International Journal of Law and Politics Studies
ISSN: 2709-0914
DOI: 10.32996/ijlps
Journal Homepage: www.al-kindipublisher.com/index.php/ijlps

IJLPS
AL-KINDI CENTER FOR RESEARCH AND DEVELOPMENT

| RESEARCH ARTICLE

History of Legal System and Sources of Law in Force in Indonesia

Nikita Ayu Dini Maulidya[1] ✉ Bambang Eko Turisno[2] and Siti Malikhatun Badriyah[3]
[123]Master of Law Program, Faculty of Law, Diponegoro University, Semarang, Indonesia
Corresponding Author: Nikita Ayu Dini Maulidya, **E-mail**: nikitayaudinimaulidya@students.undip.ac.id

| ABSTRACT
This study aims to analyze the history of law and legal sources in Indonesia. The research method used is qualitative with a historical review. The research results show that the history of Law Administration in Indonesia is grouped from the Compagnie era (1602) to the present as follows: (1) Vereenigde Oostindische Compagnie Period (1602-1799), (2) Besluiten Regerings Period (1844-1855), (3) Regerings Reglement / RR Period (1855-1926), (4) Indische Straatsregeling Period (1926-1942), (5) Japanese Period (Osamu Seirei), (6) Post Independence. The sources of law can be divided into 2 (two), namely material sources of law and sources of formal law. Sources of formal law, sources of law are seen from a juridical perspective in a formal sense, namely sources of law in terms of form, which in principle are imitated from: (i) Law. (ii) Habit. (iii) Treaty. (iv) Jurisprudence. (v) Doctrine. This material source of law is a factor that limits the division of law, for example, social relations, political power relations, social and economic situations, traditions (religious views, morals), scientific research results (traffic criminology), international development; geography is all an important object of study for sociology Law.

| KEYWORDS

Legal History, Legal System, Legal Resources, Formal Law, Material Law

| ARTICLE INFORMATION

ACCEPTED: 01 April 2023 **PUBLISHED:** 15 April 2023 **DOI:** 10.32996/ijlps.2023.5.2.4

1. Introduction

Indonesia is a unitary state based on Pancasila as well as a state of the law as stated in the explanation of the Constitution of the Republic of Indonesia Year 1945 that "Indonesia is a state based on the law (*Rechsstaat*)". Then it was further explained that "The Indonesian state is based on the law (*Rechsstaat*), not based on mere power (*Machtstaat*)." The concept of the rule of law here must be interpreted and implemented in accordance with the values of Pancasila because Pancasila is the source of all sources of law, namely divine, humane, civilized law, justice, and so on.

History and the science of law are two entities that are difficult to separate because the law is actually a product of history that continues to develop in accordance with human civilization. That is why studying law is also part of studying the stage of history itself, where legal products in every phase of history will be a mirror of the development and growth of law in the latest era. The influence of legal history in the past is enormous on the dynamics of law in the present. So knowing the history of law in the past becomes a necessity to be able to invite the development of legal history in a nation.[1]

Every nation always keeps a chronicle of its history that will be the capital for the continuity or stability and change of its laws in a time. This is where its relevance places legal history as an important part of the study and research of the development of legal science. As stated by the Minister of Justice in his welcome speech and briefing at the symposium on Legal History (Jakarta 1-3 April 1975) which among others stated that "The discussion of Legal History has an important meaning in the framework of national

[1] Agus Riwanto, Legal History; Concept, teodi and The method deep Development Legal Science,

legal development because in legal development requires not only materials about current legal developments but also materials about past legal developments. Through legal history, we will be able to explore various aspects of law in the past, which will be able to help us to understand the rules and legal institutions that exist today in our nation's society.

Legal history is a method and science that is a branch of historical science (not a branch of law), which studies (studying), analyzes (analysis), verifying, interpreting (interpreting), compiling postulates (setting the clausule), and tendencies (tendention), drawing certain conclusions (hypotheting), about every fact, concept, rule, and rule relating to the law that has ever been in force.

Both chronologically and systematically, along with cause and effect and their contact with what is happening in the present, both as contained in literature, manuscripts, and even oral speech, especially the emphasis on the unique characteristics of these facts and norms, so as to find symptoms, postulates, and legal developments in the past that can provide broad insight for people who study them, in interpreting and understanding the current law.[2]

Therefore, based on the description above, the author will discuss the history of law and legal sources in Indonesia. History and sources of law are studied based on legal sources that have been in force since before Indonesia became independent to legal sources that apply to date, both laws and other legal sources.

2. Discussion

1. History of the Indonesian Rule of Law

History studies the passage of time of society in its totality, whereas the history of law has one particular aspect in that regard: law. What applies to the whole, however applicable to the part, and the aims and purposes of legal history inevitably ultimately determine also the "postulates or laws of societal development". Thus, the problems facing legal historians are no less "impossible" than any investigator in any field. But by suggesting that legal historians should strive to write history integrally, Van den Brink seems far-reaching. It is precisely at the last stage that he oversteps this specific goal of legal history. Of course, legal historians must contribute to writing in a unified manner. In fact, this contribution is very important, given the enormous role played by law in the development of the human legal association.[3]

The law not only changes in space and location (American law, Belgian law and Indonesian law, for example) but also in the trajectory of time and time, such as formal legal sources, that is, forms of self-appearance of legal norms, as well as the content of legal norms themselves (material legal sources). The modern legal order recognizes legal norms such as: (i) legislation, (ii) jurisprudence, (iii) doctrine (iv) conventions.[4]

Legal norms today are often and often only understandable through legal history. For example, Henri de Page, in the book "Traite Eleentaire de Droit Civil" 1930-1950. that "the more he deepens the study of civil law", the more convinced that legal history, ahead of legal logic and teaching itself, is able to explain why and how our legal institutions came to the fore as they exist today. Holmes "The journey taken by law is not the paths and segments of logic but the rails of experience".[5]

Through legal history research, we will know about the possibility of legal institutions that are no longer needed or can still be developed in an effort to conduct legal guidance (BPHN-1975). Indeed, legal history, in particular, as well as history in general, has a very important role in a nation. As Soedjatmoko (1968) put it: "... *history instruction is an important means of training gogg citizens of developing love and loyalty for noes country; it is essential to a young country like Indonesia for the nation building in which its people are all engaged*". How important history is for a society, has also been affirmed by Barzan and Graff (1977), the following: "for a *while society to lose its sense of history would be tantamount to going up its civilizations, we live end are moved by historical ideas and images, and our national existence goes on by reproducing them*.[6]

Indonesia's legal system has a long history. Legal politics are used as the executor of the enactment of the rule of law. This is because Indonesia has a noble and priceless history in this world. In addition, there are also legal developments experienced as a regulator of the behavior of the Indonesian people in the association of life. Indonesian life in the field of law began to be clearly known: After the arrival of Europeans, especially the Dutch, with an effort to exert influence through colonialism (colonialism). From this nation, there are many experiences and victims suffered by the Indonesian people in carrying out their resistance.[7]

[2] Munir Fuady, Legal History, (Jakarta: Ghalia Indonesia, 2009), Pp. 1
[3] John Glisson and Frits Gorle. Pp 11
[4] Munir Fuady. Theories Big (Grand Theory) In law. (Jakarta: Gold Pretone Media Group, 2012). Pp 1.
[5] Munir Fuady, Pp 4.
[6] R. Soeroso, Pp. 320
[7] R. Abdoel Djamal, hLm. 10

The following is the history of the Legal System in Indonesia from the time of Compagnie (1602) to the present;

1. Period of Vereenigde Oostindische Compagnie (1602-1799)
This time began with the privileges granted by the Dutch government to the VOC in the form of octrooi rights (including a monopoly on shipping and trade, declaring war, making peace and printing money). Finally, Governor-General Pieter Both was given the authority to make regulations to solve problems within the VOC employees to decide civil and criminal cases.

The first collection of regulations was carried out in 1642; this group was named the Batavia Statute. In 1766 a 2nd group was produced named the Statute of Bara. VOC rule ended on December 31, 1799.

2. *Besluiten Regerings* (1844-1855)
The legal system of the Dutch East Indies consisted of the following:

a. Codified written rules.
b. Uncodified written regulations.
c. Unwritten regulations (customary law) specific to Europeans.

At this time, the king had absolute and supreme power over the colonies, including absolute power over other state possessions. The absolute power of the king was also applied in making and issuing generally accepted regulations under the name Algemene Verordening (Central Regulations).

There are 2 kinds of royal decrees:

a. The king's decree as an executive act was called Besluit, such as the decree of appointment of the Governor-General.
b. The king's decree as a legislative act is called Algemene Verodening or Algemene Maatregel van Bestuur (AMVB)

It was also during this period that the implementation of agrarian politics began, called forced labor, by Governor-General Du Bus De Gisignes. In 1830 the Dutch Government succeeded in codifying the civil code promulgated on October 1, 1838.

3. Reglement/RR period (1855-1926
Promulgated successfully:

a. The Penal Code for Europeans through S.1866:55.
b. Algemene Politie Strafreglement as an addition to the European Penal Code.
c. The Penal Code of non-Europeans through S.1872:85.
d. Politie Strafreglement for non-Europeans.
e. The Van Strafrecht Wetboek, which applied to all classes of the population through S.1915:732, came into force on 1 January 1918.

4. Indische Straatsregeling period (1926-1942)
At this time, based on article 163 IS, the population is divided into 3 groups as follows:

a. European Group – European Law
b. Foreign Easterners – Part European Law and Part Customary Law.
c. Indigenous Groups – Customary Law.

The purpose of this group division is to determine which legal system applies to each group under Article 131 IS. For procedural law used, Reglement op de Burgelijk Rechtsvordering and Reglement op de Strafvordering for Java and Madura.

The composition of the Judiciary is as follows:

- Residentiegerecht
- Ruud van Justitie
- Hooggerechtsho

For those outside Java and Madura, it is regulated in the Recht Reglement Brugengewesten based on S.1927:227. The procedural law that applies to each group, the composition of the judiciary is as follows:

a. Swapraja Court
b. Religious Courts
c. Military Tribunal

For Indigenous groups, customary law applies in unwritten form but can be replaced by an ordinance issued by the Dutch Government under article 131 (6) IS.

5. Japanese Period (Osamu Seirei)

During the Japanese colonial period, the Indies region was divided into East Indonesia (under the rule of the Japanese Navy based in Makassar) and West Indonesia (under the rule of the Japanese Army located in Jakarta). The regulations used to govern the government were made on the basis of "Gun Seirei" through the Osamu Seirei. Article 3 of Osamu Seirei No. 1/1942 stipulates that "all governing bodies and their powers, laws and statutes of the past government shall remain recognized as valid for the time being, provided they do not conflict with the regulations of the military government."

6. Post-Independence

a. Period 1945-1949

In administering the government, Constitution 45 is its juridical basis, while the applicable legal politics are contained in Article II of the transitional rules of Constitution 45 "All existing state bodies and regulations are still in force immediately as long as no new ones have been established according to this Constitution. This period applies to the RIS constitution. The applicable legal system is the legal system in the period 1945-1949 and new regulatory products produced during the period 27/12/1949 to 16/8/1950. Basically, article 192 KRIS.

b. Period 1950 – 1959

At this time, the Constitution came into force. The applicable legal system is a legal system consisting of all regulations declared applicable under article 142 of the 1950 Constitution, which is supplemented by new regulations during the period 17/8/1950 to 4/7/1959.

c. Period 1959

Based on the Presidential Decree of July 5, 1959, we return to Constitution 45. The applicable legal system is a legal system consisting of all regulations for the period 1950-1959 and all regulations applicable under Article II of the Additional Rules and Regulations established after the Presidential Decree of July 5, 1959.

d. New Order Period

The New Order began after the G.30.S/PKI coup. There was a change of government from President Soekarno to President Suharto through the Decree of March 11, 1966, which is often referred to as "Supersemar". In this order, government policy was formulated through Long-Term Development Plan I (RPJP I), which began in 1969 with a series of implementations of the Five-Year Development Plan (Reprlita).

The policy of RPJP I focuses on economic development. This is because, at that time, it was very bad, with inflation of 600%. Therefore, for smooth and economic stability, it requires political stability. Political authority at that time rested on the level of legitimacy of development/economic stability and political stability with a security approach to various societal problems.
The pouring of law in the form of laws and regulations refers to MPRS Decree Number XX / MPRS / 1966 jo. MPR Decree Number V / MPR / 1973 concerning the irarry of laws and regulations as an implementation of what is mandated in the 1945 Constitution. The hierarchy in question is: (1) the 1945 Constitution (2) MPR Provisions (3) Government Laws/Regulations in Lieu of Law (4) Government Regulations (5) Presidential Decrees (6) Other implementing regulations: a. Ministerial Instructions b. and others. During the New Order period, between 1993 and 1997, there was a political paradigm shift.

At that time, the development of the law was excluded from the development of the political field and placed separately. Formally GBHN 1993-1998 paved the way for a view that no longer saw the law as a subsystem of the political order, but rather the legal system had been seen as a subsystem of the national system. Development targets in GBHN, as stipulated in MPR Decree Number II / MPR / 1993, stated that national development targets are divided into seven areas, namely: a. Economic field b. Field of people's welfare, education, and culture c. Field of religion and belief in God Almighty d. Field of science and technology, e. Field of law f. The fields of politics, state apparatus, information, communication and mass media g. Field of security defense

The administration of government during the New Order period abused the provisions of laws and regulations for the sake of power. This deviation can be seen from constitutional practices by interpreting the 15 paradigms of the 1945 Constitution through the conception of the integralistic state as a basic reference in political development, thus giving rise to very strong and uncontrolled state power, especially in the executive branch.

e. Reformation Order Period

At this time, the enthusiasm of the nation's components arose to demand political reform in the Indonesian constitutional system for improvement in state life. This spirit emerged in a movement spearheaded by students who wanted to demand that the life of the nation and state be carried out more democratically. From this movement, changes to the 1945 Constitution were made by the People's Consultative Assembly through amendments carried out four times.

With this change, the 1945 Constitution originally consisted of 16 chapters and 37 articles, and after this amendment, the 1945 Constitution changed in the form of 20 fixed articles, 43 articles were amended, and 128 articles were new additions. Four times the amendment can be seen in the form of: a) The first amendment concerns the limitation of the powers of the President, including Articles 5, 7, 9, 13, 14, 15, 17, 20, and 21. b) The second amendment, there are three hearings which include c) The third amendment concerns the Presidential Institution, and the People's Representative institution, which has not been discussed in the third amendment, as well as the abolition of the state institution of the Supreme Advisory Council and the institutionalization of Bank Indonesia followed by Education and Cultural Issues as well as Social Economy and Social Welfare, which include: Articles 2, 6A, 8, 11, 16, 23D, 24, 31, 32, 33, 34, 37, Transitional Rules I-III, and Additional Rules I-II.

2. Sources of Applicable Law in Indonesia

Various sources of law, according to Sudikno (1986: 63), are divided into sources of law in material and formal legal sources. The source of material law is the place from which matter is taken. This source of material law is a factor that limits the division of law such as social relations, political power, social and economic situation, tradition (religious views, decency), scientific research results (traffic criminology) of international development; geography is all an important object of study for the sociology of law. The source of formal law is the place or source from which a peratura acquires legal force. Relating to the form or manner in which the regulation takes effect formally. What is generally recognized as a source of formal law is law, treaties between states, jurisprudence and custom.

Van Apeldoorn, in his book 'Introduction to legal science', translated by Mr. Octarid Sadino. Distinguish four sources of law, namely:

(1) Sources of law in the historical sense;

That is the place where we can find the law in history or in historical terms; it is further divided into two, namely:

(a) Legal sources are places where historical law can be found or introduced, ancient documents, ejections and so on.
(b) The source of law is the place where the formation of legislation takes its material.
(c) The sources of law in the sociological (teleological) sense are factors that determine the content of positive law, such as religious circumstances, religious views and so on.

(2) Sources of law in a philosophical sense.

It is divided into two parts:

(a) The source of the content of the law here is asked where the content of the law comes from. There are three opinions that answer:
    (i) According to this view, the law comes from God.
    (ii) The view of natural law is this equivalent of the content of the law comes from human reason.
    (iii) The historical mashab view, according to this view, the content of law comes from legal consciousness.
(b) The source of the binding force of the law, why the law has binding power, and why we submit to the law. The binding force of the legal method is not based solely on coercive force because most people are motivated by reasons of decency or belief.

(3) Source of law in the formal sense;

What is meant is the source seen from the way positive law occurs is a fact that gives rise to the applicable law and binds judges and residents. Its content arises from the consciousness of the people. In order to be in the form of regulations on the level of darus practice, it is set forth in the form of laws, customs, and treaties or agreements between countries. Van Apeldoorn cites agreement, jurisprudence and legal teachings or doctrines as factors that help the formation of law, while Lamaire mentions jurisprudence, legal consciousness and legal science as determinants for the formation of law.

Achmad Sanusi (1977: 34) divides legal sources into two groups as follows:

(a) The sources of normal law are further divided into:
   (1) The direct sources of normal law for the promulgation of legislation are: (i) Laws. (ii) Treaties between countries. (iii) habits. (b) The normal indirect sources of legal recognition are: (i) Agreements. (ii) Doctrine. (iii) Jurisprudence.
   (2) Abnormal legal sources; (a) Proclamation. (b) Revolution/coup D'etat.

Using legal orderly sources, namely:

(a) Pancasila
(b) Proclamation of Independence August 17, 1945.
(c) The presidential decree of July 5, 1959.
(d) Constitution of 1945
(e) Warrant of March 11, 1966.

(4) Sources of idiological philosophical law and sources of juridical law. The sources of this law can be divided into:

a. Sources of idiological philosophical laws
   It is a source of law seen from individual, national or international interests in accordance with the philosophy and ideology adopted by a country. For example; (i) In the Western bloc countries (USA, UK, Netherlands, west Germany, France, Belgium), the legal sources are liberalism and the individual. (ii) In the countries of the iron curtain (formerly) and the bamboo curtain (Soviet Union, China, Czechoslovakia), it is communism and historical materialism applied with Leninism, Maoism, Titoism. (iii) In our country RI the idiological philosophical source is Pancasila.

b. Sources of juridical law,
   They are the application and direct dissemination of ideological, philosophical, legal sources that distinguish between formal legal sources and material legal sources: (i) Material legal sources seen in terms of content, for example: The Criminal Code in material terms is to regulate general crimes, crimes and offenses; The Civil Code in its material terms regulate the issue of people as legal subjects, goods as legal subjects, engagements, agreements, evidence and freedom.

c. Formal legal sources,
   The source of law is seen from a juridical point of view in the formal sense, that is, the source of law in terms of its form whose essence is derived from:
   (i) Law.
   (ii) Habit.
   (iii) Treaty.
   (iv) Jurisprudence
   (v) Doctrine

3. Conclusion

History and the science of law are two entities that are difficult to separate because the law is actually a product of history that continues to develop in accordance with human civilization. That is why studying law is also part of studying the stage of history itself, where legal products in every phase of history will be a mirror of the development and growth of law in the latest era. The influence of legal history in the past is enormous on the dynamics of law in the present. So knowing the history of law in the past becomes a necessity to be able to invite the development of legal history in a nation.

Indonesia's legal system has a long history. Legal politics are used as the executor of the enactment of the rule of law. This is because Indonesia has a noble and priceless history in this world. In addition, there are also legal developments experienced as a regulator of the behavior of the Indonesian people in the association of life. The following history of the Law System in Indonesia is grouped from the Compagnie period (1602) to the present day as follows: (1) The Vereenigde Oostindische Compagnie period (1602-1799), (2) the Besluiten Regerings period (1844-1855), (3) the Reglement / RR period (1855-1926), (4) the Indische Straatsregeling period (1926-1942), (5) the Japanese period (Osamu Seirei), (6) after independence.

Legal sources can be divided into 2 (two), namely material legal sources and formal legal sources. Formal sources of law, sources of law seen from a juridical point of view in the formal sense, namely sources of law in terms of their form whose principles consist

of: (i) Law. (ii) Habits. (iii) Treaty. (iv) Jurisprudence. (v) Doctrine. This source of material law is a factor that limits the division of law such as social relations, political power, social economic situation, tradition (religious views, decency), and scientific research results (traffic criminology) of international development; geography is all an important object of study for the sociology of law.

Funding: This research received no external funding.
Conflicts of Interest: The authors declare no conflict of interest.
Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.

References

[1] Abdoel D R (1984). *Introduction to Indonesian Law*. Jakarta:King Grafindo.
[2] Agus R (n.d). *Legal History; Concepts, Theodies and Methods in the Development of Legal Science*
[3] Abdoel D. R. (1984). *Introduction to Indonesian Law*. Revised Edition. Jakarta : Rajawali Press.
[4] John G and Frits G. (2009). *Legal History An Introduction*. Bandung: Refika Adita Utama.
[5] LJvan A. (2009). Introduction to Legal Science. Thirty-third printing. Jakarta: PT Pradnya Paramita.
[6] Lilik MulyadiPotpourri of Criminal Law (2008). Theoretical and Practical Perspectives. Bandung: PT. Alumni. 2008.
[7] Marwan M and Jimmy. P (2009). legal dictionary; Dictionary Of Law Complete Edition. Surabaya: Reality Publisher.
[8] Munir F (2012). Grand theories in law. Jakarta: Kencana Prenada Media Group.
[9] Soeroso. R. (2009). *Introduction to Legal Science*. Jakarta : Sinar Grafika.
[10] Satjipto R (2012). Legal Science. Seventh printing. Bandung: PT. The image of Aditya Bakti.
[11] Sudikno M (2008). Know the Law of an Introduction. Fourth printing. Yogyakarta: Liberty. 2008.