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The Role of Pioneering Aviation in Building Remote Area Connectivity: Development Law Theory, Progressive Law Theory and Integrative Law Theory

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Abstract

Introduction: *The geographical condition of Indonesia, where most of its territory consists of islands and archipelagos with many areas still isolated and difficult to reach, makes pioneer air transportation a potential solution for sustainable infrastructure development.*

Purposes of the Research: *In order to understand the relevant legal perspectives regarding the role of pioneer air transportation in remote areas, this can be viewed from the combination of development law theory and progressive law theory, reinforced by integrative law theory.*

Methods of the Research: *Using a normative juridical method, this research examines the law based on legislation related to the issues being studied. The research approach involves a conceptual approach, a statutory approach, and a case approach.*

Results of the Research: *This writing examines the integration of three theories: development law theory, progressive law theory, reinforced by integrative law theory, in the role of pioneer air transportation to build connectivity in remote areas amidst various challenges. One of the main challenges is the difficult geographical conditions and limited infrastructure. Many isolated areas can only be accessed by air transportation; however, airport facilities and runways are often inadequate to support safe and efficient flight operations. The principle of sovereignty over airspace is the starting point for regulating most issues in international air law. With the presence of pioneer aircraft, areas that were previously isolated from economic or governmental centers become more accessible, which in turn opens up opportunities for the distribution of goods, services, and other resources.*

Keywords: Legal Theory; Pioneer Air Transportation; Connectivity.

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INTRODUCTION

Air transportation has a function as a *servicing sector* and a *promoting sector*. The function as a supporting element is related to the ability of air transportation to provide effective and efficient transportation services. The function as a driving element is the ability of air transportation to open up isolated areas and remote areas and islands.[1]

The development of the aviation industry is expected to increase the connectivity of passengers, goods, and cargo between regions in Indonesia. The development of the aviation industry, especially passenger and cargo transportation in Indonesia, cannot only be reviewed in terms of service but must also be followed by an improvement in safety

[1] Lestari, Dwianti & Sigit Priyanto. Faktor-Faktor Yang Mempengaruhi Perkembangan Angkutan Udara Rute Sumenap-Surabaya PP, *Jurnal Manajemen Aset Infrastruktur Dan Vasilitas*, 2020, p. 1.

aspects.[2] Therefore, the function of transportation is as a very important driving element in realizing island connectivity in Indonesia.

Airspace is a sovereign area that is the responsibility of the state and its authority is handed over to the Government. For Indonesia, this has become a basic principle as mandated in the 1945 Constitution. Therefore, the Government holds rights and obligations for activities and businesses carried out in national airspace, including creating national laws and regulations that protect aviation activities in order to create aviation safety.[3]

Talking about theory, it is generally understood as a series of units of several related elements. Regarding this legal theory, according to Satjipto Rahardjo, it can be said to be a continuation of the effort to study positive law, at least in such a sequence that the presence of legal theory is clearly constructed. When a person learns positive law, he is always confronted with legal regulations with all branches of activity and problems, such as his errors, interpretations, and so on.[4]

Munir Fuady added that legal theory is between philosophy on the one hand and positive law on the other, where positive law is strongly influenced by politics, at least according to positivism and to some extent by legal sociologists, where legal theory is between philosophical disciplines on the one hand and political theory on the other. In his book Legal Theory, W. Firedmann reveals himself as a follower of the school of positivism by stating: "*All systematic thinking about legal theory is linked at one end with philoshophy, and, at the other end, with political theory*.[5] Legal Theory, which is the Sociology of Law which talks about the factual applicability or empirical applicability of law. Legal theory in a narrow sense, talks about the formal applicability or normative applicability of law. The philosophy of law talks about the evaluative applicability of law, the last is Legal Dogmatics, or Law in the narrow sense.[6]

Legal theories are then classified in several classifications. Northrop, for example, classifies legal teachings or schools into legal positivism, pragmatic legal realism, neo-Kantian and Kelsenian ethical jurisprudence, functional anthropological and sociological jurisprudence, and natural justice. Friedmann divided the school into natural law schools, schools based on the philosophy of justice issues, schools based on the influence of the development of society on law, schools of positivism and legal positivism, and schools based on usefulness and importance. Soerjono Soekanto mentioned: the school of formality, the school of history and culture, the school of utilitarianism, the school of sociological jurisprudence, and the school of legal realism. Satjipto Rahardjo highlights Greek and Roman theories, natural law, positivism and utilitarianism, pure law theory, historical and anthropological approaches, and sociological approaches. In addition, there are also those who classify these schools only into the most influential, namely natural law schools, positive law schools, historical schools, sociological jurisprudence, and pragmatic legal realism.[7]

Judging from the theory of development law and progressive legal theory, strengthened by the pioneering integrative legal theory of aviation in Indonesia can develop sustainably,

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[2] Ibrahim, A. H. H., Husain, T., Siregar, S., & La Suhu, *Kualitas Pelayanan Kargo Bandar Udara Di Wilayah Kepulauan*,2023, p. 1.
[3] Chapter ii Konsepsi Pengaturan Pengelolaan Ruang Udara Nasional, through internethttp://ruu.lapan.go.id/doc/bab2.pdf.
[4] Munir Fuady, *Dinamika Teori Hukum*, (Jakarta: Ghalia Indonesia, 2007), p. 1-2.
[5] *Ibid*, p. 8.
[6] Otje Salman dan Anthon F. Susanto, *Teori Hukum,* (Bandung: Refika Aditama, 2010), p. 60-61.
[7] Lili Rasjidi and Ira Thania Rasjidi, *Pengantar Filsafat Hukum*, (Bandung: Mandar Maju, 2010), p. 52-53.

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reach remote areas, and contribute to regional economic development and improve the welfare of the people in the area. The legal arrangements governing this pioneering flight are regulated in the Civil Aviation Act of 2009. The law covers various aspects such as the requirements for the establishment of an airline, the ownership and operation of aircraft, the composition of shareholders, the requirements of bank guarantees, aviation human resources, as well as the regulation of passenger fares and passenger protection. Article 1 of the 1944 Chicago Convention states that every state has full and exclusive sovereignty over its territorial airspace.

METHODS OF THE RESEARCH

This paper uses the normative juridical law research method which is a literature law research conducted through research on library materials or secondary data. Using a *conceptual approach*, a statute *approach*, and a *case approach*. The legal materials used are secondary legal materials in accordance with the legal issues that are researched by studying books, legal journals, or laws and regulations.

RESULTS AND DISCUSSION

A. Development Theory

The figure who gave birth to the theory of development law was Mochtar Kusumaatmadja, he admitted that his conception of law was greatly influenced by two legal scholars from the United States, namely Myres Mc Dougal and F.S.C Northop. The two scholars enriched his thinking on law by inserting a politically oriented approach as well as the philosophical and sociological foundations of law. Law according to Mochtar's conception is not only the whole principle and rule that governs human life in society, but also includes the *institutions* and processes that make these rules come into reality.

The terms law and development have become very synonymous with Mochtar for two reasons. First, Mochtar introduced and convinced that law can not only play a role in development. Mochtar emphasized the function of law in development. Second, Mochtar carries this idea when the term "development" becomes a sacred and sacred New Order political terminology that must be applied to every field of life, including legal development.

Regarding the relationship between law and development, he blends the approaches of Eugene Erhlich and Roscoe Pound. For countries that are undergoing development, one of the tools that can be used is the law. The law is used as a tool for changing society. Mochtar sees that every change basically brings its own rejections. For this reason, the law is used as a tool or means so that changes that occur as a factor in national development can run in an orderly and orderly manner. In line with the conception of law, he does not see law solely as pursuing order and order, but still pays attention to legal beliefs in society (*living law*).[8]

Development Law Theory or better known as Madzhab UNPAD. There are 2 (two) aspects behind the emergence of this legal theory, namely: First, there is an assumption that law cannot play a role or even hinder societal change. Second, in reality in Indonesian society, there has been a change in the nature of people's thinking towards modern law.[9]

[8] H. Juhaya S. Praja, *Teori Hukum dan Aplikasinya*, (Bandung: Pustaka Setia 2014), p. 150.
[9] Otje Salman dan Eddy Damian (ed), *Konsep-Konsep Hukum dalam Pembangunan* from Mochtar Kusumaatmadja, (Bandung: Alumni, 2002), p. V.

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Mochtar Kusumaatmadja stated that the main purpose of the law when reduced to one thing is order which is the main requirement for an orderly society. Another goal of the law is to achieve justice that varies in content and size, according to society and its era. Furthermore, to achieve order, there is legal certainty in human association in society, because it is impossible for humans to develop the talents and abilities given to them optimally without the certainty of law and order.[10]

Mochtar legal thinking is about the position and role of law in development. Regarding this, in one of his writings, Mochtar said "development in the broadest sense covers all aspects of people's lives and not just economic life, therefore the idea of economic development is actually inappropriate, because it is not possible to build the "economy" of a society without affecting the development of other aspects of people's lives.[11] The role of law in development is to ensure that the change occurs in an orderly manner.

Mochtar emphasized the role of law in development, which is to ensure that the change runs regularly, showing that order is one of the classic functions of the law. Change, which is the essence of development and order or order which is one of the important functions of law, is the twin goal of a developing society. With this role of law, Mochtar wants to build a law that provides orientation and correlation to the course of development, not a hukkum that promotes the immigation of power. power must be subject to the law and at the same time dismiss accusations in the concept of legal development Mochtar is a tool to perpetuate the power of the New Order.

Legal issues as a tool for change (development) and guidance or development of the law itself. Mochtar repeated it with a different editorial, "Regarding the first problem, we here want to present the problems we face in developing the law as a *tool of social engineering*". Here again, Mochtar emphasizes more on the dynamic function of law as a tool for renewing (changing) society without having to abandon the function of the law that regulates, which in this case Mochtar calls a conventional understanding of law.

The role of law in development is to ensure that the change occurs in an orderly manner, the law plays a role through legislative assistance and court decisions, or a combination of both. However, the formation of legislation is the most rational and fast way compared to other methods of legal development such as jurisprudence and customary law. So Mochtar made legislation a concrete form and the main means of social *engineering*.

B. Progressive Legal Theory

The birth of progressive law or Progressive Law (IHP) was driven by concerns about the low contribution of Indonesian law to help enlighten the nation out of the crisis, including crises in the legal field. However, that is not the only reason, according to Satjipto Rahardjo, the IHP is not only associated with such momentary circumstances. IHP goes beyond the momentary mind and has its own scientific value. The CPI can be projected and discussed in a universal scientific context. Therefore, the CPI is faced with two terrains at once, namely Indonesia and the world. It is based on the argument that the science of law cannot be sterile and isolate itself from the changes that are taking place in the world. Knowledge must

[10] Mochtar Kusumaatmadja, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*, Penerbit Bina Cipta, Bandung, Tanpa Tahun, p. 13.

[11] Atip Latipulhayat, Khazanah Mochtar Kusumaatmadja. *Padjajaran Jurnal Ilmu Hukum*, 2014, p. 3.

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basically always be able to enlighten the community served. To fulfill this role, legal science is required to be progressive.[12]

The birth of progressive law in the treasure trove of legal thought is not something that is born without a cause and is not something that falls from the sky. Progressive law is part of a never-ending process of truth-seeking. Progressive law can be seen as a concept that is looking for an identity based on the empirical reality of the working of the law in society, in the form of dissatisfaction and concern for the performance and quality of law enforcement in the Indonesian setting at the end of the 20th century. This progressive law assumes that the law is for man, not the other way around, man for the law. The presence of the law is not for itself, but for something broader and greater. If there is a problem in the law, then it is the law that must be improved, not humans who are forced to be included in the legal scheme. Law is also not an absolute and final institution, because law is always in the process of constantly becoming (*law as process*, *law in the making*).[13]

The idea of progressive law enforcement as initiated by Satjipto Rahardjo requires law enforcement not only to carry out laws and regulations, but to capture the legal will of the community. Therefore, when a regulation is considered to shackle law enforcement, it requires creativity from law enforcers themselves to be able to create legal products that accommodate the will of the community based on the values that live in the community.[14]

The sociology of law that gives birth to progressive law is a branch of science that empirically and analytically studies the reciprocal relationship between law as a social phenomenon, and other social phenomena. The purpose of progressive law in reality is useful for the ability to understand the law in a social context, provide the ability to analyze the effectiveness of the law in society, either as a means of social control, change society, regulate social interaction to achieve a certain social state and provide possibilities and the ability to evaluate the effectiveness of the law in society. Law in Indonesia has proven to have become a tool of power, law is not something autonomous because it is a sub-system of other larger systems. This situation must be corrected at this time is the right momentum for it where the law must show its authority and flexibly follow the developments and demands of the people.[15]

Judging from this theory, the role of pioneering aviation focuses on laws that are adaptive, dynamic, and in favor of social change to achieve substantial justice. Progressive law emphasizes the importance of applying laws that are not only based on normative texts, but also pay attention to the needs of society and evolving social contexts. In order to provide a solid foundation to support the pioneering role of aviation in creating social justice and improving connectivity in remote areas. With progressive laws, pioneering aviation regulations can be more adaptive to social change, pay attention to the needs of communities, and empower previously isolated areas.

C. Integrative Legal Theory

This theory was born from the result of reflection while in detention at the Attorney General's Office in the sisminbakum case and theoretical studies on the theory of

[12] Satjipto Rahardjo, *Hukum Progresif, Sebuah Sintesa Hukum Indonesia*, (Yogyakarta: Genta Publisshing, 2009), p. 2-3

[13] Satjipto Rahardjo, "Hukum Progresif: Hukum yang Membebaskan", *Jurnal Hukum Progresif*, 1, no. 1 005, p. 3.

[14] M. Syamsuddin, *Konstruksi Baru Budaya Hukum Hakim Berbasis Hukum Progresif*, (Jakarta: Kencana Prenada Media Group, 2012), p. 109.

[15] Sukananda, S. Pendekatan Teori Hukum Progresif dalam Menjawab Permasalahan Kesejangan Hukum (Legal Gaps) di Indonesia. *Jurnal Hukum Ekonomi Syariah*, 2018, p. 9

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development law (Mochtar Kusumaatmadja) and progressive legal theory (Satjipto Rahardjo), as well as experience as a bureaucratic for almost 8 (eight) years and a lecturer for 35 years, related to the conditions of law formation and law enforcement in Indonesia in the era of globalization.

The view of integrative legal theory is different from the view of development legal theory and progressive legal theory. Integrative legal theory is not only the basis for the study of national development problems in the context of inward looking, but also in the context of the influence of international relations on the life system of a nation, especially the Indonesian nation. Because in the practice of international relations in the midst of the era of globalization, developing countries often become victims of hypocritical developed countries that are more selfish than the progress of developing countries.[16]

Integrative legal theory tries to accommodate some of the concepts of development law and progressive law. However, integrative law has its own peculiarities. There are 2 (two) peculiarities, namely: First, emphasizing the use of values that develop in society to make and enforce laws. It does not mean that they are allergic to the outside world (the West, for example), but actually every society has values that continue to live and develop (*the living law*). These values can be changed to new values that can reflect legal certainty, utility and justice, and maintain and maintain them dynamically. Second, the settlement of legal issues, especially conflicts, is directed to out of court settlement in accordance with *the living law* .[17]

The reality of development law theory has not been effective in building public legal awareness in line with the expectations of its inventors because it is proven that Indonesian society is more dependent on "superiors" or "rulers" than fellow members of other societies (*patron-client relationship*) so that the role model factor greatly determines the legal awareness of the community. Based on Romli Atmasasmita's observation, it provides a correction that actually the legal awareness of state apparatus, including law enforcement officials, also needs to be engineered. The correction put forward that, "*law as a tool of social and bureaucratic engineering*", in the sense that, the public will understand and be willing to obey if the legal apparatus and bureaucracy first consistently obey the law, mere words will not encourage public obedience to the law.[18]

The correction to the theory of development law, comes from the late Satjipto, who has reminded us the Indonesian legal generation, that the legal theory "*law as a tool of social engineering*", is feared to become "*dark-engineering*", citing the opinions of Olati and Podgorcki, if it is carried out without the conscience of law enforcers so that the deceased focuses on changing conscience behavior in law enforcement, not in the formation of laws. In short, if Mochtar Kusumaatmadja, views law as a *dynamic system of norms*, the late Satjipto Rahardjo, views law as a *behavior system of norms* and Romli Atmasasmita came to the following correction that, law should also be and should be seen as *a value system of norms*.[19]

The development of Indonesian legal theory to date has produced what Romli Atmasasmita calls "*tripartite character of social and bureaucratic engineering*", which is a combination of dynamic norm systems, behavioral systems and value systems that originate from Pancasila as the philosophy of life of the Indonesian nation. Based on the point of view

[16] Romli Atmasasmita, *Teori Hukum Integratif,* (Yogyakarta: Genta Publisshing, 2012), p. 99.
[17] Fakultas Syariah IAIN Sulthan Thaha Saifuddin Jambi, Arah Kebijakan Pembentukan Hukum Kedepan (Pendekatan Teori Hukum Pembangunan, Teori Hukum Progresif, Dan Teori Hukum Integratif), *Al-Risalah JISH* 13 no. 2 (2013): p. 14.
[18] Romli Atmasasmita, Memahami Teori Hukum Integratif, *Legalitas*, III no 2, (2012): p 10.
[19] *Ibid*, p. 11.

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of legal theory, relevant to the development of Indonesian society that is developing is the combination of development legal theory and progressive legal theory, strengthened by integrative legal theory. The combination of the three core principles of Indonesian legal theory is believed: 1) It can prevent foreign influences in the process of forming national laws and their implementation in the reality of society; 2) Be able to dig deeper into the social moral values of the Indonesian nation which will be used as material for the formation of laws both through the process of legislation and jurisprudence.

One of the main conclusions of the development of integrative legal theory in Indonesia is that this legal theory has an important and decisive role in defining and maintaining values and idealisms that can maintain the continuity of our common view of life, namely Pancasila. From this theory, the law is not only seen from the formal normative side, but also in the social, cultural, and societal context, in the context of pioneer aviation, the laws governing aviation must not only follow national regulations (as set by the government) but must also take into account local needs and conditions. For example, pioneering aviation in remote areas not only relies on general regulations, but also has to adapt to the local social and cultural situation, including in terms of accessibility, cost, and community needs for air transportation services. One of the key principles in integrative legal theory is social justice, which includes equitable development and access to resources. Pioneer aviation has a big role in realizing equitable development, especially in areas that were previously difficult to reach. Integrative legal theory encourages legal policies that favor isolated areas and ensure that they have equal access to transportation facilities, which can support local economies and social mobility.

CONCLUSION

Proper regulation and consistent implementation, aviation law can be a strategic instrument in supporting equitable development, improving people's welfare, and integrating remote areas into the mainstream of national development, paying special attention to the concept of development and equitable access to transportation in remote areas. Judging from the combined theory of development law theory and progressive legal theory, strengthened by integrative legal theory, pioneering aviation has an important role in improving connectivity between regions that are difficult to reach through other modes of transportation. Development**,** Progressive, and Integrative Theories have different but complementary perspectives in the context of law and social development. Each theory offers a different perspective on managing law and development, but all three have the same goal, which is to create welfare and social justice through the use of law. These three theories have great potential to realize social justice and sustainable development if applied wisely. Development theory provides a framework for focusing law on economic progress, while progressive puts pressure on change that is adaptive and favors marginalized groups. Meanwhile, integrative theory suggests that laws accommodate social and cultural diversity in society. The integration of these three approaches can create a more comprehensive, fair, and effective legal policy.

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