

Industry 5.0 and Legal Reasoning Reconstruction

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ABSTRACT

The main feature to be found in this study is a legal reasoning concept that is consistent with the 5.0 society that highly integrates cyberspace and physical space based on the principle of Pancasila. The legal framework of positivism, in response to the legal vacuum and interactions of society 5.0, shows a lot of stagnation. This research used a case-based approach that examines the legal reasoning of judges for resolution of commercial disputes. Data used in this study were collected from secondary data, the Landmark decision of the Supreme Court in commercial disputes from 2017 to 2019 and academic studies of legal sciences. The findings of the study indicated four conclusions. First, The New legal paradigm in 5.0 society should break away from the conventional models where the legal structure plays a major role. Secondly, the value of the Pancasila judicial system requires a balance between deontic reasoning models and market-based models. Thirdly, on the capacity of legal subjects, the Supreme Court focused on the conventional governance with the concept of the deontic reasoning model. Fourthly, according to unfair business competition the Supreme Court used market-based approaches, this indicates that the 5.0 attributes have started to adopt in judicial reasoning system.

Keywords: Industry 5.0, Legal Reasoning, Reconstruction

1. Introduction

Society 5.0 is a response to the fundamental technological radical changes known today as Industry 4.0. Thus, Society 5.0 is the direct cause of a digital advancements that will greatly impact not only production but also all parts of today's life. Technological advances increase some fundamental philosophical and existential questions in legal system. (Záklasník M., & Putnová, A, 2019). The members of the 5.0 society will also find their bodies, consciences, and routine experiences modified by the application of technological advances. One of the fundamental existential issues is the diversity of society 5.0, as it involves not only people from diverse cultures, but also cyber-physical people who are capable of entering into the social structure of the types of individuals previously unnamed in world society, such as autonomous automation and artificial intelligence. They are integrated into a coherent cyberspace "system" (Gladden M.E, 2019).

Members of 5.0 society are faced with dramatic changes from the digital revolution, existing governance models locating laws and regulations at the core face difficulties in keeping up with the speed of innovation. Consequentially, such governance models have caused problems where, on the one hand, regulation cannot control the new risks that innovation can bring about while, on the other hand, hindering the development of innovations. The G20 Member States supported this issue of awareness at the G20 summit in Osaka in June 2019. Besides, the G20 Ministerial Meeting on Trade and Digital Economy declared under the title "Governance Innovation" that member countries

would "strive for innovation-friendly policies and seek to remove barriers to innovation accordingly (Ministry of Economy, Trade and Industry of Japan, 2019).

These realities show that the legal framework model can no longer rely on the reasoning of legal positivism, as the legacy of the industrial 1.0 era has not focused on the relationship between humans and new legal entities, such as artificial intelligence and non-biological digital agents. (Compare with report from The European Economic and Social Committee, 2019). As a result, the artificial intelligence that pays attention to humanity will transform millions of data collected through the Internet into new wisdom in all areas of life if this transformation is directed at the importance of balancing economic achievement and solving social problems (Arief Budiman, 2019).

Pancasila as a philosophical basis for judicial reasoning contains many teachings about how human beings must interact with others, nature, and God in the life of society and the state. On the other hand, the process of modernization stimulates the development of science and technology and the phenomenon of the 5.0 society, so that dynamics and changes in society can take place quickly. In the context of practical guidance, the implementation of Pancasila should be adapted to the development of the national and cyberspace community. The Pancasila values should be continuously reconstructed to remain relevant as a problem solver and to be able to keep up with the times. The revitalization and reinterpretation of Pancasila as a judicial reasoning model should always be done in order not to become obsolete, so abandoned by its adherents (Mulyono, 2016).

Pancasila has to be an ideal paradigm of law because it is not only to be a filter but also to harmonize between global values and principles wisdom values which are believed to be the nation's way of life and ideology (Sunaryo, 2013). However, in the context of the discovery, the fifth industrial stage (5.0) calls for legal reasoning as a derivative of the Pancasila Legal Paradigm must be reconstructed within an appropriate space and time context. In other words, the solution of judicial problems in the industrial 5.0 era is no longer based on the relevant logic model of the industrial 1.0 era, because there is a new context that causes the existential transformation of worldview (Compare with Keraf and Dua, 2001: 154).

Focusing on the previous section-mentioned problems, the objectives of this research is to analyze whether the landmark decisions of the Supreme Court represent the characteristics of the 5.0 society. The findings will be followed up as information to rebuild the concept of industrial community-based 5.0 society. The research therefore focuses on two concerns: first, whether the landmark decisions of the Supreme Court reflect the scientific response to 5.0 society. Second, how to reconstruct the legal rationale based on the values of Pancasila in 5.0 society.

2. Methods

Doctrinal perspective is the framework used in this research. Theoretically, the objective of the doctrinal framework is to determine the basic philosophy of legal practice, which is the field of study on the decisions of the Supreme Court purposively. (Wingjosoebroto, 2020: 148). To analyze the data, the author uses a casuistic-conceptual approach as an effort to explore the purposively selected legal considerations of the Supreme Court for further conceptualization and generalization to forming a relevant case law address research issues. (Ani Purwati, 2020: 86).

Two landmark decisions are used as data to be reviewed based on the topic. First, the capital market dispute; second, the agreement of the members of the company (persero); third, unfair competition in the business sector. The two decision data will be analyzed using the theory of legal reasoning as the domain of applied theory to determine the suitability between the context of the discovery and the context of the justification of the legal considerations.

3. Results and Discussions

Whether or not we realize it, Indonesia has become part of Society 5.0. Therefore technological advancement on our country has a significant impact on the behavior of the Economic Community. As of March 2019, there were 30 million people in Indonesia who became actors in e-commerce, there are 13,485 e-commerce businesses, value of internet sales revenue was 17.21 trillion, with a total of 24.82 million online sales transactions. In the 5.0 community, the economic community 's behavior through e-commerce in Indonesia was very dominant because people expect ease to meet their needs (BPS-Statistics Indonesia, 2019: 15-17).

Exploratory, study in legal reasoning models investigates formal and information processing theories of how legal experts analyze problems, make justifications and discoveries or decisions. However, the view of most researchers that the essence of legal reasoning is its open-textured and indeterminate nature (C.D Hafner, 2001). On the other hand, the problem of the legal capacity to control new risks and hinder the development of innovation will be resolved through the contextualization of the law through legal reasoning. Legal contextualization through legal reasoning follows two aspects, namely discovery and justification.

Most traditional legal theories have problems dealing with reality, especially also in digitalization society. Formalists, like Hans Kelsen, are arguing for an autonomous position of law in the context of society. Legal realists challenge Kelsenian 's claim and deny the separate and autonomous position of law from its social and, in particular, political context, in example the law mirrors and reflects society (Husa & Husa, 2014).

The strength contest between the opposing systems referred to above will be evaluated on the basis of the characteristics of the findings and their respective justifications. Based on the explanation above, there is a need for a theoretical framework to respond to the problem statement in this research.

1. Shifting Paradigm of Law in 5.0 Society.

The reconstruction of the legal reasoning can not be separated from the context. This means the characteristics of the 5.0 society function as a guiding model as well as a test tool to determine whether the legal reasoning applied is consistent with the 5.0 industrial.

The relationship between the government, community and company can be seen in attempt to discover out all the characteristics of the 5.0 society. On general perspective, each governance process, such as rule making, monitoring and enforcement, ensures the active involvement of businesses that design and implement cyber-physical architectures, as well as the communities and individuals that use them (Ministry of Economy, Trade and Industry of Japan, 2019: 3).

Under this governance model, the roles of governments , businesses, communities and individuals are expected to change in the following ways. The government will act as a facilitator of multi-stakeholder governance rather than as the sole provider of rules. For

monitoring and enforcement purposes, the government will provide incentives for businesses, communities and individuals to participate proactively in these governance processes. (Japan Ministry of Economy, Trade and Industry, 2019: 4).

Businesses will become active designers of the rules through self-regulation and architecture rather than passive followers of the regulations. They are expected to play a leading role in ensuring trust in new technologies or business models through an external explanation of their rules and architecture. (Japan Ministry of Economy, Trade and Industry, 2019: 3). Communities and individuals can play an active role in bringing their values and assessments to society rather than being left with insufficient information as weak entities. These activities may be empowered by the appropriate design and enforcement of the rules on disclosure and competition. (Japan Ministry of Economy, Trade and Industry, 2019: 4).

2. Legal Reasoning of The Supreme Court Legal for the Settlement of Business Disputes

Landmark decisions are important decisions that constitute new problems as a reference to how well the legal reasoning of the Supreme Court reflects the legal findings of the 5.0 context of industrial society. Each full discussion will be presented as follows:

a. Settlement of Dispute: PT. Insight Investment vs PT. Bank Global Internasional

This case is a civil lawsuit on the capital market between PT. Bank Global Internasional TBK (in liquidation) vs. PT. Investments Insight Settlement Decision of Dispute between PT. Insight Investment vs PT. Bank Global Internasional, Tbk. In that case, PT. Insight Investments, et al (The Plaintiffs) contend that PT. Bank Global, Tbk, et al (Defendants) committed illegal acts because they contained false and misleading information about the material facts, shortly after the public offering of subordinated bonds PT. Bank Global Tbk (Defendant) in 2003, causing losses to the Plaintiffs as buyers/bondholders.

The Central Jakarta District Court, which was upheld by the Jakarta High Court, granted the lawsuit and stated that the Defenders had committed an illegal act, and then sentenced the Defenders to pay some compensation to the Plaintiffs, ranging from 1 billion to 3 billion rupiah. The Supreme Court held that the *judex facti* decision was incorrect because, following the explanation of Article 51 (2), 1995 of the Capital Markets Act and the RUPOB, the parties had the right to act on behalf of and for the benefit of bondholders, including but not limited to the right to receive debt payments, the principal and the interest are the trustees both inside and outside the court (Mahkamah Agung R.I, 2017: 27-28).

Where the core reasoning of the Supreme Court Decision above linked to the characteristics of 5.0 society, it can be concluded that its discovery context refers to the capital market, and justification context refers to the capital market explanation of Article 51(2) of 1995. In terms of context, these considerations do not represent legal findings based on 5.0 society, referring to the main building in the 5.0 society which recognizes the parties in the capital market as the main actors.

In addition, the Supreme Court's considerations do not reflect the 5.0 society model of community legal reasoning for several reasons. *First*, the verdict is still based on rules that specify detailed behavioral responsibilities rather than goal-based regulation. When purchasing subordinated bonds, it can not be separated from the contents of the agreement between the two parties. Not only should the legislation, but also the agreement. Therefore, if the trustee is given the authority to act for and on behalf of

investors or creditors, the Supreme Court must consider it. *Second*, since the aggrieved party can not have access to their loss in real time, neglecting this fact is a weakness in this legal consideration. *Third*, dependency on the revision of the legislation has delayed the improvement of the structure and substance of the legislation.

Each two research findings are consistent with Pancasila's legal reasoning, which provides an equal and balanced opportunity for the parties to conclude the agreement in good faith. The legal character of Pancasila that stands out is Nurturing. Its implementation in the law order is characterized by its responsiveness to the development and aspirations of the expectations of the community. In other words, the aim of the law is to create humane social conditions, enabling social processes to take place naturally. Thus, in a fair world, every man has ample opportunity to develop all the potential (physical and spiritual) of humanity as a whole. By and with the law, individuals or communities can live a decent and dignified life (Yusuf, 2017).

b. Settlement of Dispute: KPPU (Commission is the only institution dealing with competition law in Indonesia) vs PT Hariara et.al

This case is an objection against the verdict of the Southern Jakarta District Court were rejected the decision of the KPPU. In essence, KPPU 's decision stated that the defendants had engaged in unfair competition in the form of a conspiracy in the tendering process (Article 22 of Law No. 5 of 1999 on the prohibition of monopoly and unfair competition in the business sector).

At the cassation level, the Supreme Court has stated that the application of the law is correct. The plaintiffs were shown to be conspiring vertically and horizontally. The evidence can be seen from the similarity in the bidding documents of three Plaintiffs I, all of whom upload documents from the same IP address. Where the Supreme Court legal considerations linked to the characteristics of society 5.0, discovery context is unfair competition and the justification context for Article 22 of Act No. 5 of 1999 on the prohibition of monopoly practices and unfair competition.

There are three aspects for the legal considerations referred to above. First of all, this decision reflects the self-regulation required by business actors to ensure that the management of fair competition data is properly managed and implemented. Self regulation contributes to the goal of discouraging conduct contrary to good faith or good practices in conjunction with codes of conduct that have been approved in the field related (Lopez, 2016). *Second*, the verdict of Supreme Court function to enforce laws in accordance with the social impacts of corporate conduct. There are three aspects to the analysis of the legal considerations referred to above. *Third*, the identification of IP addresses as a basis for proof is an acknowledgement of the factual information in 5.0 society.

3. Legal Reasoning Reconstruction

In the context of reason-based logic, rules are treated as 'logic individuals' with a conditional structure, i.e. a condition part and a conclusion part. In principle, if the conditions of the rules are completely comfortable, their conclusions shall be drawn (Ana Dimiškovska, 2013). Therefore, the context of the discovery serves to explain the conditions that must be met and the context of the justification determines the suitability of the facts to the conditions required.

On the basis of the decisions of the Supreme Court referred to above, we can see a number of concepts as the basis for the reconstruction of legal reasoning in Indonesia,

where it, on the one hand, recognizes the characteristics of society 5.0 but, on the other hand, maintains the moral principles of Pancasila.

First, in the context of legal interpretation, the Judges must be shift from rule-based reasoning to goal-based model that specify values to be achieved at the end, in order to overcome the problem of laws not being able to accommodate the speed and complexity of society. *Second*, Legal reasoning scope non only based on the conventional approach, because there are a number of unlawful behaviour that can be traced using digital tracks.

Secondly, the value of the Pancasila judicial system requires a balance between deontic reasoning models and market-based models. The legal character of Pancasila that stands out is Nurturing. Its implementation in the law order is characterized by its responsiveness to the development and aspirations of the expectations of the community.

Thirdly, Self regulation required by business actors to ensure that the management of fair competition data is properly managed and implemented. The verdict of Supreme Court function to enforce laws in accordance with the social impacts of corporate conduct. The identification of IP addresses as a basis for proof is an acknowledgement of the factual information in 5.0 society.

4. Conclusion

According to explanations referred to above, the conclusion in this research \indicated fourth conclusions. *First*, the New legal paradigm in 5.0 society should break away from the conventional models where the legal structure plays a major role. *Secondly*, the value of the Pancasila judicial system requires a balance between deontic reasoning models and market-based models. *Thirdly*, on the capacity of legal subjects, the Supreme Court focused on the conventional governance with the concept of the deontic reasoning model. *Fourthly*, according to unfair business competition the Supreme Court used market-based approaches, this indicates that the 5.0 attributes have started to adopt in judicial reasoning system.

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