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REVIEW ARTICLE

DETERMINATION OF ADVANCEMENT OF TECHNOLOGY AGAINST LAW

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ABSTRACT

The rapid technological advancement cannot be separated from the negative impact. Unfortunately, technological advances that have a negative impact are often determinants of law. This condition is of course very detrimental to society. Law, which is actually an instrument of state policy to prevent and act against the negative impacts of technological progress, is precisely technological progress as a determinant of law. This certainly creates problems that must be resolved. This study examines the determination of technological progress on the law. This study also formulates a legal model that is able to provide determination on technological progress. This research was conducted using a qualitative research approach and normative juridical research. The results of this study are to describe the evidence for the determination of technological progress against the law. In addition, it also formulates a legal model that is determinant of technological progress.

Keywords: *Determination; Technology Advances; Law*

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INTRODUCTION

Technology from the past to the present can be said to continue to progress (Wahyudi & Sukmasari, 2014). Humans continue to make innovations that make technological progress even more unstoppable. Everything that was not imagined by many humans is now a reality (Setiawan, 2018). Even things that are considered impossible are often denied by advances in technology. Interestingly, almost all humans on this earth have been or are in contact with technological advances. This condition cannot be denied because many humans cannot even escape technology. The rapid advancement of technology cannot be stopped. Human creativity and innovation in the field of technology has made technological progress even faster. No wonder so many humans then make plans that were never thought of by many humans. These plans were greeted enthusiastically by various groups (CNN, 2020).

Many people then believe that plans beyond rationality that are only imagined can be realized with technological advances (BBC, 2016). There are also many people who do not believe and think that imaginary plans are only limited to seeking sensations and even lead to mere commercial purposes (Azizah, 2016). Finally, time will tell whether technological advances can bring about the plans of the imagination or not. Looking at some evidence, it can be said that technological advances have been able to turn imaginary things into reality.

Technological advances that are able to make the condition of the imagination come true certainly have an impact. The impact of these technological advances can consist of positive impacts and negative impacts. The positive impacts of technological advances include: (1) the world is more effective and efficient; (2) it becomes easier for humans to carry out activities; and (3) many problems have been resolved by technological advances (Azizah, 2020). The negative impacts of technological advances include: (1) increasingly fierce competition; (2) many human activities have been replaced by technology; and (3) there was a lot of unemployment which led to crime (Ratnaya, 2011). The positive impact of technological advances is certainly an advantage that can be sustained. The negative impact of technological progress is something that must be anticipated so as not to cause problems for humans.

The state as the largest organization that has autonomous power can anticipate or minimize the negative impact of technological advances. The state through policy or legal instruments must be able to control the negative impact of technological progress so that it does not cause problems for mankind. How big the impact of technological advances must be controlled by the state through legal instruments. This is so that there is order and security for the people, considering that the state is the biggest controller in public order and security.

Interestingly, until now, laws that have become technological instruments and are supposed to control technological progress and its impacts, are often determined by technological advances. Technological progress can be said to be the dominant determinant of law. Indonesia as a country can be said to be an example that technological progress is often a determinant of law. Rapid technological advances often make the law slow in responding (Diniyanto & Suhendar, 2020). As a result, the negative impact of technological advances often occurs and causes harm to society (Diniyanto & Suhendar, 2020). This paper examines the determination of technological progress on law in Indonesia. This study also formulates laws that are determinant of technological progress through a model of law formation.

METHOD

This research uses a qualitative research approach. Researchers first capture the phenomena that occur in society and then describe them in narrative form (Hardani, et.al., 2020). The next researcher finds the problem and analyzes the phenomenon and formulates problem solving model. The type of research used in this research is the juridical-normative research type (Sonata, 2014). Researchers will examine the laws and regulations related to this research. Researchers also analyzed statutory regulations with a literature review which contained theories. Sources of data used in the study consisted of primary and secondary legal materials. Primary legal materials, namely laws and regulations related to this research. Secondary legal materials are documents and library sources related to this research.

DETERMINATION OF ADVANCEMENT OF TECHNOLOGY AGAINST LAW

It can be said that technological progress almost always precedes the law (about technology). Laws related to technology follow technological advances. No wonder

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the law is often left behind in responding to technological advances (Diniyanto & Suhendar, 2020). As a result, the negative impact of technological advances is difficult to control by law. Another thing that is no less interesting, technological progress is a determinant of the law. How is technological progress a determinant of the law? There is some evidence that technological progress is determinant of law. The first evidence can be seen from Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions hereinafter referred to as the Information Law and Electronic Transactions. This regulation often gets pros and cons in society. This regulation also suspects that there are many rubber articles that can carry out criminalization (Prabowo, 2019). The pros and cons of several articles in the Law on Electronic Information and Transactions often cause injustice to various elements of society. This condition actually reflects that technological progress is a determinant of law so that laws that are formed in regulating technology have pros and cons in society.

The second evidence is Law Number 44 Year 2008 concerning Pornography which in its journey raises various pros and cons in society. The pros and cons that exist in the community towards Law Number 44 of 2008 concerning Pornography are seen from the different interpretations of the material content of Law Number 44 of 2008 concerning Pornography. The multi-interpretation does not mean the fault of the law enforcer, but rather that the content of Law Number 44 of 2008 concerning Pornography is unclear, which creates multiple interpretations. The existence of multiple interpretations of Law Number 44 of 2008 concerning Pornography has the potential to cause harm to society (Briantika, 2021). This condition is very clear that Law Number 44 Year 2008 concerning Pornography is not able to control technological progress so that the established regulations create multiple interpretations and have the potential to harm the community. The existence of content material in Law Number 44 of 2008 concerning Pornography which has multiple interpretations indicates that the law has not been able to clearly interpret technological progress. As a result, the law is floating and has multiple interpretations. Technological advances are determinants of law so that the law cannot provide concrete clarity for no multiple interpretations.

The two evidence namely the ITE Law, Law Number 44 of 2008 concerning Pornography, have indicated that laws, especially those related to technological advances, have pros and cons. The two evidence also illustrate that technological progress is determinant of law. In this situation, of course, a solution must be found so that the law can be determined so that it is able to prevent pros and cons in the law and to prevent the negative impact of technological progress, so that technological progress does not produce negative impacts that harm society. Likewise, with laws which are determinants of technological progress, the law does not contain rubber articles and articles or material with multiple interpretations.

LAW THAT IS DETERMINANT OF TECHNOLOGICAL PROGRESS THROUGH THE LEGAL FORMATION MODEL

Technological progress, which can be said to be a determinant of law, must be balanced so that there is an inter determinant between technological and legal progress. The law must be able to control the rapid advancement of technology. This is necessary so that the negative impact of technological advances can be prevented and minimized through state policy instruments, namely law. Therefore, technological progress should not be a determinant of the law. In this regard, the law should be determinant of technological progress so that the law can control technological progress, especially in relation to the negative impact of technological progress. The question is: can the law be determinant of technological progress? Given the rapid technological advances, while the law in this case the formation of laws seems slow in responding to technological advances. There needs to be a law that is determinant of technological progress. Laws that are determinant of technological progress can be formed through a model of law formation.

The next question is what is the legal formation model that is able to produce determinant laws for technological progress? Answering this question, the researcher proposes that the law formation model that can produce determinant laws of technological progress, namely (1) a model of legal formation quickly; and (2) produce future-oriented laws. The formation of the law quickly is one of the instruments so that the law can control technological progress.

I. The Model of Quick Legal Formation

The slow formation of laws will be lagged behind by fast technological advances. Therefore, we need a model for quick legal formation. The quick law formation model can be done by (a) quickly capturing problems in the public; (b) quickly formulating laws; and (c) quickly approve the law.

A. Quickly Catch Problems in Public

Laws that are not left behind with technological advances and are able to control technological developments can be started with the formation of appropriate laws. Appropriate legal formation is not limited to formal procedural only in accordance with statutory regulations, appropriate legal formation namely the formation of laws that prioritize formal and material aspects. The material aspect in question is the aspect of legal substance. The substance of the law must be appropriate and in accordance with the wishes of the community. Fulfilling the substance aspect in the

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formation of the law can be done by capturing or absorbing problems in the public. Good law is the law in accordance with the needs of society. Therefore, in the formation of laws, we must quickly catch or absorb problems in the public (Diniyanto & Suhendar, 2020). The absorbed problem is then formulated a solution so that the law that is formed can solve the problem. Law is a solution in public settlement because it is in accordance with public needs.

Conformity law as a solution in solving problems in the public, this can make law a solution in dealing with problems due to technological advances. Rapid technological advances can be said to have both positive and negative impacts. The negative impact of technological advances can only be prevented or punished using fast laws. Fast law can be done by forming laws that capture or absorb problems in the public, so that the laws are formed according to the needs of the community. Laws like these are able to prevent and act against the negative impacts of technological advances.

B. Quickly Formulate Laws

The speed in capturing or absorbing problems in the public must also be consistent in formulating laws. Do not let the absorption of problems in the public be carried out quickly, but the formation of laws through the formulation of legal materials is carried out slowly. This condition is tantamount to not solving the problem because there is no quick follow-up after the absorption of the problem. Therefore, lawmakers after absorbing problems quickly must also carry out legal formulation quickly. Quick legal formulation is meant by a formulation that still relies on regulations and prioritizes the quality of substance and is in favour of public justice. Do not let the legal formulation be quick but ignore the substance and harm the public interest. It is the equivalent of hasty legal formulation.

C. Quickly Approve Laws

After quickly catching the problem and quickly formulating the law, you must quickly agree to the law. The approval process for the formation of laws is part of the process in the formation of laws. Without an approval process, the law cannot be enforced. Therefore, as a complete form of legal formation, there must be a legal approval process. Slow legal approval will cause a law to be slow to apply. Laws that are quickly enforced can be done on the condition that they have been approved by lawmakers. This means that speed in approving the law is necessary so that the law can be applied immediately. As previously mentioned, the speed of agreeing to the law must not ignore the substance and pro-public aspects. The speed of approving laws must be in line with alignments with justice and public values, so that laws that have been approved and are ready to be implemented can be in accordance with public needs.

If the formation of the law is carried out at three speeds, namely (1) quickly catching problems in the public; (2) quickly formulating laws; and (3) quickly approve the law. The formation of these laws will produce laws that are fast and able to keep up with technological advances. Laws that are fast and keep pace with technological progress can be determinants of technological progress, at least from the legal aspect in controlling technological progress.

II. Law Formation Produces Future-Oriented Law

In addition to the model of law formation that is carried out quickly, it is also necessary to form laws to produce laws that are future-oriented. Future-oriented laws are needed to predict technological progress. The existence of future-oriented laws can also prevent the negative impact of technological progress. This is because future-oriented laws have been able to map the possible future technological advances and the possible negative impacts, so that the law can be used as an instrument to prevent the negative impact of technological progress. The formation of laws to produce future-oriented laws can be done by forming (1) responsive laws and (2) futuristic laws. Responsive law is open law and integrity. Open is meant to be open to change, integrity namely accountability for the values of justice (Nonet & Selznick, 2003). The formation of laws that are responsive with the nature of being open to change serves to adapt quickly and even more quickly with technological advances. This condition is very important so that technological progress is not always determinant of law. Responsive laws can be created and keep pace with technological advances if they are done quickly to catch problems in the public.

In addition to producing responsive laws, the formation of laws must also produce futuristic laws. Futuristic laws are needed in order to map or predict future conditions. Mapping or predicting the future is needed as part of the steps to adjust to the future and prevent the negative impact of technological advances in the future. Laws that can adapt to the future and prevent the negative impact of technological progress are laws that are determinant of technological progress. This means that if the formation of laws is able to produce responsive and futuristic laws, then technological progress will not always be a determinant of the law. Law can actually be a determinant of technological progress. The legal determination of technological progress is not to hinder technological progress, but rather to prevent the negative impact of technological progress.

CONCLUSION

This paper highlighted and concluded that determination of technological progress against the law is a natural thing, considering technological progress is often faster than the law. Technological advances are already in the future, sometimes the law still dwells on past problems. Technological progress is determinant of the law can

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actually be seen from at least two evidences. The evidence referred to is evidence of the pros and cons and the rubber article in the ITE Law. Further evidence can be seen from the content material in Law Number 44 of 2008 concerning multi-interpretative Pornography. These two evidences reflect that technological progress is determinant of law. Technological progress, which is often a determinant of law, is certainly not good. This is because technological advances cannot be separated from negative impacts. Determining technological advances that have a negative impact is certainly a bad thing. The law should be the controller to prevent and act against the negative impact of technological advances. This means that technological progress is not often a determinant of the law on the contrary the law must be a determinant of technological progress. One of the ways to do legal determination of technological advances is by using a model of law formation which includes (1) a model of rapid law formation; and (2) produce future-oriented laws. The quick law formation model can be done by (a) quickly capturing problems in the public; (b) quickly formulating laws; and (c) quickly approve the law, as for producing future-oriented laws, it can be done by forming (1) responsive laws and (2) futuristic laws.

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QUOTE

As computational technology and artificial intelligence matures, more people will be able to have better access to justice

Monica Bay, Fellow, Stanford Law School CodeX

from: https://www.relativity.com/blog/the-best-of-legaltech-2017-our-favorite-quotes-from-the-speakers/

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