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Jeremy Bentham's Utilitarianism Theory Methodology in the Corporation Law System In Indonesia

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Abstract. *This study examines the relevance and application of Jeremy Bentham's theory of utilitarianism in the context of corporate law in Indonesia. The theory of utilitarianism, based on the principle of "the greatest happiness for the greatest number", offers a moral framework oriented towards social benefit. In practice, corporate law is often faced with an ethical dilemma between the interests of shareholders and the public welfare. The research method used is a normative juridical approach with qualitative analysis of laws and regulations related to corporations in Indonesia, as well as a literature study of primary and secondary literature on utilitarianism theory and legal ethics. The results show that most of the corporate regulations in Indonesia, such as the Limited Liability Company Law and the Financial Services Authority regulations, implicitly reflect utilitarian values, especially in the aspects of corporate social responsibility (CSR) and consumer protection. However, there is still a gap between legal norms and practical implementation that has an impact on the inequality of benefit distribution. In this study, it emphasizes the importance of strengthening utilitarian ethics in the formulation and implementation of corporate legal policies, in order to create a legal order that not only benefits business actors, but also provides the greatest benefits to the wider community.*

Keywords: *Corporate Law; Jeremy Bentham; Utilitarianism*

Abstrak. Penelitian ini mengkaji relevansi dan penerapan teori utilitarianisme Jeremy Bentham dalam konteks hukum korporasi di Indonesia. Teori utilitarianisme, yang berlandaskan prinsip "the greatest happiness for the greatest number", menawarkan kerangka moral yang berorientasi pada kemanfaatan sosial. Dalam praktiknya, hukum korporasi sering dihadapkan pada dilema etis antara kepentingan pemegang saham dan kesejahteraan publik. Metode penelitian yang digunakan adalah pendekatan yuridis normatif dengan analisis kualitatif terhadap peraturan perundang-undangan terkait korporasi di Indonesia, serta studi pustaka terhadap literatur primer dan sekunder mengenai teori utilitarianisme dan etika hukum. Hasil penelitian menunjukkan bahwa sebagian besar regulasi korporasi di Indonesia, seperti Undang-Undang Perseroan Terbatas dan peraturan Otoritas Jasa Keuangan, secara implisit mencerminkan nilai-nilai utilitarian, terutama dalam aspek tanggung jawab sosial perusahaan (CSR) dan perlindungan konsumen. Namun demikian, masih terdapat kesenjangan antara norma hukum dan implementasi praktis yang berdampak pada ketimpangan distribusi manfaat. Dalam penelitian ini menekankan pentingnya penguatan etika utilitarian dalam perumusan dan pelaksanaan kebijakan hukum korporasi, guna menciptakan tatanan hukum yang tidak hanya menguntungkan pelaku usaha, tetapi juga memberikan manfaat sebesar-besarnya bagi masyarakat luas.

Kata Kunci: Hukum Korporasi; Jeremy Bentham; Utilitarianisme

1. INTRODUCTION

As aspired by the proclaimers and independence fighters of Indonesia, the 1945 Constitution explains that Indonesia is a state of law or "*rechtsstaat*". So that in the dynamics of the state, the law is the commander-in-chief compared to other aspects such as religion, social, political or economic.

The idea of a state of law is built by developing the legal apparatus itself as a functional and fair system, developed by arranging the supra structure and infrastructure of political,

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economic and social institutions that are orderly and orderly, and fostered by building a rational and impersonal culture and legal awareness in the life of society, nation and state. For this reason, the legal system needs to be built (*law making*) and enforced (*law enforcement*) as it should be, starting with the constitution as the law of the highest position.

In one of his writings, Prof. Mochtar Kusumaatmadja, among others, said the following, "Development in the broadest sense includes all aspects of people's lives and not only economic life, therefore the term economic development is actually not appropriate, because we cannot build the 'economy' of a society without concern for the development of other aspects of people's lives".

Prof. Mochtar Kusumaatmadja said that law is a "means of community renewal" based on the assumption that the existence of order or order in development and renewal efforts is something that is desirable or considered (absolutely) necessary. Another assumption contained in the conception of law as a means of renewal is that law in the sense of rules or legal regulations can indeed function as a tool (regulator) or means of development in the sense of channeling the direction of human activities in the direction desired by development and renewal.

In its dynamics, the law in Indonesia, which is a legacy of the Dutch state which adheres to continental Europe or civil law, has changed along with the growth and development of society in Indonesia, including with the process of assimilation with the culture, customs and religion that prevails in Indonesia. So that the applicable law in Indonesia based on Pancasila must prioritize the principle of kinship to the norms, customs, and rules that apply in society. In addition, in the ek.onomi, both regional and global, it also greatly influences *lawmaking* in positive law in Indonesia, especially the practices that apply in Anglo Saxon countries or common law.

Thus, the legal theories that apply in Indonesia also need to consider the theories of the Anglo Saxon country, one of which is the theory of Utilitarianism initiated by Jeremy Bentham, which is a normative ethical theory that determines that kindness is an action that maximizes happiness and well-being for all affected individuals.

2. RESEARCH METHODS

This research uses a normative juridical method with a conceptual and legislative approach. This method aims to examine how Jeremy Bentham's theory of utilitarianism can be applied in the corporate legal system in Indonesia, by examining the applicable legal norms, legal doctrines, and relevant principles. This approach was chosen to uncover the linkages between utilitarian ethical values and public interest-oriented corporate legal arrangements.

The data sources in this study consist of primary legal materials such as Law Number 40 of 2007 concerning Limited Liability Companies and other related regulations, as well as relevant court decisions. Secondary legal materials include academic literature such as books, scientific journals, and the opinions of legal experts on utilitarianism theories and corporate law. In addition, tertiary legal materials such as legal encyclopedias and legal dictionaries are also used to strengthen conceptual understanding.

The data collection technique is carried out through literature studies by tracing and analyzing legal documents, scientific literature, and relevant publications. Furthermore, the data is analyzed qualitatively with a descriptive-analytical approach, which describes the content and substance of the applicable law, then interprets and relates it to the principle of utilitarianism. The goal is to find the relevance of utilitarianism theory in shaping and assessing corporate law norms in Indonesia in a more ethical and functional manner.

3. RESULTS AND DISCUSSION

The Foundations of Jeremy Bentham's Philosophy of Utilitarianism in the Context of Ethics and Legal Purposes

The origins of modern utilitarianism can be traced back to the 18th century through the English philosopher, Jeremy Bentham. *Jeremy Bentham* (1748-1832) is often considered the founder of traditional utilitarianism. Bentham sought to find an objective basis for making decisions that were able to provide publicly acceptable norms in setting social policies and regulations. An objective basis is to look at the various policies that can be established and compare the benefits and consequences. The right course of action from an ethical point of view is to choose a policy that is capable of providing great utility. In short, the utilitarian principle states that: "An action is considered to be right from an ethical point of view if and only if the total sum of the utilities resulting from the action is greater than the total sum of utilities by the action that can be performed." Bentham called his formulation "the greatest principle of happiness."

Utilitarianism comes from the Latin word "*Utilis*", which means useful, useful, advantageous, or profitable. According to KBBI (Great Dictionary of the Indonesian Language), *utilitarianism* consists of the word Utilititas, which means benefits, uses, benefits. Utilitarianism is a concept in moral philosophy that emphasizes the benefit or usefulness of judging an action as the most basic moral principle, to determine that a behavior is good if it can provide benefits to a large number of consumers or society.

Utility is the basis for Jeremy Bentham's ethical and political philosophy and in this principle Jeremy Bentham believes that the principle of utility or utility should be used as a guide in moral decision-making and this will be able to increase usefulness or happiness and reduce suffering.

In relation to the purpose of law, one of which is to create justice, Jeremy Bentham sees that the principle of utility must be the foundation for creating justice. Jeremy Bentham also believed that the purpose of the legal system was to create a just society based on the common good and happiness of the many, and not just to punish lawbreakers.

The theory of utilitarianism was a form of reaction to the conception of natural laws in the eighteenth and nineteenth centuries. According to Bentham, the purpose of the law is to provide the greatest benefit and happiness to as many people as possible. So, the concept puts utility as the main goal of the law. The measure is the greatest happiness for as many people as possible. The assessment of the good or bad, whether this law is fair or not depends on whether the law is able to provide happiness to humans or not. Usefulness is the same as happiness.

The basic principles of Bentham's teachings can be explained as follows. The purpose of the law is that the law can provide a guarantee of happiness to individuals, then to the multitude. "*The greatest happiness of the greatest number*". This principle must be applied qualitatively, because the quality of pleasure is always the same. To realize the happiness of individuals and society, legislation must achieve four objectives:

(1) to provide subsistence;
(2) to Provide abundance;
(3) to provide security;
(4) to attain equity.

A law that brings a lot of happiness to the largest part of society will be judged as a good law. Furthermore, Bentham argued that the existence of the state and law is solely a tool to achieve the essential benefits, namely the happiness of the majority of the people. Bentham's teaching, which is individualistic in nature, still pays attention to the interests of society, so that the interests of one individual and another individual do not collide, so that homo homini lupus

does not occur. According to Bentham, each individual should have an attitude of sympathy for other individuals so that individual happiness will be created and the happiness of society will be realized. Bentham said "*The aim of law is the greatest happines for the greatest number*" Some of Bentham's important thoughts can also be shown, such as:

1) Quantitative hedonism is an understanding that is embraced by people who seek pleasure solely quantitatively. Pleasure is physical and sensory-based.
2) The materialistic summun bonum means that the pleasures are physical and do not recognize spiritual pleasures and consider them to be false pleasures.
3) Hedonistic calculus is that pleasure can be measured or valued with the aim of making it easier to make the right choice between competing pleasures. One can choose pleasure by the way using hedonistic calculus as the basis for his decision. The criteria for calculus are: the intensity and level of the power of the pleasure, the length of the pleasure to run, the certainty and uncertainty that are the guarantees of pleasure, the familiarity and the proximity of pleasure to time, the possibility that pleasure will result in the next additional pleasure, purity about the absence of painful elements, and the possibility of sharing pleasure with others. For this reason, there are sanctions that must and will be applied to ensure that people do not exceed the limits in achieving pleasure, namely: physical sanctions, political sanctions, moral sanctions or general sanctions, and religious sanctions or spiritual sanctions.

Utilitarianism Approach and Materialism Dialectics in Assessing Good Corporate Governance and Corporate Legal Responsibility in Indonesia

In relation to *good corporate governance* , one of the theories that will be used for the approach is the theory of utilitarianism to answer whether the goals of the law are more achieved in the context of decision-making and ethical considerations in company operations. In general, utilitarianism is an ethical theory that states that an action is considered morally right if it produces the greatest good for the greatest number. In a business context, this means that the company's decisions and policies must aim to maximize the overall well-being, not only for shareholders but also for all stakeholders such as employees, customers, suppliers, society, and the environment. Meanwhile, Good Corporate Governance (GCG) is a system that regulates and controls companies to create added value for all stakeholders. GCG involves a set of principles such as transparency, accountability, responsibility, independence, and justice/equality (TARIF). The goal is to ensure that the company is run ethically, efficiently,

and responsibly, so that it can achieve its business goals in a sustainable manner and avoid harmful practices.

In terms of laws and regulations, the state issued Law Number 40 of 2007 concerning Limited Liability Companies which is the legal basis in the implementation of *good corporate governance* and as an effort to encourage the efficiency and effectiveness of a corporation. In one of the regulations in Articles 92 and 97 which contain, among other things, related to *the business judgement rule* or considerations regarding decision-making by the Board of Directors that can protect the directors from criminal threats, especially criminal acts of corruption. In addition to Law Number 40 of 2007 concerning Limited Liability Companies, the Government of Indonesia also issued Law Number 1 of 2025 concerning State-Owned Enterprises. State-Owned Enterprises (SOEs) are business entities whose capital is owned by the state, either wholly or mostly, through the participation of segregated state wealth. The concept of SOEs reflects the two roles of SOEs, namely as a business entity that aims to achieve profits, and as an entity that acts as a tool of the government to achieve national development goals and community welfare. The role of SOEs in national economic development is very important and strategic, among others because it contributes to the development of the national economy in general and State revenue in particular, obtaining profits, providing quality and highly competitive goods and/or services, providing goods and/or services for the public benefit in order to fulfill the lives of the people or for strategic needs, To be a pioneer of business activities that have not been implemented by the private sector and cooperatives, to empower, provide support, and build partnerships with micro, small, medium, cooperative, and community enterprises.

The implementation of SOEs must aim to realize general welfare and social justice for all Indonesian people. This means that all efforts made by the State through SOEs must aim so that the community can enjoy more welfare and social justice equally, without exception. To realize these goals, the State must manage SOEs by referring to the principles or principles that have been mandated in the 1945 Constitution of the Republic of Indonesia. In an effort to optimize the management of SOEs, it is necessary to separate the supervisory and operational functions. This principle is the legitimacy and legal basis for the State to control important and strategic branches of production through the establishment of SOEs in which the State is mandated to have the function of regulating (regelendaad), managing (bestuursdaad), managing (beheersdaad), and supervising (toezichthoudensdaad) these production branches. SOEs were established as an extension of the State in carrying out State goals which cannot be done through government duties, but must be done through business mechanisms.

In this context, whether *the business judgement rule*, especially for corporations that intersect with the state, namely SOEs is still relevant to the purpose of forming a corporation or company in relation to providing the widest possible benefits for the largest number of people.

In this regard, in addition to the theory of utilitarianism, the dialectical theory of materialism also needs to be considered to look at the practice of the state of law. The dialectical theory of materialism is a philosophy of science and nature and thought that sees political interests without objectivity. This theory has 3 (three) main postulates, namely The *Law of Transformation of Quantity into Quality, The Law of the Unity and Struggle of Opposites, and The Law Negation of Negation*. The hypothesis is that rigid regulation of the dynamics that develop in society can increase the occurrence of corporate crimes or the provisions of criminal articles regulated in the provisions of laws and regulations and do not cause a deterrent effect so as not to reduce the occurrence of corporate crimes. In relation to the dialectical theory of materialism, the theory of Utilitarianism and the theory of development law, it is necessary to look again at law as a political tool in relation to *the process of law making* and *law enforcement* (*pleasure & pain*) in positive law in Indonesia.

Criticism of Positive Law Enforcement and the Relevance of the Utilitarianism Approach in Corruption Eradication

In practice, the provisions of these laws and regulations are used by law enforcement officials or government internal supervisory officers (auditors) who are more tasked with enforcing law and justice. However, whether this justice is justice that has considered the happiness or benefit of society or not. Is law enforcement a form of *law enforcement* that prioritizes the interests of the community or the interests of the rulers. The fact is that there are many criminal acts involving law enforcement officials and government internal supervisory officers (auditors). In addition to the criminal aspect that has *a punishment* or deterrent effect on violators, there are also administrative aspects that can be used as unlawful acts that can be punished.

Noting that criminal articles can only be regulated in regulations that are laws, it is worth noting that Indonesia with its positive laws has 1900 laws. The government regulations as implementing regulations of the law are 4,921 and presidential regulations are 2,557.

The question is whether these regulations can finally realize the purpose of the law, namely justice, legal certainty and utility. Are the criminal acts, both general crimes and corruption crimes, lower? Based on data from the Corruption Eradication Commission, since

2004 the number of corruption crimes is 4 and in 2023 the number of corruption crimes is 161, and the total in the period 2004 to 2024 is 1,798 crimes of professional / office corruption.

Thus, the hypothesis is that rigid regulation of the dynamics that develop in society can increase the occurrence of corruption crimes or the provisions of criminal articles regulated in the provisions of laws and regulations do not have a deterrent effect so as not to reduce the occurrence of corruption crimes.

According to Prof. Mochtar Kusumaatmadja, law is a means of community renewal. Have corruption, collusion and nepotism become part of the habits and culture of the Indonesian people and what is the role of the law in overcoming the problem of corruption. In this case, law is seen only as a tool as Roscoe Pound's theory that *law is a tool of social engineering*, not an instrument to build society.

Furthermore, Mochtar argues that the meaning of law as a means is broader than law as a tool because:

1) In Indonesia, the role of legislation in the process of law reform is more prominent, for example when compared to the United States, which places jurisprudence (especially Supreme Court decisions) in a more important place.
2) The concept of law as a "tool" will result in results that are not much different from the application of "legism" as it was held in the Dutch East Indies era, and in Indonesia there is an attitude that shows the sensitivity of the public to reject the application of such a concept.
3) If "law" here includes international law, then the concept of law as a means of renewing society has been applied long before this concept has been officially accepted as the basis of national legal policy.

In more detail, Mochtar Kusumaatmadja said, that: "Law is a tool to maintain order in society. Given its function of the nature of the law, it is essentially conservative meaning that the law is to maintain and maintain what has been achieved. Such a function is necessary in every society, including the community that is developing, because here too there are results that must be maintained, protected and secured. However, a developing society, which in our definition means a rapidly changing society, the law does not have enough to have such a function. He must also be able to help the process of changing society. An old-fashioned view of law that emphasizes the function of maintaining order in a static sense, and emphasizes the conservative nature of law, assumes that law cannot play a meaningful role in the process of reform."

In another part, Mochtar Kusumaatmadja also stated that "adequate law must not only view the law as a set of rules and principles that govern human life in society, but must also include the *institutions* and processes necessary to realize the law in reality". The above definition of law shows that to understand law holistically does not only consist of principles and rules, but also includes institutions and processes. The four components of the law work together integrally to realize the rules in reality in the sense that legal guidance is first carried out through written laws and regulations. Meanwhile, the four components of law that are needed to realize the law in reality, means that legal guidance after going through the renewal of written law is continued in unwritten law, mainly through the mechanism of jurisprudence.

For this reason, we must try to dig deeper into the process of *law making* and *law enforcement* in positive law in Indonesia whether it has prioritized happiness and benefits for the community. How law as a means of community reform is not only seen from the aspect of *law enforcement*, but must be part of institutions, both supra structures and political, social and economic institutional infrastructure, and other processes that grow and develop in society. The institutional part is how the state can be realized in *lawmaking* in the fields of culture and education as a barometer of the development and progress of a country and nation. Culture can be the basis for the formation of the nation's character, especially teenagers as the next generation and education as a tool for cultural transformation. Furthermore, *the law-making* was formed and built by prioritizing "*the greatest happiness of the greatest number*" as the goal of the law.

4. CONCLUSIONS AND SUGGESTIONS

The application of Jeremy Bentham's theory of utilitarianism, especially the principle of "the greatest happiness for the greatest number", shows high relevance in the modern legal system, including in countries with a Continental European legal tradition such as Indonesia. Although this theory comes from the common law tradition, its basic principle of emphasizing social benefits can be a strong philosophical foundation in the development of corporate law. Bentham's idea of the importance of law creating pleasure and minimizing pain opens up space for reflection on the orientation of national law that often focuses too much on formalistic and legalistic aspects, without considering the broader social impact on society as a subject of law.

In the context of the state of law (rechtsstaat), ideally the law should function to balance the interests of the state and society, as well as to create justice, order, and civilized legal certainty. However, in practice, the rule of law is often interpreted narrowly as an instrument of power, not as a tool to ensure the public benefit. Therefore, the utilitarian approach can be

used as an evaluative framework for the current corporate regulations, so that the law is not just a tool of power control, but truly reflects the value of substantive justice and broad benefits for society.

Based on these findings, it is recommended that law enforcement officials, policy makers, and state auditors internalize a utilitarian approach in the law-making and law enforcement process. Understanding Bentham's theory can strengthen the orientation of legal policies that are more inclusive and oriented towards public welfare. By placing the principle of usefulness as the main orientation in corporate legal policy, the state not only maintains order and legal certainty, but also ensures collective welfare as the core of good governance.

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