

CHAPTER 2

LITERATURE REVIEW

A. Conceptual Framework

1. Definition

a. Definition of Comparative Law

The development of comparative law studies is as old as the law itself. In its development, comparative studies beginning to rise in the 19th century as one of the special branch of law science. This study start to deepen with many experts from Europe line Montesquieu from France, Mansfield from England and Von Feuerbach, Thibaut and Gans from German⁹.

The use and benefits from studying comparative legal system are to study the legal system that many counties uses. Many scholar tell their opinion regarding the use and benefits to studying comparative law, their opinion are as follows¹⁰:

1) Sudarto

General use:

- a) To satisfy people scientific curiosity.
- b) To deepen the undertanding of own Society and cultural framework.

⁹ Barda Nawawi Arief, *Perbandingan Hukum Pidana* (Rajawali Pers, 2002).page 1

¹⁰ *ibid*.page 17

c) To become more critical to own legal system.

2) Rene David and Brierley

a) Beneficial in historical and Philosophical law research

b) Important to study because it helps to have a better understanding and to help develop our own national legal system.

c) Help to develop understanding other nation and to help set up a good tone for the development of international relationship.

3) Tahir Tungadi

a) Useful for National, regional and International unification and Codification.

b) Beneficial for law harmonization, between international convention and with local legislation.

c) For law renewal, to deepen knowledge regarding national law and can objectively see the strength and weaknesses of our national law.

d) To determine general principle from law (especially for judge from international court). This is important to decide the general principle of law that become an important source for international public law.

e) As a subsidiary knowledge for international public law, for example in the clause of international public law, a state need to refer to a foreign law that need to be implemented in a case.

f) Needed in education program for law adviser from international trade institution and embassy, for example to create international tract.

4) Comparison of legal systems is aimed at obtaining a comprehensive understanding of all legal systems that exist globally and to at least obtain benefits such as:

a) Internal Benefits

By studying comparative legal system, we van understand the portrait of our own natioanal legal culture and can adopt positive things from foreign legal system to help develop national legal system.

b) External benefits

By learning comparative legal system, either individual, organisation or country can take the right approach When engaging relationship with other country with a different legal system.

c) For the interest of law harmonisation to create a supranational law.

b. Definition of Vehicle

Vehicle according to oxford Dictionary is a machine, usually with wheels and an engine, used for transporting people or goods on

land, especially on roads.¹¹ Longman Dictionary of contemporary English define vehicle as a machine with an engine that is used to take people or things from one place to another, such as a car, bus, or truck.¹² According to Kamus Besar Bahasa Indonesia, vehicle is a something that is use to be driven or ridden (such as horses, trains, cars)¹³.

c. Definition of Electric

Cambridge dictionary defines Electric as using electricity for power.¹⁴ While electricity means a form of energy that provides power to motors and devices that create light or heat and power is to provide a machine with energy and the ability to operate. Longman dictionary properly explains electric as needing electricity to work, produced by electricity or used for carrying electric¹⁵.

d. Definition of Electric Vehicle

¹¹ Cambridge Dictionary, "Vehicle," n.d., <https://dictionary.cambridge.org/dictionary/english/vehicle>.

¹² *Longman Dictionary of Contemporary English* (Edinburgh: Pearson Education Limited, 2003).page 1831

¹³ Kamus Besar Bahasa Indonesia, "Kendaraan," n.d., <https://kbbi.kemdikbud.go.id/entri/kendaraan>.

¹⁴ Cambridge Dictionary, "electric." n.d., <https://dictionary.cambridge.org/dictionary/english/electric>

¹⁵ Longman Dictionary of Contemporary English.*op.cit*.page 506

Electric cars run partially or fully on electricity. Unlike conventional vehicles that use a gasoline or diesel-powered engine, electric cars and trucks use an electric motor powered by electricity from batteries or a fuel cell¹⁶.

In General, there are two kind of electric powered vehicle right now, those are¹⁷:

1. AEVs (all-electric vehicles)

AEV are powered by one or more electric motors. They receive electricity by plugging into the grid and store it in batteries. They consume no petroleum-based fuel and produce no tailpipe emissions. AEVs include Battery Electric Vehicles (BEVs) and Fuel Cell Electric Vehicles (FCEVs).

2. PHEVs (plug-in hybrid electric vehicles)

PHEV use batteries to power an electric motor, plug into the electric grid to charge, and use a petroleum-based or alternative fuel to power the internal combustion engine. Some types of PHEVs that called extended-range electric vehicles (EREVs).

B. Legal Framework

¹⁶ Union of Concerned Scientists, "What Are Electric Cars?," n.d., <https://www.ucsusa.org/clean-vehicles/electric-vehicles/what-are-electric-cars>. accessed 10 september 2018

¹⁷ U.S Department of Energy, "Electric Vehicle Basics," n.d., <https://www.energy.gov/eere/electricvehicles/electric-vehicle-basics>. accessed 10 september 2018

Electric vehicle is not a new topic in the world of transportation. But it is just recently start to become a hot topic since many company trying to mass produce electric cars, for indonesia it's a difficult because indonesian regulation make it hard for electric powered vehicle to enter indonesia market, from the regulation that doen not fit with electric vehicle and import tax.

Below are some law and regulation in both Australia and Indonesia that closely related to the theme for this study.

1. Law No 22 Year 2009 About Traffic And Road Transportation

Article 1

Paragraph 7, *“A vehicle is a transport medium on a road consisting of motorized vehicles and non-motorized vehicles.”*¹⁸,

Paragraph 8 *“Motorized vehicles are every vehicle moved by mechanical equipment in the form of a machine Other than vehicles running on rails.”*

Paragraph 9 *“Non-motorized vehicles are any vehicles driven by human power and / or animal.”*¹⁹,

¹⁸ Indonesia, “Undang Undang Lalu Lintas Dan Angkutan Jalan” (2009).

¹⁹ *ibid.*

Article 48

Paragraph 1 *“Every Motorized Vehicle operated on the Road must meet the technical and roadworthy requirements.”*

Paragraph 2 *”The technical requirements as referred to in paragraph (1) consist of:*

- a. structure;*
- b. equipment*
- c. size*
- d. Car Body*
- e. technical design of the vehicle in accordance with its designation*
- f. load*
- g. application*
- h. Trailer of Motorized Vehicles; and / or*
- i. Carriage of Motorized Vehicles.”*

Paragraph 3 *“The roadworthiness requirements as referred to in paragraph (1) are determined by the minimum performance of the Motor Vehicle which is measured at least consisting of:*

- a. exhaust gas emissions;*
- b. noise;*
- c. efficiency of the main brake system;*
- d. efficiency of the parking brake system;*
- e. narrow the front wheel;*
- f. horn sound;*
- g. light emitting and direction of the main headlight;*
- h. turning radius;*
- i. accuracy of speed indicator;*
- j. suitability of wheel performance and tire conditions; and*
- k. suitability of driving engine power to the weight of the vehicle.”*

Article 49

Paragraph 1 *“Motorized vehicles, trailer, and carriage that are imported, made and / or domestically assembled that will be operated on the Road must be tested.”*

Paragraph 2 *“Testing as referred to in paragraph (1) includes:*

- a. type test; and*
- b. periodic test.”*

Article 50

Paragraph 1 *“The type test as referred to in Article 49 paragraph (2) letter a must be carried out for each Motorized Vehicle, trailer, and carriage, which is imported, manufactured and / or assembled domestically, and modification of Motorized Vehicles which causes type changes.”*

Paragraph 2 *“The type test as referred to in paragraph (1) consists of:*

- a. physical testing for the fulfillment of technical requirements and roadworthiness carried out on the basis of Motorized Vehicles and Motor Vehicles in complete condition; and*
- b. Motor vehicle design and engineering research conducted on houses, cargo tray, trailer, carriage, and modified Motorized Vehicles.”*

2. Government Regulations No 55 Year 2012 About Vehicle

Article 12

Paragraph 1 “The driving motor as referred to in Article 7 letter b includes:

- a. fuel motor;
- b. electric motor; and
- c. Combination of fuel motor and electric motor.”

3. Law No 28 Year 2009 About Tax And Region Levy

Speaking about vehicle, we also need to talk about the taxation of the vehicle itself. For Indonesia, there are a few kind of tax that applied on a vehicle according to many categories.

There are several article mentioning the taxation of vehicle in Law No 29 year 2009 About Tax And Region Levy. The articles that mention it as follows:

Article 1

Paragraph 12: “*Motor Vehicle Tax is a tax on ownership and / or control of motorized vehicles*”

Paragraph 13: “*Motorized Vehicles are all wheeled vehicles and their trailer which are used on all types of road, and are driven by technical equipment in the form of engine or other equipment which functions to convert a particular energy resource into the motion of the motorized vehicle, including heavy and large equipment and tools. In its operation using wheels and motors that are not attached permanently and motorized vehicles operated in water.*”

Article 2

(1) *“Type of provincial tax consists of:*

- i. Motorized vehicle tax*
- ii. Customs for transferring names of motorized vehicles*
- iii. Motor vehicle fuel tax*

This article explain that vehicle tax is considered a provincial tax”

Article 3

(1) *“The object of Motor Vehicle Tax is ownership and / or control of Motor Vehicles.*

(2) *Included in the definition of Motor Vehicles as referred to in paragraph (1) is a wheeled vehicle and their trailer, which are operated on all types of road and motorized vehicles operated in water with five to Seven Gross Tonnage.*

(3) *Excluded from the explanation of Motor Vehicles as referred to in paragraph (2) are:*

- a) Train*
- b) Motorized vehicles that are solely used for the purposes of state defense and security;*
- c) Motorized Vehicles that are owned and / or controlled by embassies, consulates, representatives of foreign countries with reciprocity and international institutions that obtain tax exemption facilities from the Government; and*
- d) Other Tax objects stipulated in Regional Regulations.”*

Article 4

(1) *“Motor Vehicle Tax Subjects are individuals or entities that own and / or control motorized vehicles.*

(2) *Motorized vehicle taxpayers are individuals or entities that have motorized vehicles.*

(3) In the case of Corporate Taxpayers, the tax obligations are represented by the management or the authority of the Agency.”

Article 5

(2) “The basis for imposing Motor Vehicle Taxes is the result of multiplication of 2 (two) main elements:

- a. Sale Value of Motor Vehicles; and*
- b. Weight which reflects the relative level of road damage and / or environmental pollution due to the use of Motor Vehicles.*

(3) Except for Motorized Vehicles that are used outside public roads, including heavy and large equipment and water vehicles, the basis for imposing Motor Vehicle Taxes is the Selling Value of motorized vehicle.

(4) The weight as referred to in paragraph (1) letter b is stated in the coefficient whose value is 1 (one) or greater than 1 (one), with the following meanings:

- a. The coefficient is equal to 1 (one) means that the damage to the road and / or environmental pollution by the use of the Motor Vehicle is considered to be within the tolerance limit; and*
- b. Coefficient greater than 1 (one) means that the use of the Motor Vehicle is considered to exceed the tolerance limit.*

(5) The Sale Value of Motorized Vehicles is determined based on General Market Prices for a Motorized Vehicle.

(6) General Market Prices as referred to in paragraph (4) is the average price obtained from various accurate data sources.

(7) The Motor Vehicle Sales Value as referred to in paragraph (4) is determined based on the General Market Price in the first week of December of the previous Tax Year.

(8) In the event that the price of the General Market for a Motorized Vehicle is unknown, the Motorized Vehicle Selling Value can be determined based on part or all of the factors:

- a. The price of the Motor Vehicle with the contents of the cylinder and / or the same power unit;*
- b. public or private use of motorized vehicles;*

- c. *the price of the Motorized Vehicle under the same Motorized Vehicle brand*
- d. *the price of Motorized Vehicles with the same year of making;*
- e. *the price of Motorized Vehicles with makers of Motorized Vehicles;*
- f. *prices of Motorized Vehicles with similar Motorized Vehicles*
- g. *Motorized Vehicle prices based on the Goods Import Notification document.*

(9) Weight as referred to in paragraph (1) letter b is calculated based on factors:

- a. *axle pressure, which is distinguished on the basis of the number of axles, wheels and weight of the Motor Vehicle;*
- b. *types of fuel which are differentiated according to diesel, gasoline, gas, electricity, solar power, or other types of fuel; and*
- c. *Type, usage, year of manufacture, and characteristics of motorized vehicles that are differentiated based on the type of two or 4-stroke engine, and the contents of the cylinder.*

(10) Calculation of the basis for imposition of Motor Vehicle Tax as referred to in paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), paragraph (7), and paragraph (8) is stated in a table stipulated by the Minister of Home Affairs Regulation after receiving consideration from the Minister of Finance.

(11) Calculation of the basis for the imposition of Motor Vehicle Tax as referred to in paragraph (9) is reviewed annually.”

Article 6

- a. *“Private Motorized Vehicle Tax rates are set as follows:

 - a. For the first Motor Vehicle ownership at a minimum of 1% (one percent) and a maximum of 2% (two percent);
 - b. For second Motor Vehicle ownership and so on the rate can be set progressively at the lowest of 2% (two percent) and at the highest at 10% (ten percent).*
- b. *Ownership of Motorized Vehicles is based on the same name and / or address.*
- c. *Tax rates for public transport vehicles, ambulances, firefighters, socio-religious institutions, social and religious institutions, the government / military / police, regional governments, and other vehicles stipulated by regional regulations are set at a minimum of 0.5% (zero point five percent) and the highest is 1% (one percent).*
- d. *Motorized vehicle tax rates for heavy equipment and large tools are set at a minimum of 0.1% (zero point one percent) and the highest is 0.2% (zero point two percent).*
- e. *Regional Regulation stipulates the Motor Vehicle Tax Rate.”*

4. Government Regulation Number 41 Year 2013 And Its Revision In Government Regulation Number 22 Year 2014 About Luxury Tax-Based Goods In The Form Of Motorized Vehicles That Are Imposed By Sales Tax On Luxury Goods

Article 2:

Paragraph 1: *“Taxable Goods in the form of motorized vehicles are subject to Sales Tax on Luxury Goods based on the group of Taxable Luxury Goods”*

Paragraph 2: “Group of Taxable Goods classified as luxury in the form of motorized vehicles as referred to in paragraph (1) which are subject to Sales Tax on Luxury Goods at a rate of 10% (ten percent), are:

- a. motorized vehicles for the transportation of 10 (ten) people to 15 (fifteen) people including the driver, with a internal combustion or compression (semi-diesel or semi-diesel) fuel motor, for all cylinder capacity; and
- b. motorized vehicles for transportation of less than 10 (ten) people including drivers other than sedans or station wagons, with internal combustion or compression (diesel or semi diesel) motor with a 1 (one) drive axle (4x2) system, with a cylinder capacity up to with 1,500 cc.”

Paragraph 3: “Group of Taxable Goods classified as luxury in the form of motorized vehicles as referred to in paragraph (1) which are subject to Sales Tax on Luxury Goods at a rate of 20% (twenty percent), are:

- a. motorized vehicles for transportation of less than 10 (ten) people including drivers other than sedans or station wagons, with Internal combustion or compression (diesel or semi-diesel) motor, with a 1 (one) drive axle (4x2) system, with cylinder capacity more than 1,500 cc to 2,500 cc; and
- b. motorized vehicle with a double cabin, in the form of an open or closed cargo space, with passengers of more than 3 (three) people including the driver with a internal combustion or a compression (diesel or semi diesel), with system 1 (one) drive axle (4x2) or with a 2 (two) drive axle system (4x4), for all cylinder fill capacities, with a total mass of no more than 5 (five) tons.”

Paragraph 4: “Group of Taxable Goods classified as luxury in the form of motorized vehicles as referred to in paragraph (1) which are subject to Sales Tax on Luxury Goods at a rate of 30% (thirty percent), are motorized vehicles for transportation of less than 10 (ten) people including drivers, in the form of:

- a. motorized vehicles in form of sedan or station wagons with internal combustion engines or compression (diesel or semi diesel) with cylinder filling capacity up to 1,500 cc; and
- b. Motorized vehicles other than sedans or station wagons with internal combustion or compression (diesel or semi-diesel), with a 2 (two) drive axle (4x4) system, with cylinder filling capacity up to 1,500 cc.”

Paragraph 5: “Group of Taxable Goods classified as luxury in the form of motorized vehicles as referred to in paragraph (1) which are subject to Sales Tax on Luxury Goods at a rate of 30% (forty percent), are motorized vehicles for transportation of less than 10 (ten) people including drivers, in the form of:

- a. motorized vehicles other than sedans or station wagons, with internal combustion engines, with a 1 (one) drive axle (4x2) system with a cylinder filling capacity of more than 2,500 cc to 3,000 cc;
- b. Motorized vehicle with internal combustion engine, in the form of:
 - i. Sedans or Station Wagons; and
 - ii. besides sedan or station wagon with a 2 (two) drive axle (4x4) system, with a cylinder capacity of more than 1,500 cc to 3,000 cc; and
- c. motorized vehicles with compressed (diesel or semi diesel) motors, in the form of:
 - i. Sedans or Station Wagons; and
 - ii. besides sedan or station wagon with a 2 (two) drive axle (4x4) system,

with a cylinder capacity of more than 1,500 cc to 3,000 cc.”

Paragraph 6: “Group of Taxable Goods classified as luxury in the form of motorized vehicles as referred to in paragraph (1) which are subject to Sales Tax on Luxury Goods at a rate of 50% (fifty percent) are all types of special vehicles made for golf.”

Paragraph 7: “Group of Taxable Goods classified as luxury in the form of motorized vehicles as referred to in paragraph (1) which are subject to Sales Tax on Luxury Goods at a rate of 60% (sixty percent), are:

- a. two-wheeled motorized vehicle with a cylinder capacity of more than 250 cc to 500 cc; and*
- b. Special vehicles made for traveling on snow, on the beach, on the mountain, and similar vehicles.”*

Paragraph 8: “Group of Taxable Goods classified as luxury in the form of motorized vehicles as referred to in paragraph (1) which are subject to Sales Tax on Luxury Goods at a rate of 125% (one hundred and twenty five percent), are:

- a. motorized vehicles for transportation of less than 10 (ten) people including the driver, with a internal combustion engine, in the form of:*
 - i. Sedans or Station Wagons; and*

ii. *other than sedan or station wagon with a system of 1 (one) drive axle (4x2) or with a system of 2 (two) driving axles (4x4),*

with a cylinder filling capacity of more than 3,000 cc;

b. *motorized vehicles with compressed (diesel or semi diesel) motors, in the form of:*

iii. *Sedans or Station Wagons; and*

iv. *other than sedan or station wagon with a system of 1 (one) drive axle (4x2) or with a system of 2 (two) driving axles (4x4),*

with a cylinder filling capacity of more than 2,500 cc;

c. *2-wheeled motorized vehicle with a cylinder filling capacity of more than 500 cc; and*

d. *trailer, semi-trailer from caravan type, for housing or camp.”*

Articles 3

Paragraph 1: *“Sales Tax on Luxury Goods for Taxable Goods classified as luxury which are included in the group of motorized vehicles as referred to in Article 2 paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (8), are calculated with a tax base of:*

- a. 75% (seventy five percent) of Selling Prices for motorized vehicles using advance diesel / petrol engine technology, dual petrol gas engines (CNG / LGV converter kits), biofuel engines, hybrid engines, CNG / LGV dedicated engines, with material consumption fuel oil starts from 20 kilometers per liter to 28 kilometers per liter or other fuels equivalent to that.
- b. 50% (fifty percent) of Selling Prices for motorized vehicles that use advance diesel / petrol engine technology, biofuel engines, hybrid engines, CNG / LGV dedicated engines, with consumption of oil fuels of more than 28 kilometers per liter or other fuels equivalent to that; and
- c. 0% (zero percent) of the Selling Price for motorized vehicles including energy-efficient and affordable car programs, beside sedans or station wagons, with the following requirements:
 - i. Internal Combustion Engine with cylinder capacity up to 1,200 cc and consumption of oil fuel at least 20 kilometers per liter or other fuels equivalent to that; or
 - ii. a compression engine (diesel or semi diesel) with a cylinder capacity of up to 1,500 cc and consumption of oil fuel at least

20 kilometers per liter or other fuel equivalent to that.”

Paragraph 2: *“The Clause as referred to in paragraph (1), apply to groups of motorized vehicles that fulfill the requirements as stipulated by the minister who administers government affairs in the industrial sector and after being coordinated with the minister who administers government affairs in the financial sector.”*

5. Regulation Of The Minister Of Transportation No 33 Year 2018 About Testing Of Motor Vehicle Type

Article 1

Paragraph 30 *“Electric Vehicles are vehicles that use an electric motor as the main drive and get electricity from a battery or electrical energy storage media.”*

Article 9

Paragraph 1 *“Every Motorized Vehicle that will be operated on the road must meet the technical and roadworthy requirements.”*

Paragraph 5 *“Types of Motorized Vehicles as referred to in paragraph (1) that use electric drive motors include:*

- a. electric motorcycle;*
- b. electric passenger car;*
- c. electric bus;*
- d. electric cargo vehicle; and*
- e. electric special vehicle.”*

Article 23

Paragraph 1 *“Motorized vehicles that use electric motors in addition to having to meet the requirements of technical and roadworthy requirements, must be carried out at least testing on the performance of electric accumulators, speed control electronic devices, and electrical energy recharging devices.”*

Paragraph 2 *“Motorized vehicles whose driving motors only use electric motors as referred to in paragraph (1), do not perform emissions test.”*

Paragraph 3 *“Electric motorized vehicles to fulfill safety aspects must be equipped with sound with a certain level of noise and type of sound.”*

Paragraph 4 *“The noise level as referred to in paragraph (3) is at least 31 (thirty one) decibels and the highest does not exceed the threshold of Motor Vehicles that use ordinary combustion motors.”*

Paragraph 5 *“The noise level as referred to in paragraph (3) minimum is as follows:*

- a. at a speed of 10 (ten) km / h at least 50 (fifty) decibels;*
- b. at a speed of 20 (twenty) km / h a minimum of 65 (sixty five) decibels;*
- c. to reverse a minimum of 47 (forty seven) decibels.”*

Paragraph 6 *“Sound generated by electric motorized vehicles as referred to in paragraph (3) is adjusted to the type of vehicle category and does not resemble the type of sound of:*

- a. animal;*
- b. siren;*
- c. horn; and*
- d. music.”*

Paragraph 7 *“The level of noise caused by electric motorized vehicles as referred to in paragraph (3) follows the speed level of the Motor Vehicle.”*

Paragraph 8 *“Sound noise test threshold for Motorized Vehicles whose driving motors only use electric motors.”*

Paragraph 9 *“Sound noise test threshold for Motorized Vehicles as referred to in paragraph (7) in accordance with the provisions regulated by the minister who administers government affairs in the environmental field.”*

Paragraph 10 *“In determining the threshold as referred to in paragraph (8) coordinate with the minister responsible for the field of traffic facilities and infrastructure and road transportation.”*

6. Motor Vehicle Standards Act 1989

Part 1 Paragraph 5

“Motor vehicle means a vehicle that uses, or is designed to use, volatile spirit, gas, oil, electricity or any other power (not being human or animal power) as the principal means of propulsion, but does not include a vehicle used on a railway or tramway.”

7. Australian Design Rules

For the national standards regarding vehicle safety, anti-theft and emissions Australia come up with Australian Design Rules (ADR), this cover many requirements for vehicles that newly manufactured in Australia or imported car, new or used and introduced to Australian market. The current ADR is the third edition made in 2006.

Adr Cover 91 points regarding safety, anti-theft and emissions that have to be followed regarding the type of vehicles, those are²⁰:

- 1) Reversing Lamps
- 2) Side Door Latches and Hinges
- 3) Seats and Seat Anchorages
- 4) Seatbelts

²⁰ The Department of Infrastructure Regional Development and Cities, “Third Edition Australian Design Rules,” n.d., https://infrastructure.gov.au/vehicles/design/adr_online.aspx.

- 5) Anchorages for Seatbelts
- 6) Direction Indicators
- 7) Hydraulic Brake Hoses
- 8) Safety Glazing Material
- 9) Steering Column
- 10) Steering Column
- 11) Glare Reduction in Field of View
- 12) Installation of Lighting and Light-signalling Devices on other than L-Group Vehicles
- 13) Rear Vision Mirrors
- 14) Demisting of Windscreen
- 15) Windscreen Wipers and Washers
- 16) Fuel System
- 17) Instrumentation
- 18) Installation of Lighting & Light-signalling Devices on L-Group Vehicles
- 19) Safety Rims
- 20) Instrument Panel
- 21) Head Restraints
- 22) Passenger Car Tyres
- 23) Tyre & Rim Selection
- 24) Anti-Theft Lock
- 25) External Noise of Motor Vehicles

- 26) Side Door Strength
- 27) Smoke Emission Control for Diesel Vehicles
- 28) Brake Systems for Passenger Cars
- 29) Brake Systems for Motorcycles and Mopeds
- 30) Child Restraint Anchorages and Child Restraint Anchor fittings
- 31) Commercial Vehicle Brake Systems
- 32) Exhaust Emission Control for Heavy Duty Vehicles
- 33) Emission Control for Light Vehicles
- 34) Trailer Brake Systems
- 35) External Noise of Motor Cycles
- 36) Mandatory Operation on Unleaded Petrol
- 37) General Safety Requirements
- 38) Vehicle Configuration & Dimensions
- 39) Specific Purpose Vehicle Requirements
- 40) Lighting & Light-signalling Devices not covered by ECE Regulations
- 41) Headlamps
- 42) Retroreflectors
- 43) Devices for Illumination of Rear Registration Plates
- 44) Front and Rear Position (Side) Lamps, Stop Lamps and End-outline Marker Lamps
- 45) Front Fog Lamps
- 46) Filament Lamps

- 47) Rear Fog Lamps
- 48) Front and Rear Position Lamps, Stop Lamps, Direction Indicators
& Rear Registration Plate Lamps for L-Group Vehicles
- 49) Headlamps for Mopeds
- 50) Headlamps for Motor Cycles
- 51) Moped Noise
- 52) Special Requirements for L-Group Vehicles
- 53) Requirements for Omnibuses Designed for Hire and Reward
- 54) Standards for Omnibus Rollover Strength
- 55) Centre High Mounted Stop Lamp
- 56) Vehicle Marking
- 57) Mechanical Connections between Vehicles
- 58) Trailers Designed for Use in Road Trains
- 59) Heavy Goods Vehicles Designed for Use in Road Trains & B-Doubles
- 60) Maximum Road Speed Limiting for Heavy Goods Vehicles and Heavy Omnibuses
- 61) Seat Strength, Seat Anchorage Strength and Padding in Omnibuses
- 62) Installation of Lighting and Light-Signalling Devices on Three-Wheeled Vehicles
- 63) Occupant Protection in Buses
- 64) Full Frontal Impact Occupant Protection
- 65) Exhaust Emission Control for Diesel Engined Vehicles

- 66) Temporary Use Spare Tyres
- 67) Dynamic Side Impact Occupant Protection
- 68) Offset Frontal Impact Occupant Protection
- 69) Side Marker Lamps
- 70) Headlamp Cleaners
- 71) Daytime Running Lamps
- 72) Gas Discharge Headlamps
- 73) Gas Discharge Light Sources
- 74) Emission Control for Light Vehicles
- 75) Emission Control for Heavy Vehicles
- 76) Fuel Consumption Labelling for Light Vehicles
- 77) Engine Immobilisers
- 78) External Noise
- 79) Front Underrun Impact Protection
- 80) Pole Side Impact Performance
- 81) Parking Lamps
- 82) Cornering Lamps
- 83) Electronic Stability Control
- 84) Brake Assist Systems
- 85) Steering System
- 86) Rear Underrun Impact Protection
- 87) External Projections
- 88) Forward Field of View

89) Audible Warning

90) Installation of Tyres

91) Commercial Vehicle Tyres

8. Australia Luxury Car Tax

Australia also have a luxury based tax regulation, but if it compared to Indonesian regulation, the Australian rule is simpler. This regulation is called Luxury Car Tax (LCT), Luxury car tax (LCT) is a tax on cars with a price that have a value that include Goods and service tax (GST) above the Luxury Car Tax treshold. The amount of Luxury Car Tax in put on a fixed rate of 33%. The subject that obligate to pay Luxury Car Tax are businesses that deal or import luxury cars or dealers and Luxury Car Tax also applied to individual that import luxury cars.²¹

Luxury Car Tax applies to sales of cars that are two years old or less. A car is more than two years old at the time of supply if it was manufactured locally or imported more than two years previously. For tax purposes, a car is a motor vehicle (but not a motorcycle) designed to carry a load of less than two tonnes and fewer than nine passengers. A limousine is classified as a car, regardless of the number of passengers it's designed to carry²².

²¹ Australia Tax Office, "Luxury Car Tax," n.d., <https://www.ato.gov.au/business/luxury-car-tax/>, accessed 10 september 2018

²² *Ibid.*

Luxury Car Tax applies to a car purchased by a person with a disability even if the car is Goods and service Tax-free. However, disability-related modifications are not subject to Luxury Car Tax.

The threshold for the car price is separate into two categories, fuel-efficient vehicles and other vehicles. The minimum price for the price of the car also change every year.

Below are the table that show the price threshold for LCT.

| Financial Year | Fuel Efficient Vehicles | Other Vehicles |
|----------------|-------------------------|----------------|
| 2018-19 | \$75,526 | \$66,331 |
| 2017-18 | \$75,526 | \$65,094 |
| 2016-17 | \$75,526 | \$64,132 |
| 2015-16 | \$75,375 | \$63,184 |
| 2014-15 | \$75,375 | \$63,184 |
| 2013-14 | \$75,375 | \$60,316 |
| 2012-13 | \$75,375 | \$59,133 |
| 2011-12 | \$75,375 | \$57,466 |
| 2010-11 | \$75,375 | \$57,466 |
| 2009-10 | \$75,000 | \$57,180 |

Table 4.1: Price Threshold For Luxury Car Tax from 2009-2019

Source: Australia Taxation Office

The meaning of fuel-efficient car in this rule meaning a car that have of fuel consumption not exceeding 100 kilometres for every seven litres of fuel in reference to Motor vehicle Standards Act 1989

Based on the explanation above, there is also a few exception to this rule that can help to avoid Luxury Car tax those are²³ :

- a) where the recipient has quoted an Australian Business Numbers in the approved format
- b) where the car was manufactured in Australia more than two years before the sale
- c) where the car was imported more than two years before the sale
- d) to a car exported as a GST-free export
- e) to a car that is (or is intended to be) registered for use as an emergency vehicle such as an ambulance, firefighting vehicle, police vehicle, or search and rescue vehicle
- f) to a motor home or campervan, or a commercial vehicle designed mainly for carrying goods and not passengers
- g) to modifications for people with a disability
- h) to the LCT value that LCT has already been paid on

²³ Australia Tax Office, "When LCT Doesn't Apply," n.d., <https://www.ato.gov.au/Business/Luxury-car-tax/When-LCT-doesn-t-apply/>. accessed 20 september 2018

- i) when an endorsed public institution (museum, gallery or library that is registered for GST and endorsed as a deductible gift recipient) either
 - i. imports a car that is a work of art or collectors piece for the sole purpose of public display
 - ii. sells a car that was purchased as a work of art or collectors piece for the sole purpose of public display to another endorsed public institution that also intends to use that car solely for public display.

C. Theoretical framework

Law created with goals to be attained, that is the aim for law to be created, to create an orderly, safe and balanced life in society. By achieving order in society, hopefully human interest as law subject will be protected without the need to bump with other human interest. that is why law have a duty to separate between right and responsibility, divide authority and regulate a way to solve problem that come from those right and responsibility²⁴.

Because this goal and function not always can be achieved as planned, The trust of public starts to diminish. This happen not only because of the law itself, but can be because of the practice of it is not as hope for.

²⁴ H.Zaeni Asyhadie and Arief Rahman, *Pengantar Ilmu Hukum* (Jakarta: PT RajaGrafindo Persada, 2013). Page 116

Based on the description above, author will use theory related to the material, that is:

1. Legal Development Theory

Mochtar Kusumaatmadja's Legal Development Theory is a Law Theory that exists very much in Indonesia, and one of the causes of its existence in Indonesia is because the Legal Development Theory created by Indonesians, by looking at the dimensions and culture of a pluralistic Indonesian society.

Mochtar Kusumaatmadja's Development Theory also uses a frame of reference for the views of life of the people and the Indonesian people, which include structure, culture, and substance, as stated by Lawrence F. Friedman.

Providing a basis for functions, law as a means of renewing society, and law as a system that is very necessary for the Indonesian people as a developing country.

On the legal system development phase, a system of law that suggested by Friedman was applied. Friedman states that the subject of social science is law as a system, not the social science itself. Many continental jurist influenced by the legal system as a science law. A legal system, which Friedman states is a complex organization in which the interaction between legal structures occurs including the court system. Friedman also states that in this case, the substance itself refers to rules, and culture is part of the same culture, norms

and practices. In summary culture is an element of the value of social and community behavior.²⁵

The dimensions and scope of Mochtar Kusumaatmadja's Development Theory of Law is a modification and adaptation of Roscoe Pound's theory of "Law as a Tool of Social Engineering".

Mochtar Kusumaatmadja's opinion regarding the role and the function of national development that which later known to public as the Legal theory of Development can be separate into a few key point and that point is²⁶:

- a) A developing society can always be seen by the change and the law that can ensure that the changes itself can happen in order. This can be achieve by the help of the law or by the court decisions or by both.
- b) Law have to be used as a facility and not as a tool that help society to change and developing
- c) The purpose of law in society is to maintain order by upholding legal security and law as a social norm has to be able to arrange and organize the change in the society.

²⁵ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Russel Sage Foundation, 1975).

²⁶ Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional* (Bandung: Bina Cipta, n.d.).

d) A law can be considered good if that law can conform with the living law in the society and a good law has to reflect and compatible with the values that exist in people and society.

e) The law itself can only be implemented if its conducted with a power, but on the other side the law has to work within its regulation.

These 5 points of Legal Theory of development explain a certain view about law:

a. Law should develop at the same pace with the development of society. The development of law that mentioned above, correspond with the theory of sociological jurisprudence, which stated that the development of society can be seen from its court decision. In this case, if the court decision will hold the correct values and that decision can be accepted by the society where the law live and develop. This statement contadict the theory of savigny, where law will always fall behind the development of society

b. Mochtar Kusumaatmadja state, based on the Indonesia historical law development, the development of law that in line with yhe development of society can also be created not only by court decisions but also through the creation of act. The main problem with system of law that prefer the creation of act

as the source of law rather than the use of jurisprudence is that the creation of act is a byproduct of politic and that means the creation of act itself influenced by the interest of the party in power. Based on the statement above, John Rawls insert a different opinion to mediate between those two statements by underlining that the meaning and notion of a Just law have to be based on a “fair” value. John law saw the concept of justice from the concept of liberalism that believe to understand the law, the concept of justice have to be embedded I the concept of politic itself. Justice as a concept of politic can only be seen with political values, not from the point of view of religion, moral anda philosphy theory or values.

c. Mochtar Kusumaatmadja also stated that law need to be use as a facility not a tool in terms of development of society. By using law as a facility, the development of society can be held in orderly and organized fashion.

d. Legal Security cannot contradict with justice and the definition of justice cannot be determined only by the authority of person in power, it need to correspond with the values that live in society.

To understand the main view of Mochtar Kusumaatmadja regarding the theory of Legal development law, there are a few

keyword that has appear in Mochtar Kusumaatmadja writing. Those keywords can form a very important proportion. Those are²⁷:

- a. Law is one of the social priciples (beside moral priciples, religious principle, ethical principle, custom principle and many other) that become reflection from values that exist in society. it means that a good law is law that compatible with a living law.
- b. Law is not only about principle and fundamental that regulate and rule, but also including institution and process that are needed to realize the validity of the law in reality.
- c. The character of law is coercion by the state through its tools and institution, because without power the law only exist as a recommendation. power is needed for an orderly society life. Law without authority is just a dream and law must come with a limitation, because authority or power that comes without law is a tyranny.
- d. Power can bring authority and last long if it gets the support of those who are controlled, for that the ruler must have the spirit of serving the public interest and those who are controlled have the obligation to submit

²⁷ Shidata, *Mochtar Kusuma-Atmadja Dan Teori Hukum Pembangunan: Eksistensi Dan Implikasi* (Jakarta: Epistema Institute, 2012). Page 19-22

to the authorities or the duty of civil obedience. Both have to be educated to have a sense of public awareness.

e. The main and first objective of all law is order, which is a fundamental requirement for the existence of an organized society. To achieve order, certainty is needed in the interaction between people in society; the second goal after order is justice, which the justice differs according to society and its time.

f. Indonesian society is in transition from a closed to more open, dynamic and modern society; the nature of the problem of development is renewing the way of thinking (attitude, character, values), either on the ruler or on the masses for example, members of the community must change from being just mental as the subject of the state to being mentally immersed as a citizen (not only passively following the orders of the authorities but also actively knowing even daring to actively claim their rights)

g. In a developing society, the law is not enough to preserve and maintain what has been achieved (the conservative nature of the law) but also plays a role in engineering society; but the point must be that there is

order (when changes are made in an orderly manner, as long as there is still room for the role of law).

h. Development must be understood as broadly as possible in all aspects of people's lives and not only in terms of economic life.

i. The law as a means of renewal in the developing community can also be detrimental to the extent that it must be done carefully; therefore the use of law must also be linked to aspects of sociology, anthropology and cultural; Law experts in developing communities need to learn positive law with a spectrum of social and cultural sciences.

j. The role of law in development is to ensure that the changes occur in an orderly manner; law plays a role through the aid of constitution and court decisions, or the combination of both, but the creation of legislation is the most rational and fast way compared to other legal development methods such as jurisprudence and customary law.

k. obstacles or difficulties faced in the context of legal role in development are:

- 1) the difficulty of setting goals for legal development and reform

- 2) there is little empirical data that can be used to conduct a descriptive and predictive analysis
 - 3) The difficult to objectively measure of the success or failure of a legal reform effort.
 - 4) The existence of charismatic leadership, which mostly its interests contradicts with the ideals of legal engineering towards a law society.
 - 5) The low level of trust and reluctance to the law (respect for the law) and its role in society, especially the people who are present through political shock or revolution.
 - 6) The reaction of the society because they considered that change could hurt national pride.
 - 7) Reactions that are based on self-fault, that is, the intellectuals themselves do not practice the values or traits they advocate
 - 8) Heterogeneity of Indonesian society in terms of level of progress, religion, language and other things to consider.
1. In order to establishing legislation in the era of Indonesia's development, it is necessary to prioritize the establishment of neutral (not sensitive) laws and

regulations in the field of law. Such a practical legal domain will not cause much controversy related to customs, religion and other formal values.