

Law Enforcement Problems and Impacts of the Law Development in Indonesia

By Achmad Irwan Hamzani

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Abstract— One of the crucial law issues in Indonesia is law enforcement. Law enforcement has received much attention, not only domestically, but internationally. Problematic law enforcement will have an impact on law development. The purpose of this study is to describe law enforcement in Indonesia, the factors that influence law enforcement in Indonesia, and the impact of law enforcement on national law development. This research uses a normative approach. The results showed that law enforcement is one element of the operation of the law. Without law enforcement, the purpose and function of law will not be fulfilled. If law enforcement has a problem, the purpose and function of the law will not be achieved. Law enforcement is strongly influenced by the mentality and morality of law enforcement. Culture of law-abiding society also affects law enforcement. The problem of law enforcement has an impact on the development of national law. Public pessimism about law enforcement has led to a loss of trust in the law.

Keywords— Law Enforcement, Impact, Law Development, Indonesia.

I. INTRODUCTION

One of the law issues in Indonesia is law enforcement. Law enforcement often disappoints the public, especially those involving large law cases. Even law enforcement in Indonesia received a very sharp focus from all walks of life, both from within the country and abroad. The impact of law enforcement issues is only on the level of public trust in the law.

Criminal law is ranked first which not only gets the spotlight but is also criticized compared to other law fields. The criminal law field is the easiest field of law to be used as an indicator of whether law reform carried out in Indonesia has gone well or not. Criminal law does not only talk about court decisions on handling criminal cases, but also covers all criminal justice processes and systems (Sulaiman, 2016).

Another problem with law enforcement is that there are many cases of law enforcement morality. Starting from the law can be ordered, the sharp law upward blunt down, the law sided with the power, one-sided law, law enforcement intervention, judicial mafia, increasingly complements the law problems in Indonesia. It has even been very systemic and has led to many injustices for Indonesian people.

This fact shows that as a rule of law it is still limited to mere formalism. Various trends in people's behavior emerge that often deviate from the various rules produced by the state. Even the state administrators themselves are

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doing the same thing, deviating from the law. The impact is an increase in crime both in quantity and quality and intensity. Even more alarming is the increasing number of corruption cases and bribery practices, so that it has been said to have been entrenched. This is certainly very ironic considering that Indonesia identifies it as a law state.

Another crucial issue is the many issues that are addressed to law enforcement officials, be they the police, prosecutors or judges. For example, many corruptors are acquitted by the court, and even if convicted it is only comparable to a criminal chicken thief. A different reality occurs in ordinary society, where the poor will find it very difficult to find justice formally.

The practice of law in Indonesia runs discriminately and seems to only favor certain groups. People with money will find it so easy to get justice while on the other hand ordinary people are far from justice. Court decisions can be measured in money, because what becomes the parameter for leniency in the trial is more on the consideration of how much money for it rather than law considerations that rely on justice and truth. The impact of law life becomes undirected and devastated. The deterioration of the law will have a negative impact on Indonesia which is trying to build its own law system.

The purpose of this study is to describe law enforcement in Indonesia, study the factors that influence law enforcement in Indonesia, and study the impact of law enforcement on national law development.

II. RESEARCH METHODS

This type of research is library research. Literature research is research conducted by examining library materials or secondary data. This research is included in library research because the data used is secondary data in the form of law documents. The approach used in this research is philosophical. The philosophical approach in law research is to study the law from the ideal side. This study uses a philosophical approach because it is examined by law in an ideal level. The data source used in this study is secondary data. Secondary data is data that is obtained indirectly or has been provided by another party. Secondary data is used as the main reference which is already available in written form in books, scientific journals, and other written sources. Data collection techniques are done through conventional and online search. Conventional literacy is the activity of searching for library resources to a data storage. While online graduation is an activity to find library resources in cyberspace through the internet network. Conventional literature searching is carried out by searching library materials, purchasing books, journals and attending scientific activities (seminars). While searching online is done by searching on the internet. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into basic patterns, categories and description units so that themes can be found presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in numerical or numerical form.

III. DISCUSSION

Law Enforcement Problems in Indonesia

Law enforcement is one of the important components in law. The operation of the law system one of which is the element of law enforcement. Without law enforcement, law certainty, usefulness and justice will not be fulfilled.

Law enforcement is the administration of law by law enforcement officials and by everyone concerned in accordance with their respective authorities according to applicable law (Sudarto, 2005).

Law enforcement can be interpreted within the framework of three concepts namely the concept of total law enforcement that demands that all values behind the law norms are upheld without exception. A full concept that realizes that the total concept needs to be limited by procedural law and so for the protection of individual interests and the concept of actual law enforcement that arises after discretion in law enforcement because of limitations, both related to facilities and infrastructure, the quality of human resources, the quality of the legislation and the lack of community participation (Setiadi, 2002).

Law enforcement as a process, in essence, is the application of discretion that involves making decisions that are not strictly governed by law principles, but have an element of personal judgment (Santoso, 2015). Real consideration can only be applied selectively and the problem of crime repetition. Not when it is important, in the process of being criticized, it must harmonize between the consistent application of law and human factors.

Law enforcement is the process of making an effort to establish or function of law norms as a real code of ethics in law traffic or relations in the life of society and the country. Law enforcement is a preventive measure carried out by every law enforcement with the aim of obtaining law certainty (Gunawan, et.al., 2017).

Conceptually, the core and meaning of law enforcement lies in the activity of harmonizing the relationships of values that are set out in solid principles and embodying them and acting as a series of translation of values aimed at creating, maintaining and maintaining peace in life (Yunus, 2012). As a means to achieve law objectives, both as regulators of public order and to realize social and spiritual justice, the law enforcers are mobilizing all personnel so that the law is able to work to realize moral values in law. The failure of the law to realize the value of the law is a dangerous threat to the existing weak law. Poor/weak law implementation of moral values will be distant and isolated from the community. The success of law enforcement will determine and become a barometer of law legitimacy in the midst of social reality (Ali, 2015).

Law enforcement must be carried out firmly indiscriminately against violators of the law. The implementation is carried out with full dedication and a strong sense of responsibility and moral integrity. Based on the available facts, due to lack of firmness or because of uncertainty in dealing with violations of the law, many lawbreakers escaped the snare of the law or in other words escaped prosecution (Yunus, 2012). Whereas in today's modern era and globalization, law enforcement can guarantee law certainty, order and law protection can only be carried out if various dimensions of law life always maintain harmony, balance and harmony between social morality, institutional morality and civil morality based on values actual in civilized societies, both national and international (Setiadi, 2012).

The law enforcement component in implementing repressive sanctions in law enforcement efforts must be based on law instruments or regulations and respecting basic human rights. The strategy is by striving for community self-adherence to laws and regulations, implementing a criminal justice process, and preventing the emergence of community diseases that can cause crime (Ishaq, 2008).

Law enforcement will greatly affect the purpose and function of law. Abila law enforcement problem, then the law objectives of justice, usefulness and certainty will not be realized. Likewise the function of law. Law enforcement is problematic, law also loses its function as balance, happiness and determination.

Factors Affecting Law Enforcement

The process of law enforcement according to is influenced by several factors, namely law substance, law culture, and law structure. These three components largely determine the effectiveness of law enforcement and must move simultaneously. Defects in one component will frustrate or reduce the effective quality of law enforcement, which of course will impact on the rule of law in society (Ni'mah, 2012).The dominant factor that greatly influences both the positive and negative scale of law enforcement is:

1. Law Certainty Versus Law Justice

There are often conflicts between law certainty and justice in law enforcement. This is due to the conception of justice as an abstract formula, whereas law certainty is a normatively determined procedure. A policy that is not entirely based on law is something that can be justified as long as the policy or action is not contrary to law. The implementation of law in essence does not only include law enforcement, but also peace maintenance, because the implementation of law is actually a process of harmonizing the values of rules and real behavioral patterns aimed at achieving harmony (Ishaq, 2008).

This does not mean that every social problem can only be resolved by written law, because there is no legislation that can regulate all human behavior, the contents of which are clear to every citizen he governs and match the need to implement regulations with the facilities that support them (Ishaq, 2008).The law is a symptom of society, which has the perspective, phases, character, shape, dimension of space and time, as well as having a "compound" abstraction (Bakir, 2007).The purpose, content, sanctions, and targets must be understood and understood well by the community and be able to provide benefits, peace and justice in society while being able to solve various problems related to law in every interaction of people's lives.

2. Factors of Law Enforcement

Law enforcement mentality plays an important role in law enforcement. Although the regulations are good, but the quality of law enforcement officers is not good, there is a problem. One key to success in law enforcement is the mentality of law enforcement. Moreover, there is a tendency in society to interpret the law as officers or law enforcers (Ishaq, 2008).The public certainly hopes that law enforcement agencies such as the courts, prosecutors and the police as a place to seek protection and provide justice in fighting for their rights. Often the implementation of law enforcement is not as expected by the community. Law enforcement officials who should enforce the law violate the law.

At least there are several reasons for law enforcement to do it all, including; decreased moral integrity, loss of independence, economic demands, lack of income, weak supervision, to non-compliance with the law profession code of ethics that binds it (Yunus, 2012).The weakness of the substance of the code of ethics does not originate from the absence of more sanctions on the inability of the norms in the code to cause compliance with law

enforcement and its substance. Moreover, the code of ethics actually contains various sanctions that can be given to law enforcers who violate them, such as reprimands, minor warnings, stern warnings, temporary dismissals for a certain time, up to the dismissal forever, and dismissal from membership of professional organizations.

3. Supporting Factors

Law enforcement officers in carrying out their duties certainly need the facilities or facilities needed, both in terms of quality and quantity. The number and quality of facilities and facilities owned by the court, prosecutors and police officers can certainly hamper the implementation of law enforcement (Yunus, 2012).

Supporting facilities or facilities include software and hardware, one example of software is education. Education received by the Police today tends to be conventional practical matters, so that in many cases the Police experience obstacles in their duties, including knowledge of cyber crime, in specific criminal acts which are still given authority to prosecutors, This is because technically the Police are considered not capable and not ready.

While the hardware is supporting facilities such as communication tools, transportation, and various other administrative purposes. Facilities or facilities have a very important role in law enforcement. Without these facilities or facilities, it is not possible for law enforcement to harmonize their proper roles with their actual roles (Ishaq, 2008).

4. Community Factors

Law enforcement is not something that can stand alone, but are interrelated with other social problems in society. Law is not only a value system, but also a sub-system of a larger social system, namely the society in which the law is enforced (Yunus, 2008). Laws are made to regulate human behavior aimed at creating order and peace in society. Law and humans are inseparable, humans make rules and humans also can change the order of laws and laws. The application of these rules is all to organize and regulate various human interests, so as to create order and justice.

The attitude of the people who are not aware of the police's duty, are not supportive, and even most are apathetic and consider the task of law enforcement solely a matter of the police, as well as the reluctance to be involved as witnesses and so on. This has become one of the inhibiting factors in law enforcement (Ishaq, 2008). Law enforcers in carrying out their profession address the law as "the law, like the traveller, must be ready for the morrow, it must have a principle". Law is only a means. Justice must be a goal even though it does not always use a law perspective (Rahardjo, 2006). The law that developed in Indonesia then leaned towards written law with emphasis on the systematic aspects and formal procedures contained in the form of legislation (Nugroho, 2014). The main obstacle in the level of law enforcement in Indonesia lies in the law-positivistic law thinking, where law science is studied and used as a solution to the crisis, solely positive law, which considers that state law is the only law, beyond that it is not there is a law.

5. Cultural Factors

Culture is a basic component that regulates how humans should act, act and determine their attitudes in relationships with others. Culture is a main line of behavior that sets rules about what must be done and what must be prohibited.

Culture also breeds law culture. Law culture is an important element in law enforcement, because law culture shows the thinking and power of the community that determines how the law is implemented, obeyed, avoided or misused. Without a law culture, law enforcement is powerless (Yunus, 2012).

IV. IMPACT OF LAW ENFORCEMENT ON NATIONAL LAW DEVELOPMENT EFFORTS

Each rule of law applies three basic principles, namely supremacy of the constitution, division and separation of powers, and protection of human rights. The rule of law adheres to the principle: the principle of law, the protection of the government's Human Rights bound by the law, the government's coercive monopoly to ensure law enforcement, and supervision by an independent judge (Santoso, 2015).

Law enforcement is a problem that occurs in every developing country law. The problem of law enforcement in Indonesia is very complex, its qualifications as well as its modus operandi. Even Satjipto Rahardjo called it a major crisis in law enforcement, where views on the law had declined. Law professionals are now largely domestic law education products. None of the theories, doctrines, principles and intentions taught speak of law enforcement based on struggle (Rahardjo, 2008).

If the behavior of law officials including judges, prosecutors, lawyers, police officers, and government officials in general changes, then the law automatically changes, even though the law position is still the same as before. Because what becomes law is daily practice by law officials. The law is helpless without the actions of law enforcement officers who move it. In social reality, the powerlessness of the law is often caused by the actions of the law enforcers themselves (Yunus, 2012).

The problem of law enforcement always tends to the inequality of dynamic interactions between law aspects in expectations or *das sollen*, and aspects of the application of law in the reality of *das sein*. Law enforcement is closely related to the process of political policy transformation in policy instruments, such as information, economics, regulations, and procedures (Yusran, et.al., 2017). Law enforcement is not only a matter of law enforcement, although in Indonesia there is a tendency towards positive law enforcement (Idami, 2018).

The phenomenon of the depravity of law enforcement in Indonesia can be seen from the presentation of law facts, the law mafia is everywhere, even tearing apart the law procedures that have been carried out by the government (Yunus, 2012). Weak law enforcement can be reflected in various resolutions of major cases that have not yet been resolved, one of which is the practice of corruption, collusion and nepotism which has been overtaken, but ironically the main actors are very few who are charged with the law. This fact is the best compared to some cases involving the common people. Ideally, in state activities, law determines everything; entangle the wrong one, and try to cause a deterrent effect.

Law enforcement is one aspect of implementing law that functions to keep the law in compliance and properly implemented. Law enforcement is a reaction from an event that violates the law (Subarsyah, 2017). Law is the commander, also the rule system. The leader is the system of rules, not individuals who happen to occupy positions. People who hold public offices come and go dynamically, but the system of rules is steady and relatively fixed. Substitution of people must not necessarily result in a change in the rule system. All people who occupy positions

and are lawfully given the authority to act on behalf of the state, must be obeyed by all relevant law subjects or those concerned as long as the official carries out the legislation accordingly and can be made a role model in his observance to the law rules (Gunarto, 2014).

Law enforcement in the context of law development needs to be improved so that law progress produces the value of justice in society. One way is to move from a positivist paradigm to a more substantive paradigm. The positivist paradigm is only able to explain the circumstances and normal processes of positive law. Meanwhile, to explain the atmosphere of chaos and shocks that occur in Indonesia positive law still has limitations. This can be seen in the inability of the law to reach new issues that continue to develop (Rahardjo, 2009). Progressive, non-conventional, "abnormal" law enforcement needs to be emphasized, by way of getting out of the way of minimalist punishment, which is simply carrying out the law by applying what is written in the text outright to "lawfully with common sense" (Samekto, 2013).

In addition, it is necessary to take firm steps by carrying out collective law enforcement. The police, prosecutors, lawyers, and even advocates join hands with the same enthusiasm and concern to advance in law enforcement. For tens, even almost a hundred years the world of law enforcement in Indonesia is dominated by liberal minds and culture. As a result, liberal praxis and culture are deeply ingrained and considered as an absolute thing to do. Liberal culture puts the element of law enforcement in a confrontational position in order to maintain and protect individual independence. With such a culture of law enforcement, law enforcement is more preoccupied with maintaining the strength of these institutions, namely the courts, prosecutors, lawyers and the police (Rahardjo, 2008).

Law enforcement is still far from what is expected is inseparable from the political influence in the law. This does not only affect law enforcement, but also the characteristics of law products, as well as the manufacturing process (Agiyanto, 2018). The implementation of functions and law enforcement is not always in line with the development of its structure. This is if the measure of law development in Indonesia is the unification and codification of the law, then from time to time the productivity of legislation increases. But from the other side in terms of the function of law there has been a decline.

The quality of judges is a component of law enforcement, ideally understanding the law values that live in society. The task of judges in law enforcement will be very closely related to the problem of law philosophy. Through the discovery of the law, the judge is required to interpret the reality in providing a fair decision based on the truth and realizing a sense of justice itself by using a conscience. This conscience is important as a factor that can prevent and safeguard law discovery that must be improved and honed so that it is able to receive guidance from God.

Law enforcement in law development must also be based on Pancasila, which is carried out by applying the law in accordance with the principles of God, humanity, unity, deliberation and justice. Law enforcement not only fulfills the formality requirements of the legislation, but also involves all the principles and values contained in the Pancasila. Law enforcement can run well, if the law is practiced in accordance with the five principles of values contained in the Pancasila.

Pancasila acts as a paradigm of law development must be a reference in all thoughts, attitudes and actions and law activities carried out in the country of Indonesia. Including in the field of law, of course, must be guided by Pancasila, so that the law produced in accordance with the principles of Pancasila values. As the source of all sources of law, Pancasila is a grundnorm for every statutory regulation that has a position under Pancasila. So it must base its logical ratio on Pancasila and must not conflict with it.

The application of the values of the Pancasila law philosophy becomes important in every legislation in Indonesia. The material philosophy of Pancasila law was excavated from the noble values of the Indonesian people that have existed for thousands of years ago. The Pancasila law philosophy was thus born from the feelings and knowledge of the Indonesian people for themselves and their environment (Nugroho, 2014).

After the reformation, actually many people put their optimism that the law will be applied correctly and fairly by the police, prosecutors and advocates. At the practical level, all law enforcement officers are from the New Order. Reform will only succeed if honesty, mental and moral justice begins with oneself first. The correct verdict based on staatsfundamentalnorm must read For the sake of justice based on Pancasila. That is, every precept of Pancasila must be listened to in the context of weighing before it is established as a dictum (Zulfan, 2014). In reality, there are still many law cases that have not been resolved completely so that it affects the people's trust in law enforcement.

This phenomenon has caused a lot of debate, especially related to the thought of the relevance of law enforcement with the values of social justice and social welfare. There are several facts that are very influential on the paradigm of law enforcement.

First, the tendency for the widest possible autonomy system to become federalism. The claim of federalism is believed that each region is able to maintain the law which is a national law obstacle because the region has a large share in accordance with the portion of justice that is rolling. We often find this in some cases which befell regional officials or a number of regional elites who are caught or held hostage by law.

Second, the tendency of multiparty system that has an impact on the presidential cabinet system which has been adopted in the 1945 Constitution of the Republic of Indonesia. This means that at the time the law has a tendency to change political transition in coalition and opposition. With a multiparty coalition system, the law empowerment becomes manipulated at the stage of the process to the proper reach of justice.

Third, the tendency of separation (not differentiation) is explicit (separation not differentiation) between executive, legislative and judiciary. very influential on the Law Making Process, and the Law Enforcement Process. The law that touches the highest state institutions above sometimes does not budge, that the law context can be ignored by the transfer of power of high officials who can actually undermine the development of Indonesian national law.

Fourth, the inclusion of the influence of Non-Governmental Organizations (NGOs) in government decision making and the legislative process sometimes influences the process of upholding justice. NGOs are sometimes not well targeted for analysis when the law is always confronted with interests. That NGOs only take the role of

themselves as catalysts "limps" who should be as a companion instead into the niche of the case. This often happens both at the regional and national levels.

Fifth, the Decree of the People's Consultative Assembly (MPR) which instructs the President to eradicate Corruption and Nepotism Corruption and create a clean and authoritative government increasingly adds to the burden of the government that is not small in the present and the future. Because the MPR is no longer the highest interest of the state in favor of its people (Gunarto, 2014).

Law enforcers are required to be able to implement and apply the law properly, with the art owned by each officer, so that the law function runs well, including: (1) interpreting the law in accordance with justice and each position needs to be held analogical interpretation of law refinement or give the phrase a contrario, and (2) required skills and skills and dexterity of law enforcers in applying applicable law (Asikin, 2017).

Satjipto Rahardjo provided a solution how to get out of the deterioration of the law due to law enforcement in Indonesia, namely; *First*, the use of spiritual intelligence to wake up from the deterioration of the law by finding a new way and not allowing yourself to be constrained by the way of running the "old and traditional" law which clearly hurt the sense of justice more. *Secondly*, the search for deeper meaning should be a new measure in carrying out the law and the urgency of the law, in their respective capacities, both as judges, prosecutors, advocates, bureaucrats, police, educators and others. *Third*, the law should be carried out not according to logical principles alone, but with feelings, caring, and a spirit of involvement (compassion) (Rahardjo, 2008).

More than that it must be able to arouse law vigilantism especially among law enforcement. Law vigilantism is people who with their own initiative do the work needed by the community in the field of law. A district attorney who on his own initiative accelerated the course of the case by cutting a number of links in the process, without being asked and without asking for overtime, is an example of law vigilance. Likewise with advocates who refuse hard, whatever paid, to free the client from his mistakes. Judges who are not calm about doing business as usual, but are always anxious to find ways and the best way to provide justice to the people (Rahardjo, 2004).

There should no longer be a law community in this country which generally thinks in classical ways, especially in the courts, prosecutors and the police. They are very submissive to positive law, not creative, let alone dare to break existing rules (rule breaking), very loyal to be followers of analytical jurisprudence or dogmatic jurisprudence which triumphed in the XIX century (Rahardjo, 2005).

The court as a institution for resolving disputes used by the community must be free and impartial, let alone take sides, honestly and in the manner stipulated by law. Then the practical law bearers who can be in the form of parliament, justice, law aid institutions, and government bureaucracy that fills the law system building in Indonesia in the law structure and conducts the formation of law in building law substance must truly test their integrity and capability and have a morality that can made a role model in law. In addition, no less important is the law culture itself which has a significant effect on the pros and cons of law enforcement in Indonesia. How much law benefit can be formed in realizing the values of social justice which is the embodiment of the values of the Pancasila itself (Agiyanto, 2014).

The problem of law enforcement has an impact on the development of national law. As a country that is trying to build its own law system, problems in law enforcement greatly affect law development. Public pessimism about law enforcement has made people lose faith in the law, so there is less attention about the need to replace colonial legislation. There is pessimism among the people who consider any product to be the same law.

V. CONCLUSION

Based on the above discussion it can be concluded that law enforcement is one element of the operation of the law. Law enforcement must be carried out with full dedication and a strong sense of responsibility and moral integrity. Factors that influence law enforcement because there are often conflicts between law certainty and law justice. Law enforcement influences law enforcement. Mentality and morality of law enforcement are very important in law enforcement. Supporting facilities are also needed and play a role in law enforcement as a facility for the operation of the law. Community factors also influence law enforcement. The law is in the middle of the community, so the culture of obeying the community's law greatly affects law enforcement. The culture of a society that is aware of the law, will be very decisive in law enforcement. The problem of law enforcement has an impact on the development of national law. As a country that is trying to build its own law system, problems in law enforcement greatly affect law development. The public's pessimism towards law enforcement has made people lose faith in the law, so there is less attention about the need to replace colonial legislation.

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