

## LAW ENFORCEMENT IN INDONESIA IN THE PERSPECTIVE OF LAW STATES

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### Abstract

The existence of Indonesia as a state of law has given birth to regulations that cover all aspects of life which aimed to protecting human rights and law enforcement. In carrying out these objectives, the state must first be able to achieve and realize the law goals, such as the value of justice, certainty and usefulness. The most strenuous work at the moment is facing various polemics and law issues so that it has not been going well, of course, assertiveness is needed to uphold the commitment of law enforcement so as to realize a value of certainty and benefit for the people of Indonesia.

Keywords : *law enforcement, law country, perspective of law*

### INTRODUCTION

Indonesia is a states of law, that has been clearly stated in the 1945 Constitution. As a state of law, Indonesia has goals and ideals to be achieved. The concept of law states was initially developed in Continental Europe, among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term, "rechtsstaat". According to Julius Stahl, the concept of law states which he calls the term 'rechtsstaat' includes four important elements, such as:

1. Protection of human rights.
2. Sharing of power.
3. Government based on law.
4. State Administrative Court.

One important element in a law states is the protection of human rights. Human rights are the most basic rights that humans have had since they were born into the world. Therefore, the protection of human rights is an important agenda that must be carried out by the State. Human rights as contained in article 1 paragraph 1 of Law Number 39 of 1999 concerning Human Rights is a set of rights inherent in the nature and existence of humans as God's creature and is a gift that must be respected , upheld, and protected by the State, law, government, and everyone for the sake of honor and protection of human dignity.

One form of rights protected in the Law on Human Rights is the right to obtain justice regulated in articles 17, 18, 19 of the Human Rights regulations. The law is a set of rules that contain binding orders and prohibitions, and there are strict sanctions if there are violations of the law itself. Laws are made by the authorities and applied to those controlled by them. The purpose of the law according to some law experts formulates the general principles of the law objectives are justice, expediency, or usefulness and certainty.

To achieve these objectives, legal norms must be upheld. Law enforcement is the process of making efforts for the establishment or functioning of legal norms as a real guide to behavior in traffic or legal relations in the life of society and the state. So a law must be enforced in order to function properly so that the objectives of the law can be achieved.

Law enforcement in Indonesia is still biased in achieving the objectives of the law itself. After times changes and the new order to reform. Law enforcement in Indonesia has ups and downs. Sometimes the law enforcement satisfies the people, sometimes it disappoints the people. The former Chief Justice of the Constitutional Court (MK), Mahfud MD, assessed that the world of law enforcement is currently in a crisis of integrity. This crisis occurs in institutions and law enforcement personnel ranging from prosecutors, judges to the police.

The phenomenon of integrity crisis in law enforcement institutions certainly creates problems in realizing a state of law, one of which is marked by consistency and determination in law enforcement. Therefore, the question is what form of law enforcement should be to achieve the objectives and the formation of the law itself. The problem that becomes a legal issue and is discussed in this paper is how is the form of law enforcement going forward to suit the law objectives?

## METHODOLOGY

The making of a law scientific work certainly cannot be separated from the writing method which is based on the results of either normative or empirical research. Law research is conducted to produce new arguments, theories or concepts as a prescription in solving the problem at hand. The type of research in this paper is Normative Yunidis (Legal Research). Normative Juridical Research is research conducted by reviewing and analyzing the substance of laws and regulations on the subject matter or legal issues in consistency with existing legal principles. The statute approach that used in this paper are, conceptual approach and case approach. The legal material that used in this paper is primary legal material, secondary legal material, tertiary legal material. Analysis of legal material is carried out using the content analysis method, by conducting an in-depth study of the substance (content) of the relevant laws and regulations for subsequent conclusions.

## RESULTS AND DISCUSSION

The concept of the state of law in Continental Europe was developed among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term, yalta "rechtsstaat". The concept of Immanuel Kant was later refined by Julius Stahl who argued that the classical formal legal state (rechtstaat,) was characterized as follows:

1. Recognition of human rights.
2. There is a separation of powers.
3. The government is run based on the law (written law).
4. There is an administrative court

The concept of the Night Guard State as the concept of the Kiasik State Law, historically was strongly influenced by the liberal economic understanding prevailing at that time. The principle in the economic field "laissez faire, laissez aller" is applied in the constitutional field. According to Franz Magnis-Suseno there are 4 important conditions or characteristics state of law:

1. The existence of the principle of legality which means that the government acts solely on the basis of applicable law.
2. The existence of freedom and independence of judicial power, especially in its function to uphold law and justice
3. There are guarantees of protection of human rights
4. The existence of a government based on a constitutional system or basic law.

The first to the third characteristic revealed by Franz Magnis Suseno becomes an important point that must be fulfilled by a state of law as well as Indonesia which is also a state of law. Indonesia as a state of law uses law as a foundation in all activities of the state and society. The purpose of law as an embodiment of justice, usefulness and legal certainty which is a universal goal of a law. To achieve this goal, the law must be upheld as it functions.

If we look back from the historical point of view the Indonesian legal system has the same structure as the legal system during the Dutch colonial period. This cannot be denied because the Indonesian legal system has adapted a lot to the legal system during the Dutch colonial period. The Indonesian legal and judicial system before independence was plural and the system was differentiated based on groups or races, such as the European group, the Chinese, Eastern descendants, and the native groups.

During the New Order era, the development and dynamics of the law could be said to have experienced a downturn. The law became a tool for the authorities, for example the government formed several laws that facilitated foreign capital investment in Indonesia, government intervention in the course of law enforcement, until finally the term "KKN", corruption, collusion and nepotism began to develop at that time. Freedom of speech is silenced, human rights violations also occur everywhere.

This setback aroused the enthusiasm of several parties who wanted change which became known as reformation. The shift of the New Order into reform was a milestone in the change of the law order in Indonesia. Beginning with the amendment of the 1945 Constitution to four times the amendment to the 1945 Constitution. The formation of several laws constituting a form of reform of the political system and state, reform of the law system and human rights; and also the economy. The old disease

of the new order, namely "KKN" (corruption, collusion and nepotism) was still firmly rooted in the reform era, even more out of control.

Law enforcement officials such as police, prosecutors, and judges are still unable to break through the law enforcement. This can be seen when many violations occurred during the transition from the new order to the reforms that did not get law certainty, while at that time the human rights instruments of the Human Rights Law and the judiciary that specifically handled cases of human rights violations had been formed. Law enforcement is still considered not firmly felt there is still discrimination, still siding with certain parties and still can not deter the perpetrators. On the bright side, the empowerment of the people to claim their rights and develop their legal resources independently, is more aggressively and widely implemented. Even so, legal reform still feels slow and its direction is still uncertain.

This situation causes the community to become a crisis of trust in law enforcement institutions so that it is not uncommon for the community to choose to solve it on their own terms and even tend to play judge themselves. Restoring public trust in the law as a means of resolving conflicts is felt the need to realize public order.

Law Conditions in Indonesia nowadays is more often reap criticism than praise. Various criticisms directed both related to law enforcement, legal awareness, legal quality, unclear various laws relating to the ongoing process of law and also the weak application of various regulations. Criticism has often been raised with regard to law enforcement in Indonesia. Most people consider that the law in Indonesia can be bought, who wins those who have a position, name and power, who have a lot of money are certainly safe and disturbed by the law even though state rules are violated.

The law, which should have been a tool for public renewal, has turned into a kind of killing machine because it is driven by a set of messy and chaotic laws. The practice of fraud in the process of law enforcement, such as the law mafia in the judiciary, discriminatory justice or the fabrication of the judicial process is an easy reality to be found in law enforcement in this country. Discriminatory justice makes the law in this country exactly as described by the Philosopher Plato that law is a spider's web that is only able to ensnare the weak but will be torn if faced with a strong Application of Law in Indonesia in the Perspective of the State of the rich and strong laws (laws are spider webs, they hold the weak and delicate who are caught in their meshes but are torn in pieces by the rich and powerful). Ordinary people who are caught committing petty theft, such as underage Hamdani who 'stole' the company-owned perforated flip-flops where he works in Tangerang, Grandma Minah who took three cocoa in Purbalingga, Aguswandi Tanjung who 'hitched a cellphone at a house stacking in Jakarta and Kholil and Basan in Kediri who stole two watermelon seeds were immediately arrested and severely punished. Whereas a state official who corrupts billions of rupiah in state-owned money receives a very minimal sentence even if he can be free even though in his law there is a maximum criminal.

Law cases with suspects and defendants people who have power, position and name. The law process carried out is so complicated and it seems that the ending is unclear. Whereas if the law case concerns ordinary people the law is made as steep as possible. It becomes an irony where the law should be more able to protect the general public rather than protecting those who have power. Injustice that occurs in people who are not satisfied with law enforcement will certainly trigger various natural actions in the form of resistance that can be manifested in various anarchic actions or counterproductive violence against national development. Disparity in judges' decisions, bribery corruption involving law enforcers has further exacerbated the image of law enforcement.

Then how is the concept of law enforcement going forward. According to Jimly Asshidiqie law enforcement in terms of 2 perspective such as from the perspective of the subject and the perspective of the object. Reviewed and the perspective of the subject, law enforcement can be done by a broad subject and can also be interpreted as law enforcement efforts by the subject in a limited or narrow sense. In a broad sense, the process of law enforcement involves all law subjects in every law relationship. Anyone who runs a normative rule or does something or does not do something based on the norms of the rule of law, means they run or enforces the rule of law. In terms of anti-narrow, in terms of the subject, law enforcement is only interpreted as an effort of certain law enforcement apparatuses to guarantee and ensure that a rule of law runs as it should be reviewed and its object perspective, such as and its legal aspect. In this case, the understanding also includes broad and narrow meanings. In a broad sense, law enforcement also includes the values of justice contained in the sound of formal rules and values of justice that live in society. According to Lawrence Friedman, law enforcement can be effective if the three main elements that become the pillars of law enforcement can work well, such as the substance of the law, law structure and law culture. Based on this opinion, if we talk about the law system, then the three elements together or individually, we may not rule aside. The structure is the

whole law enforcement institution, along with its officials. So it includes: the police with the police; the attorney's office with the prosecutors; lawyer's offices with the lawyers, and courts with the judges. Substance is the whole principle of law, law norms and law rules, both written and unwritten, including court decisions. Law culture is the habits, opinions, ways of thinking and ways of acting, both from law enforcers and from citizens.

Therefore, in order to create the state of law, it certainly requires hard work and all elements in our country. Efforts to create the state of law are not only the rights of our state institutions with the distribution of power characterized by the principle of checks and balances in the implementation of their government, but also the right of every citizen to participate in efforts to create the state of law in our country. The importance of the law culture to support the existence of a law system, as Friedman said, is that substance and apparatus alone are not sufficient for the operation of the law system. Where Lawrence M Friedman stressed the importance of Law Culture. That way the law can function properly and the law objectives can be achieved, such as fairness, benefit and law certainty.

## CONCLUSION

The nature of public trust in law enforcement is basically caused because the law does not function as it should, enforcement of the law is weak and even tends to be unjust, pointing downward obtuse upward. Whereas law should be neutral, because it was created with the aim of justice, benefit and law certainty itself. According to Lawrence Friedman, law enforcement can be effective if the three main elements that become pillars of law enforcement can work well, such as the substance of the law, law structure and the culture of law.

Therefore, in order to be able to restore the actual function of the law and achieve the law goals, the mentality and law enforcers must be improved first, the substance of the law must be more favorable to the people and not merely become a tool for the authorities to suppress the community. And the culture of law awareness in the community is further enhanced. That way Indonesia can realize the state of law with real meaning.

## REFERENCES

- Benny K Harman, 1997, *Konfigurasi Politik dan Kekuasaan Kehakiman di Indonesia*, Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM).
- Munir Fuady, *Teori Negara Hukum Modern (Rechtstaat)*, Bandung: Refika Aditama
- Jimly Asshiddiqie, *Gagasan Negara Hukum Indonesia*, [http://www.jimly.com/makalah/namafile/57/Konsep\\_NegaraHukum\\_Indonesia.pdf](http://www.jimly.com/makalah/namafile/57/Konsep_NegaraHukum_Indonesia.pdf)
- Jimly Asshiddiqie, *Penegakan Hukum*, <http://www.jimly.com>
- Sutrisno, E. (2019). Relations between legal culture and economic empowerment among marginalized group of farmers. *Journal of Legal, Ethical and Regulatory Issues*.
- Sutrisno, E. (2017). THE STUDY OF RIVER POLLUTION RELATED TO DOMESTIC WASTE IN THE PERSPECTIVE OF COMMUNITY LEGAL CULTURE. *South East Asia Journal of Contemporary Business, Economics and Law*, 12(2), 158–162. <https://doi.org/10.1017/CBO9781107415324.004>
- Syafruddin Kalo, Penegakan Hukum Yang Menjarnin Kepastian Hukum Dan Rasa Keadilan Masyarakat, [hunterscience.weebly.com/uploads/3/./makalah\\_penegakan\\_hukuin.do](http://hunterscience.weebly.com/uploads/3/./makalah_penegakan_hukuin.do) [http://nasionalnews.viva.co.id/news/read/4\\_85932-mahfud--penegakan-hukum-diindonesia-dibawah-5](http://nasionalnews.viva.co.id/news/read/4_85932-mahfud--penegakan-hukum-diindonesia-dibawah-5)
- Yolanda, N., Sutarih, A., & Hartini, S. I. (2020). Acquisition company. *International Journal of Scientific and Technology Research*, 9(4), 2292–2294.