

LAW ENFORCEMENT IN THE INDONESIAN CONSTITUTIONAL SYSTEM IS IN ACCORDANCE WITH THE LAW THE ENFORCER'S CONSCIENCE

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ABSTRACT

The purpose of this research is to analyze and evaluate the role of law enforcement in the Indonesian constitutional system, specifically focusing on how the enforcement of laws aligns with the personal conscience and ethical judgment of law enforcers. The study utilizes secondary data gathered through literature reviews, drawing from primary, secondary, and tertiary legal materials, such as legislation, books, journals, and articles. The collected data is analyzed following the Miles and Huberman (2014) model, which includes processes of data reduction, data display, and data verification, to derive conclusions pertinent to the research questions. It sheds light on how ethical considerations influence decision-making, offering insights into the moral dimensions of the law enforcement beyond formal legal frameworks. Furthermore, this study contributes to discussions on judicial integrity and accountability, providing a foundation for evaluating how personal conscience impacts the fairness and effectiveness of law enforcing. It also offers practical recommendations for strengthening the ethical standards and professional judgment of judicial officials in Indonesia. Comparative studies on how different countries' judicial systems integrate human rights and democratic values into their law enforcement structures could provide valuable insights for reforming Indonesia's judicial system to meet global standards of justice and fairness.

INTRODUCTION

Basically, understanding the concept of a state of law is understanding a concept that seems simple but contains a relatively long history of thought. The idea of a state of law is built through the development of legal instruments as a functioning or stand-alone system and equivalent to the one developed. In general, the understanding of the state of law embraced by each country can be seen from the work of 3 (three) ways of basic principles, namely the rule of law (supremacy of law), equality before the law (equality before the law) and law enforcement (due process of law) (Asshiddiqie, 2010). Law as a system means law as an orderly order that results from the rules of life in society. Therefore, the properties of the system are then comprehensively arranged in each of its components and operate in a single functional relationship.

In the context of reforming law enforcement institutions, a new paradigm change that prioritizes human rights values and democratic values is expected to bring law enforcement institutions into transparent and accountable institutions, as well as show their faces as professional law enforcement officials in carrying out their duties. The change in the new paradigm must be accompanied by a change in the way of thinking from textual law to progressive law. Based on this, it can also be understood that law enforcement rules are greatly influenced by the thoughts of law enforcement itself. Therefore, it is

no longer a question mark if sometimes in Indonesia's constitutional system there are many changes that are not for renewal but for an interest based on the desire of a certain group as the controller.

The clash of power regulations and the control of power regulations is certainly something that should be the main focus to maintain Indonesia's legal order so that it remains healthy and can grow as a guideline or guidance as aspired by the law itself in the process of making it as well as conveying the purpose and purpose of the formation of the legal rule.

The purpose of this research is to analyze and evaluate the role of law enforcement in the Indonesian constitutional system, specifically focusing on how the enforcement of laws aligns with the personal conscience and ethical judgment of law enforcers. The study aims to explore the balance between strict legal compliance and the moral or ethical considerations that influence decision-making in the practice of law enforcement, providing insights into how this dynamic affects the justice system in Indonesia.

The research contributes to the understanding of law enforcement in Indonesia by highlighting the relationship between legal compliance and the personal conscience of law enforcers within the constitutional system. It sheds light on how ethical considerations influence decision-making, offering insights into the moral dimensions of law enforcement beyond formal legal frameworks. Additionally, this study contributes to discussions on judicial integrity and accountability, providing a foundation for evaluating how personal conscience impacts the fairness and effectiveness of law enforcement. Furthermore, it offers practical recommendations for strengthening the ethical standards and professional judgment of law enforcers in Indonesia.

METHODS

The research method in this study adopts a normative legal approach, focusing on the analysis of legal principles, systematics, history, synchronization, and comparison. The study utilizes secondary data gathered through literature reviews, drawing from primary, secondary, and tertiary legal materials such as legislation, books, journals, and articles. The collected data is analyzed following the Miles and Huberman (2014) model, which includes processes of data reduction, data display, and data verification, to derive conclusions pertinent to the research questions.

RESULTS

State of Law

The discussion of the state of law is a seemingly simple concept, but it contains a relatively long history of thought. The concept of the state of law was born before the revolution of 1688 in the United Kingdom which then developed in the 17th century and became popular in the 19th century. The background of the emergence of the idea of the state of law is a reaction to the arbitrariness of the rulers in the past. Therefore, the elements of the state of law are interrelated with the history and development of the nation (Muhtaj, 2005).

The idea of the state of law was first brought by Plato when he introduced the concept of *namoi* in his third work after *Polycia* which was introduced in his first work and *Politico* in his second work. In *Namoi*, Plato argued that good governance is based on good rule of law. This idea is considered more appropriate and in line with his student Aristotle who was later written in his book entitled *politica*. The meaning of the state of law has actually been widely sought since ancient times before Aristotle introduced the concept of the state of law. The definition of the state of law is still often associated by Aristotle with the meaning of politics.

The idea of a state of law is built through the development of legal instruments as a functioning or stand-alone system and equivalent to the one developed. The management of superstructures and infrastructure of political, economic, and social institutions and regularly can build a culture of legal awareness with rationality and impersonal in the life of society, nation and state. Therefore, the legal system must be built or have legislation and can be controlled so that it can run as it should. In a state of law, law enforcement is biased from the 1945 Constitution as the supreme law, ensuring compliance with the constitution as the basic law. Because a constitution that can be applied properly will be the guardian of the success of the state of law (Asshiddiqie, 2010). So far, the concept of the state of law has undergone different developments and formulations. Thinking or perception in formulating it differs depending on the development of the times and the historical situation with each influence. Therefore, although the rule of law is considered universal, it turns out that the implementation area has various differences in the interpretation of this understanding.

The state of law is a state that stands on the basis of law that can provide a guarantee of justice for its people. Justice means that every action of the state and rulers is not arbitrary and in accordance with the rule of law, both in carrying out government duties or making legal products and always being able to pay attention to the state of the surrounding community and must not deviate from the dimension of justice itself (Kusnardi, 1987).

The state of law in Islamic nomocracy is based on the values contained in the Qur'an and As-Sunnah. Islamic nomocracy is also interpreted as a state of law that has principles such as the principle of deliberation, the principle of justice and equality, the principle of amana (in carrying out power, for example), the protection of human rights owned by every human being, the principle of peace and free justice, the principle of welfare and so on (Azahary, 2010).

In general, the understanding of the state of law embraced by each country can be seen from the work of 3 (three) basic principles, namely supremacy of law, equality before the law, and due process of law. The characteristics of a state of law that adheres to this understanding can usually be seen from: 1). How the state guarantees the protection of human rights (Human Rights) for every citizen. 2) Have an independent and free judicial power. 3) Legality in the legal sense in the sense that both the government or the state and citizens must behave and act in accordance with the rule of law (Ridlwani, 2012).

Soepomo in his explanation regarding the issuance of the draft 1945 Constitution stated that Indonesia must be built on the state of law (*rechtstaat*) and not on mere power. At first the *rechtstaat* emerged radically to challenge unjust powers and rely more on written law than on judges' decisions. This factor is also the background for the emergence of administrative justice. Talking about the direction of the state of law, it can be seen in the 1945 Constitution such as related to the power of the judiciary that is independent and free from all forms of intervention that pretend to be the characteristics of the state of law.

The concept of a state of law adopted based on the 1945 Constitution is an active or dynamic state of law in the sense that it has an orientation towards the fulfillment of the realization of people's welfare in accordance with the principle of *welvaastaat*. because the characteristics inherent in the state of Indonesia law are in line with the purpose of the establishment of the Indonesian nation, namely the protection of all Indonesia people and all Indonesia's bloodshed, participation in maintaining world order, the promotion of general welfare and the deterioration of the nation's life, which is based on independence, lasting peace and social justice

Law as a System in Indonesia's Constitutionality

Talking about law as a system has a lot of meaning from various points of view. Because law is the most important system in the implementation of a series of institutional systems. It begins with power in the fields of politics, economics, industry and so on. Many legal theories say that the law must be stable, but on the other hand, the law must be dynamic to continue to be able to follow the dynamics of human life development. On the basis of a system of legal rules there are fundamental principles, namely legal principles, according to Paul Scholten, principles are basic thoughts, formulated in laws and regulations and judges' decisions.

Other laws and norms can be distinguished from various aspects such as aspects and objectives of norms where law focuses more on regulating human aspects as social beings and human external traits while legal norms are maintained in order to maintain obedience and order in society. The legal system or norms of rules created by state institutions are guided through a mechanism that in the sense that the law is formed and grows and develops through institutions or institutions that have the authority to form it, namely the legislature.

The paradigm that views the law as a system has dominated the great thinking of the lawmakers. Law as a system includes several things such as a structure that is likened to a machine in which there are institutions such as the House of Representatives (DPR), Executive, Legislative, Police, Prosecutor's Office and courts. Related to this, it is necessary to carry out an objective and transparent selection of these institutions. Because substance is also what is done and produced. In order for the law to run effectively as a means of controlling society, the legal system in question needs to be improved in order to create an accountable, credible, and capable legal system (Budiarjo, 2010).

The legal system is a unified norm of the order consisting of parts and elements that are closely related to each other. To achieve a unified goal, cooperation is needed so that a norm rule that lives in society is achieved. This is also because in a legal system there should not be a conflict between one *huku* system and another legal system, besides that it also prevents duplication or overlap between

parts of the law because each law has guidelines and several principles in its formation. It can also be said that a legal system cannot be separated from the principles that support it (Marbun, 2004).

Law as a system means law as an orderly order that results from the rules of life in society. Therefore, the properties of the system are then comprehensively arranged in each of its components and operate in a single functional relationship. The source that becomes a legal norm or social order is like a living norm that contains whether or not something can be done.

The legal system is characterized by interconnected components that reflect societal norms, including social, religious, and moral norms. Immanuel Kant emphasized law as a norm for respecting others, where personal freedom aligns with the will of others. Cornelis Van Villenhoven viewed law as a reflection of social dynamics, constantly evolving amidst conflicts. Prof. Subekti highlighted the state as a legal system, an organized structure where all parts work together toward a common goal. Hans Kelsen, an Austrian jurist, argued that law is a positive rule that must be obeyed and cannot be rejected. These perspectives collectively emphasize the interplay between legal norms and societal order.

Based on this, it can be concluded that the concept of the state of law as contained in the provisions of Article 1 paragraph (13) is related to the welfare state (*welvaarstaat*) or the understanding of the material state of law as contained in paragraph 4. Therefore, in the order of its implementation, the more active the state is in the implementation of the rule of law, it will create a perfect state in its journey and bring it closer to the ideals of the nation's founding.

The concept of a modern legal state is generally based on the goals of the formation of a legal state that are to be achieved, such as the capacity of rules, standards or legal principles to lead the community in the implementation of its affairs. To create the formation of a state of law as aspired, the community must know as a whole and then obey the law made. Next is the effectiveness of the law, how effective the legal order is made in the midst of the community and the extent to which it has an impact on the community. As expressed by Jo Sefh Raz, namely "People should be ruled by law and obey it" which in its meaning can be interpreted that the people must be ruled by the law and obey it.

The legal system can also build a social system that is much more complex, much more diverse and much more developed. On the other hand, when the state is negligent in carrying out its role, is not present in all the needs of the community or even is not effective or efficient in providing protection, then every citizen is allowed or entitled to get justification to carry out self-defense actions. Law is a system, a system of rules, a new system will be called a system if it can become a container that penetrates and protects efficiently and effectively.

Law Enforcement Legal system perspective

In the modern state structure, the task of law enforcement is carried out by the components of the executive body and carried out by the bureaucracy of the executive, so it is often called the law enforcement bureaucracy. Since the State interferes in many fields and activities and services in society, legal intervention is also increasingly intensive, such as in the fields of health, housing, production, and education. This type of state is known as a welfare state. Exclusive with its bureaucracy is part of the chain to realize the plans listed in the legal regulations that deal with these fields (Rahardjo, 2012).

Talking about legal issues cannot be separated from how the law enforcement process is. Through the form of legal rules that have been formulated explicitly, the rule of law contains actions that must be applied such as law enforcement (Rahardjo, 2009). The purpose of the law is carried out by humans based on vision to enforce a definite law so that in the enforcement of the law, the legal system occupies the highest position according to what the law promises. Or in other words, the work of the law can be seen by law enforcers when interpreting the law itself.

In legal practice, it is not uncommon for misinterpretations and misunderstandings to even give birth to new interpretations. This happened because considering that the concept of law itself is very broad. Therefore, a good law is a law that can divide justice and is able to accommodate the society that is regulated. Because the law and society are closely related so that good law reflects the values that grow in society (Goesniadhie, 2010).

An understanding of social values that live in society needs to be known by law enforcers, because it will affect the way law enforcers think before being applied to the community. If law enforcers do not know or do not understand these values, law enforcement will become a non-progressive law. Some of the factors that can cause the decline of the law are the existence of corrupt law enforcers and their thinking is still legalistic and positivistic. This paradigm can lead to law enforcement that violates human rights (Christianto, 2012).

In the face of a law that increasingly does not refer to good law enforcement, the progressive law developed by Sajipto Raharjo can actually be the answer. Seeing that progressive legal ideas actually start from the downturn in law enforcement that has occurred, from the existence of the judicial mafia and the codification of the law that is increasingly developing, it shows that the actual law enforcement functions to prosper the people. This goal will only be realized if the substance of the law is in favor of the interests of the people and in law enforcement it attaches importance to the value of justice, because the true essence of law is justice (Suhardin, 2007).

Law enforcement is part of the state's efforts to maintain the existence of the law to apply the ideals of society that have been regulated in the state legal order. Therefore, when talking about the issue of law enforcement, it must involve several factors, including the essence of the values that are maintained in society, the institutional system in society that is aimed at organizing resources to perpetuate order, and the activities carried out to maintain economic and political stability. This activity has a cybernic relationship with law enforcement, or in other words law enforcement becomes the control of economic and political activities because it can determine how law enforcement is enforced, the purpose of law enforcement must be rooted in the people (Handoko, 2020).

According to Fuller, there are several incidents that can hinder law enforcement in a country, these obstacles include the existence of misinterpretation of the law, the lack of ability to maintain the essence of the law, the desire for power, bribery and exploitation for personal interests (Rahardjo, 1982). The obstacle conveyed by Fuller is in accordance with the facts of law enforcement incidents in Indonesia.

Meanwhile, according to Harun Nasution, law enforcement problems can be born from the lack of strict provisions contained in the law, so that there is a gap in the possibility of irregularities by law enforcers. This can be seen related to preventive police actions, some are regulated in various laws and some are only based on government policies. The existence of preventive police authority is often tolerated in the state of law without a concrete and clear legal basis. The problem will be even bigger if the arrest and detention are used to simplify the investigation task (Nasution, 1982).

Law Enforcement: Legal Certainty Perspective

Law enforcement is often only associated with the aspect of order. This assumption is because the law is always synonymous with law enforcement, this kind of assumption is a wrong assumption, because the law in essence must be seen in one provision that gives birth to certain injunctions in various elements of the legal system that not only refer to regulations, but cover a wider field, such as structures, institutions and laws that grow in society. In the field of law enforcement, legal culture is a very important element, because legal culture includes people's habits or behaviors about the values and objectives of the applicable legal system.

From the reality of law enforcement that occurs, law enforcement should not only prioritize formal legal aspects. Because in law enforcement that only refers to the substance of formal legal norms contained in the law, it will tend to injure the value of community justice. In essence, law enforcement must also be based on living law. Law enforcers must pay more attention to legal culture to know the attitudes and beliefs, values and expectations and public thoughts on the law in the applicable system.

Theoretically, legal objectives have three scopes, namely certainty, justice, and usefulness. Justice is the main universal goal, which contains the meaning of protecting rights, equality of position before the law. The abstract nature of justice is that justice can not only be born from rationality, but is also determined by the social atmosphere which is influenced by other values and norms in society. Therefore, the nature of justice has a dynamic nature that sometimes cannot be accommodated in positive law (MD, 2009).

The conception of fair law enforcement emphasizes the protection of human rights, equality before the law, and a balance between social and individual interests. Achieving just law enforcement requires both institutional and personal transformation among law enforcers. This transformation should be guided by three key principles: democracy, the rule of law, and the protection of human rights, ensuring that legal systems promote fairness and justice for all.

The principle of democracy emphasizes that law enforcement must maintain the values of openness to public involvement, responsiveness, control over democratic institutions that reflect the public interest, and transparency in the implementation of their responsibilities and functions. To reform the institution of the police, for example, consider the idea of Democratic Policing, which consists of at least six interrelated pillars: internal control of the security agencies (police),

governmental/executive control, legislative oversight, judicial oversight, and public accountability. The National Police, the Attorney General's Office, and law enforcement agencies are pillars in Indonesia's legal system and are very important to enforce the law. Therefore, these law enforcement organizations are expected to continue to create an integrated cooperative relationship in the criminal justice system (Ansori, 2018).

The National Police, the Prosecutor's Office, the KPK, the Prosecutor's Office (MA and MK), and the Advocate Institution in law enforcement need to continue to be strengthened in the field of legal substance so that there is no unequal difference in authority between one law enforcement agency and another so that certain law enforcement entities do not weaken gradually. Therefore, it is hoped that a review of laws and regulations will be carried out, especially those related to the authority of each law enforcement agency.

In the field of legal culture, the improvement of legal culture in Indonesia is very necessary both by the community and law enforcement officials who both have a tendency to prioritize a sense of justice. Law enforcement officials have a tendency to enforce the law by prioritizing legal certainty. Because of this ambivalence, it is hoped that law enforcement officials will be able to make decisions based on sociological factors and then take action to fulfill the community's sense of justice. Indonesia's law enforcement often involves the intervention and co-optation of interested parties in the case at hand, which jeopardizes their independence in handling the case. Transparency is required in this regard for all actions taken by law enforcement.

Law enforcers in making decisions, both in the form of legislation, and material acts must refer to the interests of the community because government legal acts give birth to legal relations between state administrative officials and citizens, if a legal dispute occurs, it must be resolved through law enforcement in accordance with the principles of legal certainty (Handoko, 2020).

In law, it is known as the term legal awareness, there are those who argue that legal awareness is a formulation that states that the only source of law and binding force is the legal awareness of the community. Another opinion states that the law is determined and depends on the daily practices of government officials, such as law and public order. This legal awareness is said to be in line, but in practice it is not always the case in the process even though legal certainty and public order always demand that the provisions be carried out based on legal certainty (Maulidah et al., 2022).

CONCLUSION

The state of law in Indonesia is shaped by various factors, including the creation of the law and its relationship with power. The 1945 Constitution emphasizes the importance of the state of law, which focuses on the judiciary's independence and independence from interference. Reforming law enforcement institutions should prioritize human rights values and democratic values, transforming them into transparent and accountable institutions. This change should be consistent with changes in cultural aspects, resulting in improved service quality to the community. Law aims at three main goals: legal certainty, justice, and usefulness. Future research should explore the practical implementation of a progressive law approach, focusing on how law enforcement institutions balance these goals. Comparative studies on other countries' judicial systems can provide valuable insights for reforming Indonesia's judicial system.

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