



Problematics of law enforcement in Indonesia

Susani Triwahyuningsih

Faculty of Law, Universitas Merdeka Ponorogo, Indonesia

Abstract

Before countries are formed, each individual has complete freedom to carry out his wishes. Humans are Zoon Politicon, where they always interact between one and the other. To regulate the order of human life that can potentially clash or occur between these individuals, then an instrument called law is needed, which regulates human life to be organized. With this law, humans are forced to respect the rights of others, and have an obligation to realize the conditions of a safe and order society. In addition, the law is also expected to be able to accommodate the possibilities that will occur in the future, through the establishment of law instruments in the form of legislation and institutions.

Keywords: problematics, law enforcement, legal instruments, and zoon politicon

Introduction

After more than a decade of the transitional period, law life in Indonesia has not yet improved. Various recipes and formulas have indeed been used to improve the depravity of the law in this country, but the therapies carried out by many groups have not been encouraging. At the beginning of the reforms, a lot of mapping and analysis had been carried out to save the law as the main pillar. However, in practice, until now it has not shown comprehensive and logistical improvements. This is likely to occur because in encouraging law reform, the parties involved are more likely to use approaches that are tactical - tactical reforms. Reformation is only done by repairing or patching the lack of this design, without making an investigation, thorough formulations and form a great renewal design.

In order to reconcile the direction and design of law reform in Indonesia, there are at least four fundamental issues that must be explored in the problematic law system in Indonesia. The first is related to the philosophical foundation of the direction of development and law reform, which in it is closely related to the purpose of the establishment of the country, affirmation of the principle of the rule of law. Secondly, it relates to the political configuration of the law which has a profound influence on the creation and use of law. Third, the problem of actors or agents who run and implement the law. Fourth, related to the development of a law culture that places law as social engineering. What is needed is a thorough touch in its improvement. It is meant by the whole is improvement in the law system in which by Lawrence Friedemn includes the substance of law, law structure, human resources law enforcement officers and law culture.

Achmad Santosa mentioned that there are 2 fundamental components in law reform, the first is legislation reform, the second is judicial reform or in other words reform in other law enforcers includes policy institutions and the police. Effective law enforcement will provide and help social change in accordance with what is expected. From the background above, the following problems were raised :

1. What are the law problems in Indonesia?
2. Improvement of how it relates to law enforcement in Indonesia?

Methods

In this study using the following methods:

1. Library Research which studies libraries and other scientific works related to the problems under study in order to obtain a theoretical and law basis that is related to the discussion or problems studied.
2. Research normative law in the form of data the problems to be investigated.

Discussions

1. Legal Problems in Indonesia

Daniel S. Lev once gave scathing criticism to our law world. He noted that since 1960 the decline of justice in this country has begun to occur. Law symbolisation also changed, from the God of Justice with eye cover and a balance sheet in his hand to become a 'banyan tree' with 'pengayoman' which meant as protection and help under it. The symbol of the banyan tree contains meaning that originated from Javanese palaces' values of yore.

Someone who wants to ask justice for his king, he just sits under a banyan tree in front of the palace. This can be an instrument of coercion for the king, with regard to the justice that the servant pleads for. However, in practice the 'banyan tree' in the future was interpreted as a paternalistic relationship between patrons and their clients. A relationship that does not require objective consideration in taking an action or decision.

2. Law in Indonesia

Discussing the issue of law enforcement in Indonesia cannot be separated from the understanding of the system itself which is always included in three components which are inseparable from one another, namely the components of structure, substance and

culture. So that in order to enforce the law to the fullest, all three components must be considered.

While the notion of law enforcement is a process to realize the wishes of the law that come true, which is referred to as law desires here is nothing but the thoughts of the legislature formulated in the law regulations. The formulation of the mind of the law maker as outlined in the law regulations is carried out. In reality, the law enforcement process culminates in its implementation by law enforcement officials themselves. There are several factors that determine whether the law enforcement process can be effective or not, those are:

- a) Community expectations, whether the law enforcement is in accordance with or not with community values.
- b) There is motivation from the community to report violations of the law to the law enforcement agencies.
- c) Ability and authority of law enforcement organs.

Law enforcement is a problem in almost every country, especially for developing countries. In Indonesia law issues are very good and varied, both their qualifications and their mode of operation. Because of the many law problems, as the consequence, there are many who have not or may will never be resolved. The most troubling main problem is the corrupt behavior of the elite in this country, which seems to have become a tradition and culture.

Corruption that causes poverty for the people of Indonesia has a close correlation with other law violations because in all difficult conditions, it triggers someone to get money with easy way so that their needs can be met. Finally other law violations were also committed by people who did not have the right to corruption in violation of the law, such as selling and consuming drugs, committing fraud, smuggling goods to other countries and other law violations. Like a chronic disease, it is difficult to find a cure. According to Lawrence, the law system includes three aspects, namely: structural, substance and cultural aspects. In order for law supermation to be realized, of course all three must run well simultaneously.

a) Structural Aspect

This structure referred to here includes two aspects, namely law institutions and law apparatus.

- 1) Institutional law: Reformation Agenda is the enforcement of law supermation through reform of law. Since then, corrections have been made to institutions. For institutions that are relevant to needs such as DPA, they are abolished. On the contrary, the institutions needed are formed such as the DPD, KPK, Komnas HAM, KPPU, KPU, and others. But ironically after these institutions were formed, new problems emerged, namely not running effectively, even seeming to burden the country budget. This is due to its formation not paying attention to the rules of utility, efficiency and work efficiency. The presence of these institutions even though it is needed but raises a considerable burden of country finances. For institutions that have almost the same function, it is better.
- 2) Law apparatus: Human resources are one of the problems in the application of law in Indonesia. The number of cases of wrongful arrests carried out by police officers lately is due

- 3) to a lack of understanding of the Criminal Procedure Code, or perhaps the low professionalism of the police. Therefore, investigators must be provided with knowledge in the field of law. The case is only one example of the low human resources and professionalism of law enforcement officials.

this, a system of recruitment of other law enforcement officers needs to be addressed. In addition, the guidance and supervision system must also be improved.

b) Substantial Aspect

It is often found that law substance in Indonesia is problematic because it is not in accordance with cultural values, Pancasila moral values and universal values. For example UU Number. 5 year 1960 concerning UUPA which stipulates that Cultivation Rights Title is only valid for a maximum period of 60 years. But in the implementing regulations the Cultivation Rights Title changed to 120 years. This fact clearly contradicts the values of social justice because with the mastery of Cultivation Rights Title whose land area is unlimited and controlled for 120 years is certainly detrimental to the small people, especially farmers. Often found farmers who do not own land, only as cultivators, while on the other hand there are many plantation companies that have thousands of hectares of plantation land. This imbalance of land tenure clearly caused a further economic gap.

The above conditions illustrate how concerned about the law substance in Indonesia that the values of social justice are fixed, apart from this, viewed from law theory, the regulation of the Minister of Agrarian as an organic regulation on UUPA is clearly different from its entities. UUPA is a statutory regulation (regeling), while the ministerial regulation is a regulation of wisdom (beliefs regel). Therefore there is confusion in the application of legislation. Besides that the type of regeling is made by the original legislative, being bought and formed is formed by the delegated legislative which should be binding into and out.

Therefore there has been a violation of the principle of Lex superior derogat lege imperior. In addition to the above case, many laws and regulations that are made only have semantics, while the norms are nil. Making various types of regulations that are implementable which cannot be implemented, for example the Regional Regulation on Smoking Prohibition in Public Places. The enactment of the Regional Regulation is only effective for several months, after which the regulation only becomes or has the force of force and regulation. This condition can not be separated from the manufacturing process that does not pay attention to sociological and economic aspects, but only based on emotional.

Even though there are many interpretations that are multi-interpretation, law politics are centralized so as to produce law products that are not populist and responsive. Indeed, it must be admitted that the law tradition of the Civil Law inherited from Dutch colonialism is very responsive, so it is very easy to form regulations without paying attention to the ability to implement them. Therefore the efforts made in improving the core of law substance are the quality of the human resources of legislators in Indonesia that must be improved as well as the involvement of academics in the making of academic texts on draft legislation.

c) Cultural Aspect

At least there are two basic assumptions related to the problem of law culture in Indonesia.

- 1) First, that culture is not something that taken for granted. Law culture is formed through social processes for a long time. The meaning is not natural, but there is a kind of social engineering from humans..
- 2) Second, by categorizing political society (citizens and government), the most influential social groups in creating law culture are political or government society.

With that assumption, a view is established that the law culture that exists in the midst of society and becomes the building of consciousness, is formed or influenced by the law culture that exists in the government layer. Thus, if you want to build a good law culture, it must start from the government by setting an example for the community. Like a rotten fish, which will not rot from its tail, but from its head. Therefore changes must be started from above.

In law enforcement, one of the important things is law culture. This law culture is very much influenced by people's law knowledge. In the tradition of Civil Law, the formation of legislation is very easy. In addition, the Civil Law tradition adheres to the law Fictiee theory, consequently everyone is considered to have known the law, so there is no reason for someone who violates the law not to be punished just for not knowing the law even though the person does not know that there is a new law.

To improve the law awareness culture for the community, socialization of legislation should be carried out intensively. Because if not, it will be difficult to create a better law culture. this is inseparable from low human resources, barriers to access to information, and so on.

Conclusions and Suggestions

a) Conclusions

1. In Indonesia, the law in its application has not run properly. There are still many law violations that have occurred and have not been dealt with in accordance with the actual law. Law in Indonesia favored those who held positions.
2. Another law problem is that law can be used as a tool of power. In addition to institutions in country institutions, citizens, communities are subject to applicable law. However, the law is made to serve the country's authority, with the pretext that it has been based on law, but the rules that are made actually afflict the people, create injustice and foster corruption and collusion. n making it, the law has not fulfilled the basics, namely the element of justice, the element of benefit and the element of certainty.

b) Suggestions

1. It is better that the Indonesian government and law enforcement apparatus act fairly and enforce the law as well as possible. This was done so that there were no more problems arising from law in Indonesia.
2. In addition, the problem of law enforcement in Indonesia in the future must be the responsibility of all of us as good citizens. without willingness and good intentions it is impossible for law enforcement to be realized. One of the

most important is our understanding of rights and obligations.

References

1. Adnan Buyung Nasution, Aspirasi Pemerintahan Konstitusional di Indonesia, Studi Legal atas Konstituante 1956-1959, Putaka Utama Grafiti, Jakarta, 1995.
2. Azar, Penegakan Hukum Lingkungan di Indonesia, Universitas Sriwijaya, Palembang, 2003.
3. Assidiqee, Agenda Pembangunan Nasional di Abad Globalisasi, Cet, I, Balai Pustaka, Jakarta, 1998.
4. Daniel S., Dari Dewi Keadilan ke Pohon Beringin, dalam Hukum dan Politik Indonesia, Kesinambungan dan Perubahan, LP3ES, Jakarta, 1990.
5. Lawrence MF, America Law An Introduction (Terjemahan), Tata Nusa, Jakarta, 2001.
6. Marsillam Simanjutak, Pandangan Negara Integralistik, Sumber, Unsur dan Riwayatnya danlam persiapan UUD 1945, Pustaka Utama Grafiti, Jakarta, 1994.
7. Mas Ahmad Santoso, Agenda Pembaharuan Hukum Nasional, dalam Rangka Mewujudkan Good Governance, Makalah dalam Seminar Nasional Meluruskan Jalan Reformasi, UGM, Yogyakarta, 2003.
8. Rahardjo Sadjipto, Masalahn Penegakan Huku, Suatu Tinjauan Sosiologis, Sinar Baru, Bandung, 1993.
9. Ilmu Hukum, Cet V, Citra Aditya Bakti, Bandung, 2000.
10. Soekanto Soerjono, Perspektif Teoristis Studi Hukum dalam Masyarakat, Cet. I, Rajawali, Jakarta, 1985.
11. Yudha Winaryo, Sosiologi Hukum, Program Pasca Sarjana FH UI, Jakarta, 2002.