

HUMANISTIC LAW ENFORCEMENT AS THE APPLICATION OF THE VALUE OF JUSTICE, EXPEDIENCY AND LEGAL CERTAINTY BASED ON PANCASILA

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ABSTRACT

Indonesian people have made Pancasila as the foundation of the state and the live view in the life of nation and state, it is proper that its law enforcement model is humanistic. Humanistic criminal law enforcement can be realized through the establishment of a criminal legislation containing religious Pancasila value, humanitarian and social, as well as reflecting the value of justice, the value of usefulness and the value of legal certainty. So, it is required the maximum law enforcement performance by the officers in handling every criminal case by 'picking up the ball' and 'wholeheartedly'. Supremacy of law is not translated as Supremacy of Law, but Supremacy of Justice. The existence of humanistic criminal law enforcement is expected to enforce law enforcement that 'selective logging and 'physical and nonphysical torture' as it has happened in the past, but in the future is no longer found.

Keywords: Pancasila, Law Enforcement, Humanistic.

INTRODUCTION

An excellent law contains the value of justice, the value of legal certainty and the value of expediency (Darji & Shidarta, 2006). The three basic values in the law there is a tension (spannungsverhältnis) due to each value has different demands with each other so that all three tend to contradict each other and the value of justice also becomes a legal basic as a law (Rismawati, 2015). Law enforcement officers should apply the law without losing the spirit of justice, because as the instrument that needs to fulfill and protect human and the order of life society, not the other way round sacrificing the human and the society which is the place of law existence and not losing the spirit of justice which is the purpose of existence and law enforcement itself.

The indictment of the Public Prosecutor does not contain a thorough, clear and complete description of the criminal incidents that occurred under the provisions of Article 143 paragraph (2) letter b of the Criminal Procedure Code of the indictment become null and void. Under the provision of Article 55 paragraph (2) of the Criminal Code that against advocates only deliberately recommended actions are taken into account, along with their consequences. If the defendant's argument is true or can be proven, then, in that case, there will be a conflict between the value of justice and the value of legal certainty. It is said that there is a conflict between justice and legal certainty because if only relying on the legal certainty alone, the defendant cannot be sentenced by the law as it has been dropped by the Tanjungkarang District Court of

First Instance Court because the defendant did not commit the murder as indicted to him but only told his friend named Anton by giving up some money to give ‘lessons’ to the victim as desired by the victim’s wife.

The existence of the law enforcement is very important for protect public from the crime and for the establishment of the function of legal norms (Rifai, 2017). The law must be united with justice so that the purpose of law is really felt by the people. The law is objective to everyone, whereas justice is subjective. But that is the consequence, as hard as anything combines justice and the law must be done. This is for the sake of state and judicial authority because the basic rights of the law are the rights that recognized by the judiciary (Santoso, 2012).

The problem in this paper is how the form of policy (policy) to overcome the conflict between legal certainty and justice in the realization of humanistic law enforcement? This study aims to determine the form of law enforcement in accordance with the principles of Pancasila.

METHOD

The research method of this research is normative-juridical approach and descriptive analytic research as research specification. The legal data (primary, second and tertier legal data), the data collected on the basis of library materials, these data are the analyzed by qualitative-juridical.

DISCUSSION

Law enforcement must principally benefit or be empowered utility for the community, but in addition the community also expects the existence of law enforcement to achieve justice. Nevertheless not we can deny, that what is considered useful (sociologically) is not necessarily fair, and vice versa what is felt to be fair (philosophically), not necessarily useful for the community. The public only wants a legal certainty, namely the existence of a regulation that can fill the legal vacuum without regard to whether the law is fair or not. Social reality like this forces the government to immediately make rules in a practical and pragmatic manner, prioritizing the most urgent fields in accordance with the demands of the community without strategic estimates, thus giving birth to patchy regulations that do not last long. As a result, it does not guarantee legal certainty and a sense of justice in the community. Therefore, through the prioritized system approach to revision or the formation of new laws, it must be seen in a contextual and conceptual manner that is closely related to the geopolitical, ecopolitical, demopolitical, sociopolitical and cratopolitical dimensions. The substance of the law should be compiled in accordance with the principles, harmony and synchronization with the values contained in Pancasila and the 1945 Constitution. For this reason it must be done by abstracting the values contained in the Pancasila and the 1945 Constitution then deriving, namely lowering a number of principles to be used as the basis for the formation of laws.¹

The word of justice is a word derived from a fair basic word that gets the prefix to the suffix and end. The general notion of the word of justice (Mahmutarom, 2010 & Daryanto, 1997). If the issue of justice is linked to the legal life in Indonesia, then in the legal state of Pancasila, the multi-dimensional concept of law justice wants to be covered by one term, For the sake of Justice based on “*Ketuhanan Yang Maha Esa*”. (Article 4 section 1 of Law No. 14/1970, now Article 2 section (1) of Law No. 48/2009–Pen.). Pancasila can be the occurrence of

principles internalization of moral constitution spirit (Muhtadi & Indra, 2018). In General Elucidation Number 6 of the law is mentioned, among other things:

“...while as an inner condition to the judges in the implementing justice by this law laid a heavier and deeper accountability by requiring him, that because of his oath of office not only responsible to the law, to himself and to the people, but also to the one God ...”

The provision is in accordance with Article 29 of the 1945 Constitution that the State is based on “*Ketuhanan Yang Maha Esa*”. While Article 1 and Article 3 (2) of Law No. 14/1970, (now Article 2 section (2) of Law No.48/2009, Pen) states that the justice of the state or which administers the judicial powers in Indonesia, shall apply and enforce law and justice according to Pancasila (Esmi, 2001 & 2005).

One of those collaborations is the presence of principles adopted by the bill of Criminal Code year 2015 as arranged on article 13 section (1) bill of criminal code stated that judge in prosecuting a criminal case must consider the enforcement of law and justice. Then, according to article 13 section (2) bill of the criminal code, in order to consider the enforcement of law and justice as mentioned on section (1) if the irreconcilable contradiction happened, the judge can give priority to justice. Hence, the criminal law enforcement is in accordance with the perspective of progressive law (Yudi, 2009), and its must be conducted through a policy process which deliberately planned by several stages, including:

1. Criminal Determination Stage by the lawmakers or formulation stage;
2. Penalty stage by the authorized institution or application stage;
3. Criminal Implementation Stage by the authorized executing agency or execution stage.

The enforcement practice in the society illustrate that although there has been a legal guarantee about unwritten law recognition which lives among the society did not make the legal circle both legislator, academician, and legal practitioner to analyse law in the broader perspective outside the law (sociological, anthropologists, etc.). The term of Satjipto Rahardjo still shackled with normative-positivist perspective, a thought which rules out the law as the bigger phenomenon, beyond the positivist boundary.

Moreover, the crime prevention policy through criminal applicable laws and regulations in order to be humanistic should consider the Indonesia legal ideals, Pancasila. Considering the philosophy of Pancasila which places human as the cultured being that had the potential of thinking, sense, intention, idea, the National Law System is oriented toward Pancasila including criminal applicable laws and regulations should consider the human rights also human responsibilities (Maroni, 2012). The characteristic of Indonesian Law according to Pancasila as follows:

1. Belief in the one and only god obliges the national legal system to express the religious moral, not based on the religious law of particular religion;
2. Just and civilized humanity obliges the national legal system to heed the human rights;
3. The unity of Indonesia obliges the national law system to reflect on the soul and sense of justice for the whole people of Indonesia;
4. Democracy led by the wisdom of deliberations among representatives obliges the national law system must be arranged by paying attention to aspiration and sense of justice for the whole people of Indonesia;
5. Social Justice for the whole of the people of Indonesia obliges the national law system not to recognize the justice concept which is solely of individual space, but also the justice which leads to the implementation of the common welfare (Maroni, 2012).

In order to unite the justice and certainty values for the realization of humanistic Law enforcement, it is necessary to enforce the law which is “*Anticipative Law Enforcement*” or “*Futuristic Law enforcement*” (Muladi, 1995). Regarding the description above, for the implementation of the humanistic criminal law enforcement, it is necessary for Pancasila values to inspire the law enforcers. The explanation of the Pancasila values within the law enforcement includes:

1. Law enforcement is based on ethical, moral and spiritual values which give the commitment to the legal dutie;
2. Law enforcement is based on and aimed at strengthening unity and entity;
3. Law enforcement is based on and intended to participate in realizing the values of national sovereignty;
4. Law enforcement is aimed at realizing the legal certainty of justice (Silaban & Murni, 1990).

The implication of the Pancasila values in accordance with Pancasila and the 1945 Constitution. It is also in accordance with the purpose of the law such as justice, welfare, and partisanship to the citizens (Maroni, 2012).

The performance of the criminal law enforcers as mentioned above is in accordance with the working demand of the judicial apparatus as mandated by Law No. 48 of 2009 on Judicial Power, Article 5 section (1) that judges and constitutional judges shall excavate, follow and understand the legal values as well as sense of justice which live in the society (Maroni, 2012). This is important for the law enforcers to make a commitment as still many criminal cases found such as those that occurred during the colonial era. The case of Sengkon and Karta who have served a sentence of more than 5 (five) years for being convicted of murder but apparently are not the perpetrator, also cases of wrong verdicts against married couples named Risman Lakoro and Rostin Mahaji, the residents of Boalemo Gorontalo District (Maroni, 2012).

The principles of criminal law enforcement as mentioned above are in accordance with the legal politics of the judiciary in Indonesia based on Law No. 48 of 2009 on Judicial Power which has established the principles of the administration of judicial powers as regulated in Article 2 which stated that:

1. Justice is performed “*for the sake of justice in the name of God*”;
2. State courts impose and enforce law and justice according to Pancasila.

Based on these principles, the legal values which should be implemented in the administration of the judiciary in order to implement and enforce law and justice based on Pancasila, is to realize the justice based on belief in the one supreme God. Justice based on the belief in God in this paper is defined as the essential justice/material/substantial which is real justice without any engineering. (Barda Nawawi Arief. 2011).

In the legal state of Pancasila, the multidimensional concept of legal justice wants to be covered by one term “*For the sake of justice is based on God*”. (Article 4 section 1 of Law No. Law No. 14/1970 Now Article 2 section (1) of Law No. 48/2009-Pen.). In the General Explanation No. 6 of the law is described as follow:

“... whereas as a condition of the inner to the judges in administering justice by this law placed a heavier and deeper responsibility by requiring him that because of his oath he was not only responsible to the law, to ourselves and to the people but also responsible to God Almighty ...”.

The provision is in accordance with Article 29 of 1945 Constitution that “*State based on Belief in God.*”

If it critically reviewed, it can be illustrated that the current national legal system of Indonesia has not fully contained the moral values and legal values as desired by Pancasila and the 1945 Constitution. Therefore, the national problem faced nowadays especially in the field of law must be completely solved through the process of reconstruction of the national legal system in order to create the legal conditions which in accordance with the values of the Indonesian nation.

CONCLUSION

The humanistic law enforcement is a form of legal enforcement which positioned law as a tool for the realization of human welfare. In the practice of law enforcement, justice and legal certainty as the basic principles in its enforcement create a tension. However, to realize the humanistic law enforcement as the answer to society demand, the policy to conduct collaboration between justice and legal certainty values in criminal applicable laws and regulations are needed. This related to the Pancasila as the view of life also the State Fundamental Norm, so the consequences of each legislation must be coloured and flowed with the values contained on Pancasila. Those values including religious, humanity and community. Before the criminal applicable laws and regulations are made, the social studies about criminal principles of law that will be arranged in an applicable law and regulation should be conducted. It is recommended that law enforcement especially in Indonesia be carried out humanistic ally, because it is based on Indonesia fundamental norm that is Pancasila to enforce social justice as mentioned on 5th sila of Pancasila.

ENDNOTE

1. Bambang Semedi, Law Enforcement That Guarantees Legal Certainty, Material for the December 2013 Customs and Excise Training Centre.

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