

RELATIONSHIP BETWEEN LAW AND SOCIAL : A PERSPECTIVE OF LAW

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ABSTRACT

To achieve order and legal certainty in society, law enforcement needs to be carried out. This law enforcement is carried out, among others, by regulating the duties, functions, and authorities of institutions tasked with enforcing the law according to the authority of each institution, to achieve the creation of order and legal certainty, a good cooperation system is needed between law enforcement institutions. According to Satjipto Raharjo (Prof. Tjip), law enforcement in Indonesia is filled with complexity. One manifestation of this complexity can be stated as "law enforcement being pushed into the slow lane". Prof. Tjip said that basically the technology of modern law uses the method of "generalization" which always has the determination to be neutral, objective, and "indiscriminate" in dealing with legal problems in society. However, in everyday reality, this method must face the "doctrine of who", which always questions "who is the person". As a result of this doctrine, the principle of indiscriminateness changes to the principle of "discrimination", and it is not impossible that the legal process is also pushed into the slow lane. This research is normative legal research that uses data collection techniques, literature studies guided by primary, secondary and tertiary legal materials and then analyzed. To see how law enforcement in Indonesia is seen from a legal sociology perspective. Keywords: law enforcement, legal certainty, sociology of law

Keywords: artificial intelligence; constitutional law; fundamental rights; digital constitutionalism; algorithmic governance.

1. INTRODUCTION

Law is not a value-free rule where its benefits or harms solely depend on how humans implement it or people apply it. However, it is a rule that is full of values, which determine its own identity, hopes, and ideals (Rambe&Sihombing, 2024). In short, law has its own will, its own goals, and its own logic. However, law cannot realize its own will, because law

itself is only a rule. Therefore, the presence of humans is needed, in this case, law enforcement officers, to be able to realize its will. By looking at the law like that, law enforcement does not merely enforce the formal mechanism of a legal rule, but also seeks to realize the values of virtue contained in the law. (Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, p. 48.)

Law and society are two entities that influence each other. Law emerged as a response to the needs of society to create order, justice, and protection of individual rights. In this case, law cannot stand alone without considering the values, norms, and traditions that exist in society. To find and find solutions to the effective application of law is none other than by re-exploring the correlative relationship between law and society, considering that law is for society, and society needs law in organizing social life, not society for law. In order to find out the correlative relationship, it cannot be separated from the role of legal sociology. Soekanto (2008) stated that law is a social product that reflects the conditions of the society where the law is applied. Meanwhile, Rahardjo (2006) emphasized the importance of a legal sociology approach in understanding the reciprocal relationship between law and society. This study focuses on three main aspects of the relationship between law and society: law as a reflection of social values, social norms as the basis for law, and law as an agent of social change

RESEARCH METHODE

This study uses a literature review method that aims to analyze the relationship between law and society from a legal sociology perspective. Data are obtained from relevant books, journals, scientific articles, and research reports. This method allows the author to explore key concepts, such as social control, legal pluralism, and social change, to provide an in-depth theoretical understanding.

RESULT AND ANALYSIS

Legal Sociology Perspective Study

We cannot discuss the effectiveness of law without first discussing the law in the normative level (law in books) and the law in reality (law in action), because if we do not compare these two variables, it is impossible to measure the level of effectiveness of the law. Donald Black stated that the effectiveness of law is a fundamental problem in the sociology of law which is obtained by comparing the reality of law in theory with the reality of law in practice. So that there will be a gap between the two (Rambe et all, 2024) . If there is a difference between the two variables, the law is considered ineffective. To find a solution, the solution steps, what steps must be taken to bring the reality of law (das sein) closer to the ideal of law (das sollen) so that the 2 (two) variables (law in books and law in action become the same? 18 The law is said to be effective if

the law is in accordance with, the regulations that have been made in the law and the law that is in accordance with the ideals or hopes of the community. If with the existence of the law will be able to create social order in society. When talking about law is indeed very complicated because in it there is a measure of a legal reality and a legal ideal. Sometimes what has become a provision in a law is not in accordance with what society wants, it could also be the other way around society wants a new law. Because the law must follow the development of the times, then changes in law in society can occur because it is considered very necessary, namely by making regulations or norms that are in accordance with the current state of the times. Starting from the things studied by legal sociology and several basic concepts of Characteristics, it can be concluded that the function of legal sociology as a science to understand the development of society in terms of Organized and processed perspectives that should occur in society (not a logical or ideal framework) in the study of social relations or interactions of legal society, then we can conclude that legal sociology as a tool to understand the development of society has functions including the following:

- a. Sociology of law is useful in providing the basic ability to process sociological understanding of socio-legal facts that multiply in society.
- b. Sociology of law can provide the ability to analyze activities in legal society through mastery of basic sociological concepts (both micro, meso, or macrosociology of law)
- c. Sociology of law provides the ability to predict and evaluate “social facts” related to law that are empirical, non-doctrinal, and non-normative.
- d. Sociology of law can reveal the ideology and philosophy that crystallizes the basis of the way law is practiced in society.
- e. Knowing the reality of stratification that emerges and develops and influences law in society
- f. Sociology of law can also provide an explanation of knowledge of socio-legal change.

Legal sociology is a study that studies the impact of the implementation of a law in society, so that social symptoms can form and develop in society. Social symptoms that are seen are events for a social group or individual when they are faced with the law. As with several cases that have appeared in various media, both radio, television, newspapers or newspapers, online media or the internet, and others. Like the case that occurred several years ago, namely the case of Artalyta Suryani and Anggodo, who were important people and had high social status or class, the legal treatment received was more privileged by law enforcement officers. Unlike Artalyta Suryani and Anggodo, the case of Prita Mulyasari and Nenenk Minah who came from a low social class or ordinary people could easily be subject to legal proceedings. Legal sociology looks at the relationship between the application of law and the empirical reality order that exists in society. Is there justice or injustice in the relationship between the two variables in revealing existing legal facts. The community itself can also assess whether law enforcement officers have functioned well in carrying out their duties or not, so that sometimes social stratification in society has a significant influence on a law

enforcement system. This means that people or parties who have high positions or positions in government will be able to easily influence how the legal mechanism works, while people or parties who do not have high positions or positions can only surrender and submit to the existing legal rules. The reaction from the community is also quite high towards how law enforcement is considered to be still unfair and the law has not been able to run according to what is expected by the community. The impact that arises from the existence of unfair laws is the emergence of a sense of distrust from the

community towards law enforcement, so that the image of the law in the eyes of the community becomes bad. The purpose of implementing the law should be to create order and peace in the life of society. The sociology of law does not talk about the substance or material of a law, but rather refers to the impact of the implementation of a law. (Aziz, Noor Muhammad. 2012. *The Urgency of Research and Legal Studies in the Formation of Legislation*. Rechts Vinding, Vol. 1, No. 1. P. 23).

Law Enforcement in Indonesia

According to Satjipto Raharjo (Prof. Tjip), law enforcement in Indonesia is filled with complexity and complexity. One form of complexity and complexity. This can be stated as “law enforcement is pushed into the slow lane”. Prof. Tjip said that basically the technology of modern law uses the method of “generalization” which always has the determination to be neutral, objective, and “indiscriminate” in dealing with legal issues in society. However, in everyday life this method must deal with the “doctrine of who”, which always questions “who is the person”. As a result of this doctrine, the principle of impartiality changes to the principle of “discrimination”, and it is not impossible that the legal process is also pushed into the slow lane. Law enforcement in Indonesia is often said to be blunt at the top and sharp at the bottom, the law which was initially expected to be able to provide justice for the community has in reality not been able to realize that justice (Rambe et al, 2023) . The effectiveness of law enforcement is very sharp for small communities who commit small crimes, while for perpetrators of major crimes such as corruption, collusion, and nepotism or what are often called white collar crime, it cannot or is very difficult to touch. Indeed, in this case, it is necessary for the courage of law enforcement officers to be able to make breakthroughs in resolving the case. In the reality of society, the applicable law is like there is a distinction between social classes. For people who have more power or people with social stratification upwards, they will definitely get different treatment than people who do not have power or people with social stratification downwards. For people with families who have higher positions or positions, they will get special treatment or leniency in law enforcement than people who come from ordinary family backgrounds or do not have positions in society. This means that in the legal position that applies here, there is an indication of injustice by law enforcement officers in treating lawbreakers. The phenomenon of sharp law downwards and blunt law upwards, occurs almost in all areas of law in all

corners of the country in Indonesia. (Peter Mahmud Marzuki, Legal Research, Jakarta, Prenamedia Group, (2014), pp. 34-35).

a. Law as a Reflection of Social

Values Law is a reflection of the values that develop in society. For example, in Indonesia, the values of Pancasila are the basis for the formation of various laws and regulations. Laws on gender equality, such as Law Number 39 of 1999 concerning Human Rights, reflect the values of social justice that develop in modern society (Habermas, 1996). Durkheim (1893) stated that law functions to maintain social solidarity. In traditional societies, law tends to be repressive because its focus is on maintaining group harmony. In contrast, in modern societies, law is more restitutive, emphasizing conflict resolution and relationship restoration.

b. Case Study: Customary Law in Indonesia

Customary law in Indonesia is one example of how social values shape law. In the Balinese community, customary law regulates the distribution of land and other resources based on the value of mutual cooperation. This reflects the value of solidarity that is highly respected in local culture. Although this customary law often conflicts with national law, it is still recognized and respected as part of the diversity of law in Indonesia (Soekanto, 2008).

c. Social Norms as the Basis for Legal Formation

Social norms are customs, traditions, and values held by society. Weber (1968) stated that the legitimacy of law often depends on its conformity to prevailing social norms. When social norms change, the law must adapt to remain relevant.

d. Case Study: Changes in Environmental Law in Indonesia

One example of the influence of social norms on legal formation is changes in environmental law. Public awareness of the importance of environmental protection has encouraged the revision of Law Number 32 of 2009 concerning Environmental Protection and Management. Social norms that emphasize the importance of sustainability are now the basis for stricter regulations against companies that pollute the environment (Rahardjo, 2006).

e. Law as a Tool for Social Change

In addition to reflecting social values, law also functions as a tool for social change. Friedman (1975) explains that law can be used to change people's mindsets and behavior through regulation.

f. Case Study: Changing Patriarchal Culture Through Law

The implementation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) shows how the law attempts to change patriarchal culture in Indonesia. Before this law was enacted, domestic violence was often considered a private matter that did not require legal intervention. With this regulation, the law attempts to change society's paradigm about the importance of protecting women's rights.

g. Tension Between Law and Society

Not all laws are well received by society. Tension often arises when formal law conflicts with established norms or customs.

h. Case Study: Tensions in Carbon Tax Implementation

The implementation of carbon tax in Indonesia is one example of tension between law and society. Although the purpose of carbon tax is to reduce greenhouse gas emissions, many people do not understand the importance of this policy, which causes resistance. Weber (1968) stated that the legitimacy of formal law often depends on social acceptance, so public education is an important step to reduce tensions.

i. Discussion and Implications

The relationship between law and society emphasizes that law must be responsive to the needs and dynamics of society. A participatory approach in the formation of law can increase the legitimacy and effectiveness of law. In addition, the study of the sociology of law is needed to understand the complex interactions between law and society, especially in the context of rapid social change.

CONCLUSION

Law enforcement in Indonesia still cannot fulfill the value of justice because it is still influenced by social class, the effectiveness of law enforcement is very sharp for small communities who commit small crimes, while for perpetrators of major crimes such as corruption, collusion, and nepotism or what are often called white collar crime (White Collar Crime) cannot or are very difficult to touch. Courage is needed from law enforcement officers to be able to make breakthroughs in resolving these cases. Law and society have a relationship that influences each other. Law reflects social values, is influenced by social norms, and acts as a tool for social change. However, the success of the law is very dependent on public acceptance. Therefore, the sociological approach to law is important in understanding and managing the relationship between law and society, especially in the context of Indonesia which has a diversity of cultures and norms

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