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Gender Studies in the State and Constitution
(Implementation of Law Enforcement in Indonesia)

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ABSTRACT

The implementation of law enforcement in Indonesia is still relatively weak, so a deeper analysis of the causes of the occurrence is needed. This study aims to examine gender in the state and law, a study of the implementation of law enforcement in Indonesia. This study uses a qualitative approach with descriptive analytical study method. Data collection is based on in-depth interviews, participant observation and documentation studies. Furthermore, the data were analyzed using data reduction techniques, presenting data to drawing conclusions. The results of this study conclude that law enforcement in Indonesia is still weak, the integration of law enforcement officers is not well established, the level of performance implementation by law enforcement officers is low, and the application of law is blunt up and down (non-Pancasilais).

ABSTRAK

Implementasi penegakan hukum di Indonesia terbilang masih lemah, sehingga perlu pendalaman analisa penyebab terjadinya. Penelitian ini bertujuan untuk mengkaji gender dalam negara dan hukum, studi tentang implementasi penegakan hukum di Indonesia. Penelitian ini menggunakan pendekatan kualitatif dengan metode studi deskriptif analitis. Pengumpulan data berbasis wawancara mendalam, observasi partisipan dan studi dokumentasi. Selanjutnya, data dianalisis menggunakan teknik reduksi data, penyajian data hingga penarikan simpulan. Hasil penelitian ini menyimpulkan bahwa penegakan hukum di Indonesia masih lemah, integrasi aparat penegakan hukum tidak terjalin dengan baik, rendahnya tingkat pelaksanaan kinerja oleh aparat penegak hukum, serta penerapan hukum yang tumpul ke atas tajam ke bawah (non-Pancasilais).

PRELIMINARY

Law enforcement through the judiciary does not always apply statutory provisions, but the judiciary can also create law (Juwana, 2017: 1-26). Even if the law is clear, the law is perfect, it is impossible for the law to be complete and complete. It is impossible for the law to regulate all activities of human life completely, because there are not many human activities. Unless the law is the work of humans whose abilities are very limited (Anwar, 2011: 236-245).

Sometimes the law is incomplete and unclear. Nonetheless, the law must be enforced. Enforcing the law is not just carrying out the "dead" letters, sentences or articles in the legislation as positive law. Positive law has shortcomings and emptiness, because the positive legal attitude cannot keep up with the dynamics of the development of society, even in some respects it lags behind the problems that arise in society. The legal vacuum can be filled by the judge, so that the judge in this case becomes a law maker, not even changing the law (Handayani & Arifin, 2020: 1-11).

Thus, the explanation above says that indeed the law is not perfect, but when a case occurs, the law must be perfect, when the law is not perfect, the judge should address and perfect the law. Judges must be smart in dealing with existing cases, lest the law is not perfect, the judge is not perfect. If that's the case, then it will be injustice to the people involved in the case. This is what can make the law blunt up and sharp down. The explanation above also emphasizes that law enforcers such as police, prosecutors,

advocates, notaries, judges as law enforcers through their respective institutions or institutions, must act as good interpreters of the legislation which is capital letters (Kusumaatmadja, 2017: 491-501). Thus, the content and soul are in accordance with the sense of justice of the Indonesian people.

This statement also shows that law enforcement through law enforcement institutions generally looks at law enforcement, both for judges and for other legal practitioners. Law and obedience to the law are realities that apply empirically every time. Furthermore, one must look for a conception that can be justified by reality (Soekanto, 1976: 429-439).

Law that is in accordance with the living law in society, which of course is also appropriate or is a reflection of the values that apply in society. The explanation above can be concluded that the community is very concerned that the implementation of law enforcement must be fair. That is, in implementing or enforcing the law must be fair. Law is not identical with justice, but the law is general, follows everyone, is generalized without any differences from all aspects. That is, whoever steals, indeed must be punished without discriminating between who stole.

Discussions about law enforcement must be focused carefully on the role of human factors, because only from humans can law enforcement be carried out. Based on the literature review above, it is known that law enforcers such as police, prosecutors, advocates, notaries, judges as law enforcers through their respective institutions or institutions, must act as good interpreters of the legislation which is a dead letter. Thus, the content and soul are in accordance with the sense of justice of the Indonesian people (Wiratraman & Putro, 2019: 402-418).

This statement also shows that law enforcement through law enforcement institutions generally looks at law enforcement, both for judges and for other legal practitioners. Law and obedience to the law are realities that apply empirically every time. In fact, in implementing or enforcing the law must be fair. Law is not identical with justice, but the law is general, follows everyone, is generalized without any differences from all aspects (Marzuki, 1999: 1-8).

Based on the description above, do not let your guard down in this law. Don't let injustice happen like people who steal a few cocoa beans are punished more severely than people who corrupt billions of dollars. Through this research, law enforcers can run or implement the law fairly, well and firmly. Don't be careless and don't be tempted by the bribes given. Be a law enforcer who is guided by the law and Pancasila. So that the community also feels justice and the state is far from being destroyed or the law is sad.

METHOD

This research uses a qualitative case study approach. Informing that case study research is suitable for research that aims to analyze contemporary things (Assingkily, 2021). Therefore, this case study was chosen by the researcher, because this study aims to analyze Indonesian law which is sharp downwards and blunt upwards. So that readers know what it is like and is it true that the law in Indonesia is like that, when they have read this article. This research was conducted in September 2022. The data was collected by collecting references and observing in groups. The collection of references uses all reference books and journals related to the state and the constitution, which aims to analyze or find out whether it is true that the current law in Indonesia is sharp downwards and blunt upwards.

FINDINGS AND DISCUSSION

The state is an organization of power consisting of elements of the people, territory and government. In a democracy, a good government is a government that fully guarantees the interests of the people and the basic rights of the people. In exercising its power, the government must be limited in its power (Assidiqie, 2006: 121-122). As Friedrich puts it, "*The idea that government is a collection of activities carried out on behalf of the people, but which is subject to certain restrictions is intended to provide assurance that the power necessary for government is not abused by those who have government duties. The limitation in question is contained in the constitution*".

The constitution is an organic and fundamental law of a nation or state, which can be written or unwritten, which forms the character and conception of the government of a nation or state, lays down basic principles that must be followed in the internal life of a nation or state, organizes the state, regulates distribution and limiting the functions of government, determining the level and manner in which the government respects all the powers of the governed government (Manan, 1992).

The results of the author's analysis, in a law that is blunt up and sharp down, the author takes the example of the case of a grandmother who stole 7 teak logs belonging to Perum Perhutani who was sentenced to 5 years. Meanwhile, the former Governor of Banten who was corrupt in billions of dollars was only sentenced to 4 years in prison and a fine of 200 million. Here's what the image looks like:



Figure 1. Sentencing Sentences for Former Banten Governor (corruption) and a grandmother (thief 7 teak wood)

From the two pictures above, it can be concluded that the two cases are very opposite, right? Yes, because the law can be traded for people who have money and power, but to people who are lower class they will be oppressed by unfair legal decisions. In fact, when a law enforcer is handling a case like this they must be able to become a fair and wise law enforcer (Alrasid, 1982). Not because they were bribed so they don't do justice. So if it continues like this, when will our country be at peace with the law?

The problem of law enforcement in Indonesia lies in 3 factors, the integrity of law enforcement officers, legal products, and the non-implementation of Pancasila values by law enforcement officers in carrying out their duties in daily life or in handling existing cases. There are 3 aspects that form the basis for the collapse of a law in the country, namely structure, substance and culture (Budiarjo, 2008). If these three aspects are combined with the downturn in law in Indonesia, it is very appropriate with this aspect of Lawrence Friedman. The three components proposed by him are:

The structure, namely the entire existing legal institutions and their apparatus, includes, among others, the Police and their Police, the Prosecutor's Office and its Prosecutors, the Courts and their judges. Substance, namely the entire rule of law, legal norms and legal principles, both written and unwritten, including court decisions. Legal Culture is opinions, beliefs (beliefs), habits, ways of thinking, and ways act, both from law enforcers and citizens, about the law and various phenomena related to the law.

The analysis of the overall results of his research, namely the legal structure of law enforcement officers places 70% of the level of public distrust of law enforcement in Indonesia, which is caused by several factors, which include: (1) Integration of the law enforcement officers; (2) The low level of performance implementation by law enforcement officers; and (3) the non-applicability of Pancasila values in enforcing the law in Indonesia.

The deterioration of the law in terms of legal substance, namely the entire rule of law, legal norms and legal principles, both written and unwritten, so that it is not felt to be in harmony with the values of Pancasila. Furthermore, the deterioration of the legal culture aspect, where the practice of bribery has become a habit in resolving a case (Wijayanto, 2014).

The current downturn in law enforcement is preceded by the decline in the moral decadence of law enforcement officers, concepts or methods of thinking, so that reform is needed not only in terms of updating the law or its legal substance, but also reforming the legal structure and reforming legal culture. Even in this situation, reforms in the immaterial aspects of law, namely: renewal of legal culture, legal ethics or morals, law enforcement officials, and legal science or education that can be carried out by legal reforms to realize the ideals of the nation (Budiarjo, 2008).

As for matters that encourage the creation of better law enforcement towards responsive law, namely laws that are based on or that apply the values of Pancasila. Pancasila as the ideology of the Indonesian nation is a system of thought, because it is the views and basic values of the state which are described in a view of the ideology of Pancasila. The ideology of Pancasila is always open because of its dynamic society, but also that Pancasila is absolute, considering that Pancasila cannot be changed because

it is the foundation of the nation's guidelines. Pancasila always follows developments and aspirations that live in society, every content of joy is an embodiment of the desire that its people want to achieve human dignity in the life of the nation.

Law as a guide for acting or behaving in people's lives, not only as a guide to read, but must be obeyed, implemented or enforced. Law enforcement is not merely the implementation of legislation, although the reality in Indonesia is that the tendency is so that the notion of law enforcement is so popular. In addition, there is a strong tendency to interpret law enforcement as implementing judges' decisions (Assidiqie, 2006).

Law enforcement is essentially a process to make legal ideas or wishes come true. The ideas or desires in question are the achievement of legal goals such as justice, expediency, legal certainty, order, balance and welfare of the people or society. Legal certainty is the protection of justice seekers against arbitrary actions, which means that a person will be able to obtain something that is expected in certain circumstances.

People expect legal certainty. Because with legal certainty, society will be more orderly. The law creates legal certainty because it aims to maintain public order, which this law must not deviate from. Law can also aim to create welfare for the community. Law is a tool that can change something desired. A good law for the community can facilitate the process of achieving goals for the community (Darmabrata, 2000: 319-327).

Humans or society are the main keys in law enforcement, because the discussion on law enforcement issues only adheres to a necessity in legal provisions or statutory regulations. However, environmental or human factors can also lead to failure of law enforcement. Because the laws that are made are not implemented properly without going through a socialization process, especially if there are differences of legal opinion in the community. So, it will cause conflict, so that it can lead to legal failure.

So, how can law enforcement be somewhat discreet and make policy? Of course, you must make planned and continuous developments or changes in order to lead to the expected improvements together. The implementation of this development also has the aim of achieving the objectives as stated in the fourth paragraph of the 1945 Constitution, namely to protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace, and social justice. Law has a function as a keeper of order.

Order is the main and first goal of all law which is an objective fact that applies to all societies in all its forms. Law enforcement agencies are required to play a greater role in upholding the rule of law, protecting the public interest, enforcing human rights, and eradicating corruption, collusion and nepotism. Therefore, it is necessary to rearrange law enforcement agencies so as to make the law enforcement bureaucracy much more effective, efficient, transparent, and accountable so that it requires changes in culture, human resources, and institutions. The problem of law enforcement in Indonesia lies in 3 factors, the integrity of law enforcement officers, legal products, and the non-implementation of Pancasila values by law enforcement officers in carrying out their duties in daily life or in handling existing cases (Bramantyo, 2018).

According to the author, in deciding the law, it must be based on the values of Pancasila, because when the law is excessive it is also not good, especially if the law is not firm or good, it is worse. In deciding the law, one must be fair, no matter what his position, who he is, and so on. If it is wrong, it must be wrong and be given sanctions according to what was made. Do not let the law in Indonesia be sharp downwards and blunt upwards, because currently the legal problems in Indonesia are like that. So, as a community, especially law enforcement officers, let's work together to protect the law that has been made well, so that it doesn't get misused.

CONCLUSION

Based on the description above, it can be concluded that the state is an organization of power consisting of elements of the people, territory and government. The constitution is an organic and fundamental law of a nation or state, which can be written or unwritten, which forms the character and conception of the government of a nation or state, lays down the basic principles that must be followed in the internal life of a nation or state, organizes the state, regulates distribution and limiting the functions of government, determining the level and manner in which the government respects all the powers of the

governed government. The problem of law enforcement in Indonesia lies in 3 factors, the integrity of law enforcement officers, legal products, and the non-implementation of Pancasila values by law enforcement officers in carrying out their duties in daily life or in handling existing cases. The current downturn in law enforcement is initiated by the decline in the moral decadence of law enforcement officers, concepts or methods of thinking, so that reforms are needed not only in terms of reforming laws or legal substance, but also reforming legal structures and reforming legal culture.

REFERENCES

- Alrasid, H. (1982). *Kuliah Hukum Tata Negara Prof. Mr. Djokosoetono*. Bogor: Ghalia Indonesia.
- Anwar, K. (2011). Pendidikan Hukum di Era Transisi dalam Negara Demokrasi Menuju Indonesia Baru. *Masalah-masalah Hukum*, 40(2), 236-245. <https://ejournal.undip.ac.id/index.php/mmh/article/view/10475>.
- Assidiqie, J. (2006). *Pengantar Ilmu Hukum Tata Negara*, Jilid I. Jakarta: Konstitusi Press.
- Assingkily, M. S. (2021). *Metode Penelitian Pendidikan: Panduan Menulis Artikel Ilmiah dan Tugas Akhir*. Yogyakarta: K-Media.
- Bramantyo, R. Y. (2018). Strategi Mewujudkan Lulusan Fakultas Hukum Berkompetensi Spesifik (Pendidikan Hukum Indonesia dalam Tantangan Era Revolusi Industri 4.0). *Transparansi Hukum*, 1(2). <http://ojs.unik-kecidi.ac.id/index.php/transparansihukum/article/view/244>.
- Budiarjo, M. (2008). *Dasar-dasar Ilmu Politik*. Jakarta: PT. Gramedia Pustaka Utama.
- Darmabrata, W. (2000). Perbandingan dan Pendidikan Hukum. *Jurnal Hukum & Pembangunan*, 30(4), 319-327. <http://www.jhp.ui.ac.id/index.php/home/article/view/318>.
- Handayani, E. P., & Arifin, Z. (2020). Lonceng Kematian Pendidikan Hukum di Indonesia Tinjauan Filosofis. *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, 8(1), 1-11. <https://ojs.unimal.ac.id/suloh/article/view/2491>.
- Juwana, H. (2017). Reformasi Pendidikan Hukum di Indonesia. *Jurnal Hukum & Pembangunan*, 35(1), 1-26. <http://jhp.ui.ac.id/index.php/home/article/view/1458>.
- Kusumaatmadja, M. (2017). Pendidikan Hukum di Indonesia. *Jurnal Hukum & Pembangunan*, 24(6), 491-501. <http://www.jhp.ui.ac.id/index.php/home/article/download/1056/979>.
- Manan, B. (1992). *Dasar-dasar Perundang-undangan Indonesia*. Jakarta: Ind-Hill co.
- Marzuki, P. M. (1999). Reformasi Hukum dan Pendidikan Hukum di Indonesia. *Perspektif*, 4(1), 1-8. <http://jurnal-perspektif.org/index.php/perspektif/article/view/202>.
- Soekanto, S. (1976). Penelitian Hukum dan Pendidikan Hukum. *Jurnal Hukum & Pembangunan*, 6(6), 429-439. <http://www.jhp.ui.ac.id/index.php/home/article/view/716>.
- Wijayanto, D. (2014). *Problematisa Hukum dan Peradilan*. Jakarta: Pusat Data dan Layanan Informasi.
- Wiratraman, H. P., & Putro, W. D. (2019). Tantangan Metode Penelitian Interdisipliner dalam Pendidikan Hukum Indonesia. *Mimbar Hukum Fakultas Hukum Universitas Gadjah Mada*, 31(3), 402-418. <http://download.garuda.kemdikbud.go.id/article.php?article=1623612&val=11678&title=TANTANGAN%20METODE%20PENELITIAN%20INTERDISIPLINER%20DALAM%20PENDIDIKAN%20HUKUM%20INDONESIA>.