

THE APPLICATION OF LAW, GOING TO THE LAW ENFORCEMENT (AN ANALYZING OF THE RIIL SCIENTIFIC)

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Abstract

Law is not made to be observed and to be logical rational study only but to be done. Of course the application of law in society gets concretization process where the regulation of general and abstract normative law given for special, concrete and casuistic problems. It is not enough to implement limited law on legal norms only normatively in society, we have to observe more on social phenomena to implement the law flexibly. The implementation of law which is able to create effective communication between the members of society, and not release from the final objective or the main goal of the legal politics namely to reach social welfare and protection as the integral part of the social policy, that is the implementation of law into the law enforcement.

Keywords : Application Of Law; Law Enforcement; Analyzing.

A. INTRODUCTION

In this moment there is the progress and change of the social life complexity such as the change of the social system. The effective communication is needed so much to make the social life harmoniously among the social participants who have the modern style life. The modern style life is the social model is moved for the conflict where need the law to regulate and controlling the conflict. So it is able to make the effective communication in the society. Really, the role or the function of the law want to make the effective communication in the society. And it is impossible if the social life does not need the legal service. Especially for the modern social where the conflict is happening intensively. And this situation is happening continuously as well as the development period. So the law and the social life are two components that needed between the law as the normal idealism that analyzed from how far received the norm by society applying in the riil social life.

Actually the social life needs the balancing to achieve the ideas through the effective communication.

So the law is needed by the social life as a tool to serve the relation among the social participants. So it can get the positive law. In the change of the social life, it will create the legal change serving the social interest. According to Satjipto Rahardjo about the law, it (the law) is very connected with the national development. The relation among them (law and national development) it can become the international issue¹.

In the 1972 there was the meeting of lawyers attending for the law and development to compose the result of agreement about kinds of researches for the law and the development. And then, Satjipto Rahardjo said that there are many kinds of relation between the law and the development as the process to change the social. The law, it is also as a tool to change the social life. Accordance with that statement above, actually the people begin to analyze about the role or the function of law in the society but just talking about the consistent norm, logic and

1 Faisol Azhari, 2003, *The Police Discretion In The Law Enforcement*, Undip Press, Semarang, p.58

closed. It tries to analyze the law in the social actions and the law as the process to achieve the goals.

The application of law into the law enforcement can not be separated from the real law in the society, because the law enforcement is made from the law as the instrument of the norm rule received by society effectively. The positive law or the law enforcement is not the application of law normatively without attending the real situation and the background of the social reality.

In the legal development to achieve the law enforcement it is not limited by the normative rule but in the achievement of the law enforcement it should understand the social reality include its factors. We know that the effort of the criminal elimination policy (in Indonesian) is form of the legal development. It is used to make the social welfare and the social defence.

According to Muladi, the problem of the Indonesian criminal law will find the problem of the criminal elimination in the society. And it is called as the criminal policy.²G. Peter Hoefnagels said that criminal policy as a science of policy is part of a larger policy : the law enforcement policy, the legislative policy and enforcement policy is in turn part of the social policy.³

Law enforcement achieve the ideas of the legal development it is mentioned that Indonesian is the legal state and not as illegal state. It means that all activities must be regulated by the law. This research tries to find answers how does the application of law make

the role or the function of law as a social servicer in the law enforcement⁴.

B. DISCUSSION

1. The Application Of Law As A Norm Concretization In The Society

Actually the law is the ideal rules about the norm must be done. When the law is applied in the society that is the process of concretization but it is still abstract. In the dogmatical law the law must attend the application of law. It means we have to understand about its factors. And the main factor is the human. According to Satjipto Rahardjo, In the social relationship there are social models and the maker of law is the reflection of the social models.⁵Chambliss and Seidmann differed two social models they are the value consensus and the social conflict. For the value consensus, it is like no conflict in the society because they have a agreement or consensus or value recognized by them. In the second model, the character of the social conflict is change and the conflict. There are many impression in the society. Schuyt, there are two possibilities to solve the conflict they are conflict plossing and conflict versterking⁶.

2 Muladi, 1985, *Capita Selecta of the Criminal Justice System*, Undip, Semarang, p.vii

3 G. Peter Hoefnagels, 1969, *The Otherside Of Criminology*, p.57

4 Lawrence M Friedman, 1969, *Law And Behavioral Science*, the bobbs, Herril, Indianapolis, p. 76-77

5 Satjipto Rahardjo, 1980, *Law and Society*, Angkasa, Bandung, p.40.

6 Ronny Hanitijo Soemitro, 1985, *Study Of Law And Society*, Alumni, Bandung, p.31

2. The Application Of Law Into The Law Enforcement

First, we have to understand what the application of law and the law enforcement are. The law enforcement (in the small meaning) is the performing the rule to the society. But the duty of the law enforcement is not just performing it normatively such as The criminal law is not the policy to eliminate the crime normatively. According to Barda Nawawi Arief, The policy of the criminal elimination is part of the social defence. The main goal of the criminal policy is the social defence to achieve social welfare. The criminal policy is part of the social policy to reach the social welfare.⁷

Based on the UN (United Nations Organization) congress for the criminal eradication and the criminal elimination it attend the context of the development policy as the social global. The criminal elimination can be done through the policy approach (the criminal policy and the social policy and the criminal elimination). When the criminal policy is a part of the social policy, so that the rule can not be done limitatively or all rules normatively.

Talking about the legal achievement to the social welfare and the social defence the application of law is not the legal performing normatively. But it has to attend aspect of phenomena in the social reality and law is not made to be theory rational logically. But it is made to be done

being effective communication among the social participants.

Therefore it is better called as the law is not the goal but the law is a tool to achieve the goal. Paul Scholten said that really the law has stopped to be the law when it has never been done. But when talking about the application of law, the law can be done in the social reality and it is the reflection of the rule or not.

Based on that statement that is dependent on by how far to achieve the goal of the law enforcement or when the goal of the law enforcement will be achieved and the law is not done normatively. Here is, it is called as the application of law in the law enforcement. Roscoe Pound deferred them as the law in the books and the law in action. According to Edwin M Schur the law in action regulate the real social behaviour and the goals of the rule is same as the effect of the rule in the social reality⁸.

Exactly, we will find many rules and the effort of the law enforcement through the punishment. And the rules are different one for one. Because each rule has the background, histories and the way to make it. According to Soetandyo Wignjosoebroto, In the society the process of the social life will give the certain case for the effort of the order enforcement.⁹

In the national law development the national law is

7 Barda Nawawi Arief, 2001, *The problem of the law enforcement and the policy of the criminal elimination*, Citra Aditya, Bandung, p.20

8 Alvineri Shlomo, 1980, *Law And Social Control (Ideas And Ideologies)*, Edward Arnold Publisher, London, p.89

9 Soetandyo Wignjosoebroto, 2002, *The law: Paradigm, Method And The Problematically*, Huma, Jakarta, p.260

made, built and developed to create the Indonesian social life system. The law is made to be the social engineering. The legal development finds a tool to develop the society based on the national law regulate the behaviour seriously. But the application of law has to regulate it flexibly.

C. CONCLUSION

The law as a rule it consists of the ideal necessity it can be valued from how far it can be received by society as a norm system in the social reality. Really the law is a tool used to change the social life. It means to re-analyze about the function of law in the society. So the law is not as the constant norm, logic and closed but

an analyze about the law to be one with the social actions, as a process etc. The application of law into the law enforcement can not be separated from the function of the law in the social reality. Because the law enforcement is made as a norm received by society effectively. So in the implementation of law the law is not done normatively and actually the implementation of law is a law enforcement. In the legal development to achieve the law enforcement it is not limited the legal perform normatively but it must be understood as a tool to change the social life system. Finally law is not a goal but it is a tool to achieve the goal.

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