

Undang Hidayat, Negara Hukum Dan Politik Hukum Islam Di Indonesia: Catatan Kritis Atas Pemikiran Nurcholish Madjid, *Asy-Syari'ah* Vol. 17 No. 3, Desember 2015;

Yusril Ihza Mahendra, 1996, *Dinamika Tata Negara Indonesia: Kompilasi Aktual Masalah Konstitusi Dewan Perwakilan dan Sistem Kepartaian*, Gema Insani Press, Jakarta

Law Enforcement In Creating Good Governance Towards A Value Of Justice

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Abstract

The purpose of writing in this article is to find out and analyze the effect of law enforcement in the implementation of good government, The approach method used in normative legal research used in this study uses modern legal concepts. The research result states that the concept of good governance can be realized if governance is organized in a transparent, responsive, participatory manner; obeying legal provisions, oriented to consensus, existence of togetherness, accountability and having a strategic vision. Governance is said to be good if the common goal is carried out well, paying attention to the decision-making process, carrying out regulatory functions, exercising power properly and orderly institutions. Good governance is implemented in the context of democratizing the life of the nation and state. One of the conditions for democratic life is the existence of law enforcement that is just and implemented without a reed perspective. As the first step in creating good governance is to build a sound legal system, both software, hardware, and human resources who run the system.

Keywords: *Islamic Inheritance Law; National Law; Political Transformation;*

1. Introduction

The 1945 Constitution of the Republic of Indonesia Article 1 paragraph (1) states that the State of Indonesia is a unitary Republic of Indonesia. Then in paragraph (2) and sovereignty rests in the hands of the people and exercised in accordance with the Basic Law paragraph (3) Indonesia is a rule of law. In Article 18 paragraph (1) the Unitary State of the Republic of Indonesia is divided into provincial areas and provincial areas are divided into districts / cities where each regency / city has a regional government, in actual terms it requires the Government in its region. because it is realized that not all government affairs can be carried out by the central government.¹

The constitution of the Unitary State of the Republic of Indonesia stipulates in Article

1. Siti Rodhiyah, Uyunun Nafisa, Implementation Of The Vocation School Of Legislation Agency In Village Consultative Department Agreement (Study of The Implementation The Sriwulan Village BPD Sayung, Demak), *Jurnal Pembaharuan Hukum*, Volume VI No.1 Januari-April 2019, page.11-25

1 paragraph (3) of the 1945 Constitution the third amendment that the Indonesian state is a constitutional state. It means that all behavior that exists in a country, whether carried out by the government or those governed by (the people) must be based on legal rules and not based on power. Law is made as commander in state life. Efforts to reform the law in Indonesia, which have been initiated since the birth of the 1945 Constitution of the Republic of Indonesia, cannot be separated from the foundation and objectives to be achieved as well as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia. to protect the entire Indonesian nation and to promote public welfare based on Pancasila".²

With the ideals of reform that call for a new Indonesian democratic government, reforming the legal sector is a top priority. In a democratic country the formation of laws and regulations has a very important element in their formation.³ The 1945 Constitution, which has undergone four amendments, is one positive step in legal reform.

The development of legal science was preceded by philosophy and was followed by legal dogmatics (positive law science). Between the two there are sharp differences. The philosophy of law is highly speculative, while positive law is highly technical. So that to explain the two, it is necessary to have a legal theory which was originally in the form of general law teaching (algemene rechtsleer). Legal theory contains general characteristics such as legal principles and common problems from various legal systems.⁴

Law enforcement or Law Enforcement is essentially a process to realize legal goals, legal ideas become reality.⁵ Meanwhile according to Satjipto Rahardjo,⁶ Law enforcement is essentially a problem that is not simple, not only because of the complexity of the legal system itself, but also because of the complexity of the relationship between the legal system and the social, political, economic and cultural systems of society.

One of the characteristics of good law enforcement is reflected in orderly administration in the law enforcement process as well as the integration and harmony between law enforcement officers, especially in the criminal justice system known as the integrated criminal justice system. Integrity between law enforcement officers should not be misinterpreted so that it only promotes cooperation between law enforcement officers which can lead to bias that leads to disorderly administration or even violation of the law. Cooperation between legal officers is intended to

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2. Ninuk Triyanti, Re-Actualization of Pancasila Values On Law Establishment In The Economic Globalization Era, *Jurnal Pembaharuan Hukum*, Volume VI No.2 April-Agustus 2019, page.214-225
 3. Siti Rodhiyah, Muhammad Harir, Peranan Badan Permusyawaratan Desa (Bpd) Dalam Pembentukan Peraturan Desa Di Desa Krandon Kecamatan Guntur Kabupaten Demak, *Jurnal Pembaharuan Hukum*, Volume II No. 2 Mei-Agustus 2015, page.291-300
 4. Philipus M. Hadjon, Tatiek Sri Djatmiati, *Argumentasi Hukum*, Gadjah Mada University Press, Yogyakarta, 2009, page. 9.
 5. Esmi Warassih, *Pranata Hukum Sebuah Telaah Sosiologis*, Suryandaru Utama, Semarang, 2005, page. 83
 6. Satjipto Rahardjo, *Penegakan Hukum, Tinjauan Sosiologis*, Genta Publishing, Yogyakarta, 2009, page.8

facilitate law enforcement efforts in accordance with the principles of fast, simple and low cost and free, honest and impartial in the settlement of cases. In other words, integration is intended to create effectiveness and efficiency, which are other characteristics of good governance while always paying attention to law and administrative order.

Law enforcement reform as one of the reform agendas demanded by the community does not only require improvements in the material or legal regulations, but also increases the performance of law enforcement officials. The sensitivity of law enforcement officers must be clearly reflected in the pattern of behavior and professionalism as well as the performance of law enforcement officers which is a reflection of the Principle of Professionalism.

The purpose of this paper is to identify and analyze the effect of law enforcement on the implementation of good government, and law enforcement in Indonesia is often understood from a different point of view. Legal problems in Indonesia arise due to several things, both from the judicial system, legal instruments, inconsistencies in law enforcement, intervention in power and legal protection. Many cases involve authorities or law enforcement officers who are biased before entering court or are acquitted by judges. This will lead to an understanding of public distrust of the law.

2. Research Method

In research or study of normative legal science, activities to explain the law do not require the support of data or social facts, because normative law does not recognize social data or facts that are known only legal materials, so to explain law or to seek meaning and value The law only uses the concept of law and the steps taken are normative steps.⁷ Normative legal research includes research on legal principles, legal systematics, and legal synchronization.⁸

The statute approach is carried out by examining all laws and regulations related to the legal issue that is being handled. For research for practical activities, this statutory approach will open opportunities for researchers to study whether there is consistency and suitability between a law and another or between laws and the constitution or between regulations and laws. The results of this study are an argument to solve the issue at hand. For research for academic activities, researchers need to find the ratio legis and ontological basis for the birth of the law. By studying the ratio legis and ontological basis of a law, researchers are actually able to grasp the philosophical content that lies behind the law. that. Understanding the philosophical content behind the law, the researcher will be able to conclude whether there is a philosophical clash between the law and the issue at hand.

3. Result and Discussion.

1. Law enforcement towards the value of justice

7. Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2008, page. 87.

8. Soerjono Soekanto, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta, 1986, page. 51.

Law enforcement is aimed at improving law order and legal certainty in society. This is done, among others, by curbing the functions, duties and powers of the institutions in charge of enforcing the law according to the proportion of their respective scope, as well as being based on a good system of cooperation and supporting the goals to be achieved. The level of development of the society where the law is enforced affects the pattern of law enforcement, because in a modern society that is rational and has a high level of specialization and differentiation, the organization of law enforcers is also increasingly complex and very bureaucratic.⁹

Montesquieu divided power into three areas, namely the executive, judiciary and legislature, which was later known as Trias Politika. Indonesia based on the 1945 Constitution does not adhere to the Trias Politika understanding. Even so, the institutionalization of various state powers clearly shows that the drafters of the 1945 Constitution were strongly influenced by the teachings of the Trias Politika.¹⁰ The institutionalization of various state powers in the 1945 Constitution is not strictly separated which will lead to checking power with power. However, each institution holding power still has links and coordination (checks and balances).

Law enforcement in Indonesia is currently still far from expectations, the picture of law enforcement is often applied with no value of justice. Justice is what we want to achieve in the law enforcement process. However, there are still many judges who in law enforcement always use the law. Law enforcement that always uses the law has limitations. Because the judge will only use the law in resolving cases, and will not explore the values that live in society (living law). Independent and impartial judges in completing the procedure. This means that judges are free according to the law in deciding cases and there is no outside interference. Whereas in the Law on Judicial Powers it is stated that judges are obliged to explore the values that live in society.¹¹

Law enforcement that is oriented to the law, then justice that is realized is only formal justice based on the law (procedural justice). If the elements in an article have been fulfilled, the judge will give a verdict. Legal justice often injures substantial public justice. Because justice that is manifested (procedural) is not like the justice (substantive) desired by justice seekers. So the limitation of conventional law enforcement is that it cannot realize substantive justice, namely the justice desired by justice seekers.

According to Soerjono Soekanto, the law to function properly requires harmony and a

9. Sanyoto, Penegakan Hukum Di Indonesia, *Jurnal Dinamika Hukum*, Vol. 8 No. 3 September 2008, page.199-204

10. Moh. Mahfud MD, *Pergulatan Politik dan Hukum di Indonesia*, Gama Media, Yogyakarta, 1999, page. 274.

11. Haryono, Penegakan Hukum Berbasis Nilai Keadilan Substantif (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012), *Jurnal Hukum Progresif*, Vol. 7, No. 1, April 2019, page.20-39

relationship between four factors, namely:¹²

1. Laws and regulations

The possibility is that there is a mismatch in the laws and regulations regarding certain areas of life. Another possibility is the incompatibility between statutory regulations and unwritten law or customary law. Sometimes there is a mismatch between written law and customary law, and so on.

2. Mentalitas Petugas yang menegakkan hukum.

Law enforcers include judges, police, prosecutors, defenders, correctional officers, and so on. If the laws and regulations are good, but if the mentality of the law enforcer is not good, it will happen to the law enforcement system.

3. The facilities that are expected to support the implementation of the law.

If the laws and regulations are good and the mentality of the enforcer is good, but the facilities are inadequate, then law enforcement will not run properly.

4. Awareness and legal compliance of community members.

According to Lawrence Friedman, there are three elements in the legal system, namely Structure, Substance and Legal Culture.¹³ Barriers to law enforcement in Indonesia are caused by a fall in the three elements of the legal system that have shifted from the ideals in the 1945 Constitution. As the highest source of law, the 1945 Constitution has outlined the basis for the implementation of good governance.

1. Legal Substance

Ideally, the national legal order leads to the creation of a national legal order that can guarantee good governance of the state and relations between citizens, governments and the international community. The goal of legal politics is to create a national legal system that is rational, transparent, democratic, autonomous and responsive to the development of people's aspirations and expectations, not a legal system that is oppressive, orthodox and reductionistic.¹⁴

The substance of the law is a substantial part that determines whether the law can be implemented or not. Substance also means products that are produced by people who are in the legal system which includes the decisions they issue, or the new regulations they are drafting. The substance also includes living law, not just rules in law books.¹⁵

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12. Soerjono Soekamto, *Teori Sosiologi tentang Pribadi dalam Masyarakat*, Ghalia Indonesia, Jakarta, 1998, page. 83-84.
 13. Achmad Ali, *Keterpurukan Hukum di Indonesia Penyebab dan Solusinya*, Ghalia Indonesia, Ciawi-Bogor, Cetakan Kedua, 2005, page. 1.
 14. Imam Syaukani, A. Ahsin Thohari, *Dasar-dasar Politik Hukum*, PT Rajagrafindo Persada, Jakarta, 2008, page. 72.
 15. Hasaziduhu Moho, *Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan*

The substance of the law is related to the process of making a legal product carried out by lawmakers. Values that have the potential to cause legal symptoms in society are formulated in a statutory regulation. Meanwhile, the manufacture of a statutory product is influenced by the political atmosphere in a country.

Often the legal substance contained in a statutory product is influenced by the interests of certain groups. So that the resulting law is not responsive to the development of society. The broader consequence is that law is used as a tool of power and not as a controller of power or to limit the arbitrariness of those in power.

Legislation is made by the power that is authorized by law. According to the 1945 Constitution, the power to make laws is given to the DPR as the legislature and the President as the Executive. Article 5 paragraph (1) of the 1945 Constitution states that "The President has the right to submit a bill to the House of Representatives". Article 20 paragraph (1) of the 1945 Constitution states that "the House of Representatives has the power to form laws". The draft law is discussed jointly between the DPR and the President for mutual approval. According to Satjipto Rahardjo who wrote from Radbruch, there are basic values of law, namely Justice, Usefulness and Legal Certainty.¹⁶ It is not uncommon for the three basic legal values to conflict with each other in law enforcement. If this happens then what must be prioritized is justice, given the purpose of law is the creation of a sense of justice in the community.

2. Legal Structure.

Structure is the framework or the skeleton, the part that survives, the part that gives a kind of overall shape and boundary. The legal structure is an institutionalization into a law state. The legal structure here includes state law enforcement agencies such as Courts, Prosecutors, Police, Advocates and law enforcement agencies that are specifically regulated by law such as the KPK. The authority of law enforcement agencies is guaranteed by law. So that in carrying out their duties and responsibilities apart from the influence of government power and other influences.

Included in the legal structure are the hierarchy of general courts in Indonesia and structural elements which include the number and types of courts, their jurisdiction, the number of supreme justices and other judges. Judicial freedom is the essence of a rule of law, so that due to the upholding of the principles of a constitutional state, a large part depends on the presence or absence of judicial freedom in the country.¹⁷ As a means of implementing democracy parameters, the

Kemanfaatan, *Jurnal Warta Universitas Darmawangsa*, Edisi 59 Januari 2019, page.1-13

16. Satjipto Rahardjo, *Ilmu Hukum*, PT Citra Aditya Bakti, Bandung, Cetakan kelima, 2000, page. 19.

17. Abdurrahman, SH, *Aneka Masalah dalam Praktek Penegakan Hukum di Indonesia*, Alumni, Bandung,

freedom of the judiciary in examining and deciding cases must be guaranteed by the constitution.

The Supreme Court is the highest judicial body which is not only the last place to determine law in a concrete sense but also as a place to give birth to new legal principles and methods as well as new theories regarding law.¹⁸ The Supreme Court also has the authority to cancel the verdict or decision of the courts from all jurisdictions at the cassation level, as mandated in Article 30 paragraph (1) of Law no. 5 of 2004 concerning Amendments to Law no. 14 of 1985 concerning the Grand Court.

The control function of the Supreme Court has an important meaning for law enforcement efforts in Indonesia because with the effective control function, law enforcement efforts will be more secure. It is unfortunate that even though this function is still running, it is not very effective, even now there are many case brokers hanging around the Grand Court.

Law enforcers who are tasked with implementing the law cover a very broad scope, including; officers at the upper, middle and lower levels. The point is to what extent officers must have a guideline, one of which is a written rule covering the scope of their duties. In law enforcement, law enforcers may face the following matters:¹⁹

- a. To what extent are officers bound by existing regulations,
- b. To what extent are the officers willing to provide policies,
- c. What kind of role model should the officer give to the community,
- d. To what extent is the degree of synchronization of assignments given to officers so as to provide strict limits on their authority.

The weak mentality of law enforcement officials has resulted in law enforcement not working properly. Many factors influence the weak mentality of law enforcement officers, including weak understanding of religion, economy, non-transparent recruitment processes and so on. So it can be emphasized that law enforcement factors play an important role in finalizing the law. If the regulations are good, but the quality of law enforcement is low, then there will be problems. Likewise, if the regulations are bad while the quality of law enforcement is good, the possibility of problems arising is still open.

3. Legal Culture.

Legal culture according to Lawrence Meir Friedman is a human attitude

1980, page. 1.

18. Bagir Manan, *Teori dan Politik Konstitusi*, FH. UI Press, Yogyakarta, 2004, page. 116.

19. Zainuddin, *Filsafat Hukum*, Sinar Grafika, Jakarta, 2006, page. 95.

towards law and the legal system - beliefs, values, thoughts, and hopes. Legal culture is an atmosphere of social thought and social forces that determine how law is used, avoided, or abused.²⁰

The law is believed to be a strong balancing institution against the threat of disintegration in social life due to a clash of forces that both want to rule and at the same time limit the arbitrariness of those in power. Law in its original form restricts power and seeks to allow balance in social life. In contrast to aggressive and expansionist power, law tends to be compromise, peaceful and full of agreements in social and political life.²¹

The law can work according to its function if the community obeys and obeys the applicable law. This does not mean that dispute resolution in the community outside of legal institutions is not justified. The Constitution itself acknowledges this, namely in Article 18B paragraph (2) of the 1945 Constitution which states that: The State recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated in Law.

People who submit legal disputes or problems to legal institutions unless motivated by interests can also be seen from factors such as ideas, attitudes, beliefs, expectations and opinions regarding the law. People consciously come to the law (court) because of a positive assessment of the legal institution. Thus, the decision to bring the dispute to court is essentially a positive result of the operation of these various factors.²²

Both legal substance, legal structure and legal culture are interrelated with one another and cannot be separated. In its implementation, between the three, a mutually supportive relationship must be created in order to create a safe, orderly, peaceful and peaceful lifestyle.

2. The Effect of Law Enforcement on the Implementation of Good Governance.

Ubi sociates ibi ius where there is a community there is law. Law is not a static institution, it changes from time to time. Law develops in accordance with the development of society. The emergence of the concept of the Rule of Law was not sudden but the result of several processes of legal development in the world.

Currently, countries in the world, including Indonesia, are generally included in the

20. Achmad Ali, *Op Cit*, page. 2.

21. Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Prenada Media Group, Jakarta, 2009, page. 83.

22. Satjipto Rahardjo, *Op Cit*, page. 154-155.

category of modern law. According to Satjipto Rahardjo, modernity has characteristics:²³

1. Has a written form.
2. The law applies to all regions of the country.
3. The law is an instrument that is used consciously to realize the political decisions of the people.

Law as a means of renewal in society can be observed from the products of legislation and jurisprudence. In a country that adheres to a civil law system, this legal function will be felt, because in the civil law system it focuses more on statutory regulations. So that in order to achieve discussion in society that leads to the creation of welfare, good laws are needed in accordance with the laws that live in society or reflect the values that live in society.

The creation of just law enforcement is closely related to the implementation of good governance. To move towards modern law, it is necessary to improve governance through good governance. Good governance according to the State Administration Institute is the process of exercising state power in implementing the provision of public good and service.²⁴ Pinto mengartikan *governance* sebagai praktek penyelenggaraan kekuasaan dan kewenangan oleh pemerintah dalam pengelolaan urusan pemerintahan secara umum dan pembangunan ekonomi pada khususnya.²⁵

Good governance is implemented in the context of democratizing the life of the nation and state. One of the conditions for a democratic life is the existence of law enforcement that is just and implemented without a reed perspective. As the first step in creating good governance is building a healthy legal system, both software (*soft ware*), hardware (*hard ware*), and human resources who run the system (*human ware*).²⁶

The aim of law enforcement, among others, is to ensure legal certainty, which is also one of the general principles of state administration. Every action by a legal apparatus at the level of investigation, investigation, prosecution, and legal remedies, execution and examination must always adhere to the rule of law which is also a characteristic of good governance. Law enforcement is not only intended to impose penalties on every violator of the law, law enforcement is also intended so that its implementation must always be guided by the procedures or procedures outlined by law by taking into account the legal culture that lives in the community, especially it must be able to capture a living sense of justice. in society.

In order to create better government administration, especially in improving the quality of procurement services, the government has made innovations aimed at increasing transparency

23. *Ibid*, page. 213-214.

24. Lembaga Administrasi Negara dan Badan Pengawasan Keuangan dan Pembangunan, *Akuntabilitas dan good Governance*, Jakarta, 2000, page. 1.

25. Sadjijono, *Fungsi Kepolisian dalam Pelaksanaan Good Governance*, LaksBang Yogyakarta, Yogyakarta, Cetakan kedua, 2005, page.180.

26. Sadjijono, *Op.Cit*, page.189.

and accountability. This goal is in line with the principles of good governance.²⁷ The principle of good governance in the process of government administration is a requirement for realizing a government that is democratic, transparent, clean, responsible, effective and efficient. The principle of good governance is suitable as a principle in improving the quality of procurement, as Richo Andi Wibowo's research concluded that good governance is a concept that has been fully incorporated as a principle of good governance.²⁸

5. Conclusion.

The political policy transformation of Islamic law into national law has nothing to do with the struggle for an Islamic or Islamic state as the basis of the state. On the other hand, Islamic law legislation into state legislation has a positive contribution in strengthening the adherence of Muslims to the commitment of the nation state because sharia can go hand in hand and be compatible with Pancasila and the 1945 Constitution. The influence of the Islamic legal system on national legal politics is play a role in creating a value system that regulates the majority of the Indonesian Muslim community as the majority community, becoming a material source for the formation of national law to fill the legal void.

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27. Lati Praja Delmana Pengaruh Penerapan Good Governance Dalam E-Purchasing Untuk Mencegah Korupsi, *Jurnal Ilmu Pemerintahan Widya Praja*, Vol. 45, No. 1, Mei 2019, page.47-62
 28. Richo Andi Wibowo, Kejanggalan Beberapa Putusan Korupsi Pengadaan dan Kaitanya dengan Konstitusi, *Jurnal Konstitusi*, Volume 13. Nomor 1 2016, page.213-240

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