

The Criminal Law Enforcement Policies in Tackling Criminal Human Rights the Review of Progressive Law Requirements



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ABSTRACT: This text is in the background by the large number of criminal law enforcement cases carried out by our law-enforcement officers far from the justice that the public desires, law enforcement is still glued to the text in the act and assumes that the law is in the affirmative. Surely this paradigm must be altered by our law-enforcement officers so that the process of law enforcement will fit the Pancasila values with those in society. So this is what the authors are interested in discussing how criminal law enforcement policies in addressing criminal rights are reviewed in progressive law enforcement and the problem with this study is how criminal law policies deal with present human rights and how future criminal law enforcement policies have defined criminal rights Based on substantive justice. The method used was normative juris (literature study). Studies that are disturbing for society are not based solely on dissatisfaction with what might be called law enforcement in a narrow sense, even a sense, that untruths, injustice, abuse of power, favoritism, practice of favoritism and so forth are necessary for law enforcement in a broader sense that is not solely the responsibility of law enforcement officers, judicial institutions, And the legal institutions of higher education, but also should be the concern and responsibility of all officers and shareholders in all aspects of life, And what is more important is that the whole component of law-enforcement officers better understand what is called a progressive law in acting in legal cases in particular against criminal rights to create justice on the basis of almighty deity and the prevailing values of a society or common, so-called substantive justice

KEYWORDS: The Criminal Law Enforcement Policies, Criminal human rights, Progressive law

INTRODUCTION

The creation of the state of Indonesia by its founding members has been nothing short of a noble goal of encouraging and creating public welfare in the Pancasila united republic of Indonesia. That goal is reflected in the opening of the constitution of the republic of Indonesia in 1945 (the 1945 law), which "to form an Indonesian government that protects the whole of Indonesia and all of Indonesia's blood and to promote public welfare, reflect national life, and share in enforcing a world order based on freedom, lasting peace and social justice." According to M. Solly Lubis, "protecting all nations and all blood" has the sense of protecting with the legal tools and instruments of power available, so in this country there are rules that ensure order in society to bring about the well-being of both moral and material, physical and mental, both written and unwritten.¹

Indonesia is such a legal state as contained in chapter 1 verse (3) the constitution of the republic of Indonesia 1945. From the sound of this chapter an understanding that the state of Indonesia must be by law (rechstaat), and not by machstaat). In the principles of the state of law (rechtsstaat) declared in its constitution as a legal state and then implemented in nationalized and domestic life, both within the formulation and in the application by the competent state office environment.

The country of Indonesia is a democratic and constitutional state that has been adopted by the rest of Indonesia. Law enforcement agencies must therefore uphold human rights, ensuring all citizens together with their positions in law and government and being obligated to uphold those laws and governments with impunity. The rules of the law defined what citizens ought to do as an obligation, things that are allowed to do as a choice and things that are not allowed to do as a prohibition. The legal system has specific objectives and objectives. The intent and objective of the law may be persons actually committing themselves against the law, as well as the act of the law itself, and even the instrument or agency of the state as its law enforcement. The legal system has certain mechanisms that ensure the observance of rules fairly, unequivocally, and have the benefit of public order and tranquillity. The operating system of that law is a form of law enforcement.²

Law enforcement is a must by the state to protect its citizens, since criminal action is a matter of society that urgently needs to be overcome to achieve a harmonious, orderly, and peaceful life as a form of a peaceful society. Records about criminal law

¹ M. Solly Lubis, 1985, Pembahasan UUD '45, Bandung: Alumni, hlm. 24.

² Barda Nawawi Arief, 2011, *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan*, Bandung: Citra Aditya Bakti, hlm. 3.

The Criminal Law Enforcement Policies in Tackling Criminal Human Rights the Review of Progressive Law Requirements

enforcement are widely published by the media both print and electronic. This illustrates the increased and intensity of reporting criminal cases in which the public feels a need for attention to its security, order, and justice. It's just that in many cases of criminal law enforcement carried out by our law-enforcement agencies that are far from the justice that society desires, law enforcement is still hung up on the text in the act and assumes that the law is he is firm, clear and must have rules. Surely this paradigm must be altered by our law-enforcement officers so that the process of law enforcement will fit the pancasila values with those in society.

FORMULATION OF THE PROBLEM

Based on the background the writer has given earlier, the writer chooses a few things to be a problem in writing this paper, as for the issues to be discussed, among other things;

- 1) What is the criminal law policy of addressing criminal rights today?
- 2) What about the future policy of criminal law enforcement in enforcing criminal actions against human rights based on substantive justice?

RESEARCH METHODS

The method used in conducting the question discussed in the study was normatian legal research method. As for the measures used for research on this normative law method, by analyzing the literature in the cultural literature of the law in the tangible forms of primary, secondary and tertiary law sources.

DISCUSSION

1. Criminal Law Policy On The Development Of Crime Of Today's Human Rights

Speaking in precautionary policy of criminal law would certainly be expected to make a good policy towards society. What is more, our present problem is the problem of a law-enactee starting to face obstacles that are related to the increasing growth of society. In the context of human rights alone is still the law of miris to be seen. Of course, in the decades of the free republic, there have always been the greatest violations of human rights, ranging from the munir murder, the destruction of rawagede, the killing of marsinah, and until recently the shooting of hinga has resulted in the death of 6 police officers of fpi. Which means a lot of criminal cases on human rights are already going on and in the process of law enforcement is like a consensus given by our stakeholders apart from judges, prosecutors, police and even advocates. all involved in dirty or often perverted justice.

To do that, there must be a criminal law policy in the wake of this. We know that current legislation regulations have a function which is the function of expressing values and the function of instruments. Based on these functions it would be wise to implement criminal law through several operating stages/functionisation of the penal law consisting:

- a) Formulation/legislative policy, formulating criminal law;
- b) Application/judicial policy, which is application of criminal law;
- c) Administrative/executive policy, which is the phase of criminal law enforcement ³

The nature of criminal law policies is the process of total and total criminal law enforcement. These three steps are expected to form a circular link so that criminal law functionisation can be fundamental to realizing social policy, and giving rise to social welfare and protection to society.

Based on the above explanation, these can be identified as follows:

- 1) The prevention and relief work should support a goal that is social welfare and social defence. It is this aspect that is a principle, for with the fulfillment of welfare and security/peace there will be immaterial societal confidence, especially trust, the value of justice, the value of honesty and truth.
- 2) The prevention of crime has to be done with an integral approach of balance between the penal and non-penal approaches.
- 3) The prevention and countermeasures of crime with the penal approach infoercement police) in implementation have been carried out through the stages; The formulation stage (melt police) or process legislation; The yudical policy stage or the police executive stage and executive stage or administrative process.⁴

The fight against crime must therefore be systematic and integral, through the balance between social - protection efforts and social welfare efforts and the objectives of the Indonesian state that has such a purpose as national and state living in pancasila and the 1945 constitution of the creation of a social justice for all Indonesian people, This means that the ultimate goal of national and national life is to relent the fifth pancasilan on four previous precepts in the form of established advanced policies as a social

³ Barda Nawawi Arief, 2001, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Citra Adiitya Bakti, Bandung, hlm. 75

⁴ *Ibid*, hlm. 74

The Criminal Law Enforcement Policies in Tackling Criminal Human Rights the Review of Progressive Law Requirements

policy in an effort to achieve public welfare and at the same time protect society.

Formulating formulation policy formulations in the address of criminal rights against human rights were contained in the 1999 act no. 39 on human rights. According to act number 39 in 1999, human rights are a set of rights inherent to the very nature of human existence as the supreme being of god. That right is his prerogative to be respected, highly valued, and protected by state, law, government, and everyone for the honor and protection of human dignity and dignity. And therein are the rights to welfare, the right to security, the right to personal freedom, the right to justice, the right to self-promotion, and the right to life.

The policies made on human rights said the authors feel that they are complete and take into account the rights of the Indonesian people and even the rights of children to participate and have been properly accommodated by act no. 39 of 1999. It is just that in the practice or in the application stage we still often see law enforcement that is far from the justice values of this republic. When we speak in the criminal law policy contest as explained at the top, that in the application and execution stages also should be fixed together with the formulation stage.

2. Criminal Law Enforcement Policies In The Future In Enforcing Criminal ACTS On Human Rights Based On Substantive Justice

Law enforcement, a term that has a variety of understanding. In a broad sense includes action to implement and apply the law and to act on legal offenses done by the subject of the law, both through judicial procedures and by arbitration procedures and other conflict resolution (alternative disputes or conflicts resolution)⁵

Even in an even broader sense, enforcing the law includes all activities to make it a set of the normative code that regulates and binds legal subjects in all aspects of public and state life and therefore should be properly observed and implemented.⁶ In a narrow sense it is defined as executing legislation on a deviant subject of law that requires the functioning of a criminal justice system through the judge's ruling on jimly Asshiddiqie⁷ Law enforcement in the narrow sense involves ACTS of bullying against any violation or perversion of the ordinance and yet another by means of criminal proceedings involving the role of police officers, prosecutors, advocates and judicial agencies.

But conceptually understanding law enforcement according to satjipto rahardjo is:⁸ "It is a process to realize the legalistic desire of the law that is the conscious mind of the governing body of the law-makers that is defined and established in the judicial regulations that then become a reality." After all, law enforcement does not mean merely enforcing legislation, but, nonetheless, in spite of the fact that in Indonesia the trend is so popular that law enforcement is generally viewed as enforcing a particular legal tool to enforce a enforcing legal sanctions to ensure their compliance with the established provisions.

The sensibility also brought forth by soerjono soekanto, which states that "activities to harmonize the relationships of values described in stable codes and implementation of actions as a series of final levels of values create (as social engineering) and maintain and maintain (social control) the peace of living society." Thus, a good system of law enforcement involves the inclusion of value with real rules and human behavior because within human associations there are basically certain views of what is good and what is bad and in that view a couple of values which need to be defined more concrete of the precepts that contain commandments, Prohibitions or things allowed in such a way that they then serve as a guideline or measure for supposed or supposed human behavior.

In the operation of the law - enforcement apparatus, there are three important elements to influence: (I) law enforcement institutions with their tools and supporting infrastructure and institutional mechanisms; (ii) a work culture associated with its personnel, including the welfare of its personnel, and (iii) set of regulations that support both its institutional performance and that regulate legal materials as standard work, both its material law and its laws. Systemic law enforcement efforts should pay attention to the three aspects simultaneously, so that the process of law enforcement and justice itself is internally manifest.⁹

But, in addition to the above three factors, complaints regarding the performance of law enforcement in our country over the years also actually require more thorough analysis. Law enforcement efforts are just one element of all our problems as a legal state that seeks to uphold and encompass social justice for all Indonesian people.

The law could not have been upright, if it itself had not or had not reflected the feelings or values of justice that lived in its society. The law could not guarantee justice if the material were largely a distorted legacy of the past. That is, the issue we face is not only about the efforts of law enforcement but also about the renewal of the law or the making of a new law. Thus, there are four important functions requiring careful attention, which is (I) the making of law 'or' law and rule making ', (ii) socialization,

⁵ Jimly Asshiddiqie, *Peran Advokat dalam Penegakan Hukum, Bahan Orasi Hukum pada acara pelatihan DPP IPHI masa bakti 2007-2012*, Bandung, 19 Januari 2008, hlm. 4

⁶ ibid

⁷ ibid

⁸ Satjipto Rahardjo, 1993, *Masalah Penegakan Hukum dalam suatu Tinjauan Sosiologis*, Sinar Baru, Bandung, hlm. 15

⁹ Jimly Asshiddiqie, *Makalah Penegakan Hukum*, PDF Created with desk PDF PDF Writer-Trial : <http://www.docusdeck.com>,

The Criminal Law Enforcement Policies in Tackling Criminal Human Rights the Review of Progressive Law Requirements

propagation and even law enforcement (iii). All three require an (iv) of legal administration (the administration of law) which is effective and efficient run by responsible government (executives).

Therefore, the development of legal administration and legal systems may be referred to as the fourth important agenda in addition to the above three. In the broad sense, 'the administration of law' includes the application of rules and the administration of the law itself in narrow terms. For example, it may be as far as the documenting system and the publications of various existing legal products have been developed in order to document the regulations (regels), to state administrative decisions (beschikkingen), or to judge and verdict throughout the ranks and layers of government from central to the region. If the administrative system is not clear, how could public access to the various forms of the law's products be open? If there is no access, how is it possible to expect people to obey rules they do not know? Although there is a "fixable" theory recognized as a universal law doctrine, laws also need to be incorporated as a means of education and social reform (reform), and therefore society's ignorance of the law must not be allowed without systematic and intentional cultivation of the law.

Certainly the things that are troubling people with a process of enforceable bad laws starting with sengketa and karta, the grandmother minah, Basar and kholik are equally terrible for both man and sri suratmi, and most recently for the case of KM 50, which I consider to be part of the human rights case, which is being fabricated by the inference of our law enforcement. Surely these cases have offended people of Indonesia who have a bedrock hold on them: Pancasila. The problem of law enforcement is certainly presented as the solution in which was written at the top of the list by Prof. Barda Nawawi, where the "law enforcement" is discussed in his book Prof. Barda Nawawi under the name "law enforcement issues," professor argues that the conditions upon which society is not merely dissatisfaction with judicial practice (which can be called law enforcement in a narrow sense, According to Barda Nawawi Arif as the enforcement of all social norms/order of life (political, social, economic, and so forth). In a sense, it may even be said that ungodliness, injustice, abuse of power, practice of sufficiency, and so forth that it requires law enforcement in a broad sense that is not only the responsibility of law enforcement officers, judicial institutions, and judicial institutions of law, but also should be the concern and responsibility of all officers and role holders in all aspects of life.

What is interesting about this study is how such law-enforcement officers reflect on or reflect on all the legal matters or events they embani or handle in order to create the justice that society hopes for. The question is about partition. What's the measure of law enforcement? Since we are on the earth of Indonesia, the only fair that is the measure of justice is the supreme deity, and since the author is a Muslim, I personally in this writing wish to present a solution to the Islamic lawmakers to pay more attention to all the decisions taken must be based on the Qur'an and as Sunnah. As in a Sahih Muslim history, the messenger of God tells his people to hold on to the Qur'an and my Sunnah that they may not stray forever.

In the Qur'an itself justice is called 28 times, one of the verses about justice in the law is in the Qur'an: "Be ye of justice for God, when bear witness fairly. And do not let your hatred of a people, impelling you to be unjust. Be fair because it is fair closer to nothing, and fear God, O God of all things what you are doing." That is, in the exercise of the powers of justice and the principles of justice, almighty God commands men of the law enforcement apparatus it should be fair in deciding a matter and should be strictly forbidden or promulgated to cut off a matter on the basis of mere lust. As for if the matters handled by law enforcement officials were handled using the concept of progressive law that the law was made to man then every matter would beget a substantive justice and a progressive law itself could be a solution to human rights matters in the future.

Legal science always flows from time to time, there is always a change in it whether from an objective or subjective standpoint, if we are attached to the progressive law, then progressive laws can be given in an objective and subjective way. In an objective way that the law was truth, meaning that it was not binding or viewed as a rule only, but it had to be broad in view of the issues in society such as somebody's behavior and even behind it, while from a subjective, progressive law depended on its adherents and compliance.

Theory of substantive justice as the purpose of the progressive laws. First, we must understand that the law had to be oriented not rule disproportionately, meaning that law enforcement had to be oriented toward the purpose of justice rather than on or confined to the rules when it was stressed would cause injustice. Second, they are the law for human not human for the law, which means that when they are no longer compatible with human needs, they must be adjusted or altered for any other development in society. Third, they are the property of the text (rules and logic) to protect lower class with compassion, meaning that those laws when applied must exalt the text's text.

Then comes the question of the progressive law of discerning the certainty of the law, when the progressive law views that the law should not be limited to positivism or regulation only, would not the view of the progressive law make one of the legal purposes of that law negligible? In answering this question, that justice in the progressive law is a substantive justice in which justice in the seen is not merely a rule, but more. As Gustav Radbruch once pointed out that when the judge found conflict between law and justice, the judge was obliged to put justice first. It means justice must come first instead of godliness.

CONCLUSION

Criminal law policies are basically a total and total process of criminal law enforcement, starting with the formulation, application

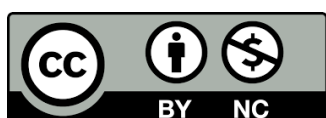
The Criminal Law Enforcement Policies in Tackling Criminal Human Rights the Review of Progressive Law Requirements

and execution process. Of course, the three processes contained in criminal law policy can deaden or tackle crime so complex in the state of Indonesia that specifically crimes committed by law enforcement officials to individuals, communities and communities, in order to achieve protection of society and public welfare.

The conditions upon which society is concerned do not lie solely in dissatisfaction with what might be called law enforcement in a narrow sense, even in a sense, that ungodliness, injustice, abuse of power, favoritism, practice of favoritism and so forth are necessary for law enforcement in a broad sense that is not solely the responsibility of law enforcement officers, judicial institutions, and judicial institutions of higher education, But it would also be the concern and responsibility of all officers and role holders in all aspects of life, and what's more important is that the whole component of law enforcement officers better understand what is called a progressive law in acting on legal cases especially on human rights to create justice on the basis of almighty divinity and the values that live in or ordinary societies that are referred to as substantive justice.

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