

# Karya ilmiah 1

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#### 4 **Law Enforcement in Indonesia: Exploration of the Concept of Justice in Islamic Dimension with Pancasila Ideology**

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1 **ABSTRACT:** *Law enforcement in Indonesia is still not going well and is so alarming. The problem of law enforcement (law enforcement) always tends to be the imbalance of dynamic interactions between legal aspects in expectations or *das sollen*, with elements of the application of the law in reality *das sein*. The weakness of law enforcement in Indonesia today can be reflected in various resolutions of significant cases that have not been completed, one of which is the practice of corrupt corruption, but ironically the main actors are very few who are legally enforced. This fact is precisely the best compared to some cases involving small people. Judging from the study of philosophy, the reflection of legal philosophy is done to be able to know the irregularities that exist in the application of the law in looking at the value orientation of justice that concerns the view of human life. Because the code must always be returned to its original purpose to create justice, this study discusses Sidharta's conception of building and legal systems in examining the problem of law enforcement in Indonesia. The research method used in this paper is descriptive research, which aims to investigate law enforcement in Indonesia in terms of the study of the philosophy of law and law enforcement seen from the concept of Sidharta in creating justice law.*

Penegakan hukum di Indonesia masih belum berjalan dengan baik dan begitu memprihatinkan. Permasalahan penegakan hukum (*law enforcement*) selalu bertendensi pada ketimpangan interaksi dinamis antara aspek hukum dalam harapan atau *das sollen*, dengan aspek penerapan hukum dalam kenyataan *das sein*. Lemahnya penegakan hukum di Indonesia saat ini dapat tercermin dari berbagai penyelesaian kasus besar yang belum tuntas, salah satunya adalah praktek korupsi yang menggurita, namun ironisnya para pelaku utamanya sangat sedikit yang terambak hukum. Kenyataan tersebut justru berbanding terbalik dengan beberapa kasus yang melibatkan rakyat kecil. Dilihat dari kajian filsafat, refleksi filsafat hukum dilakukan untuk dapat mengetahui kejanggalan-kejanggalan yang ada dalam penerapan hukum dalam menilik orientasi nilai keadilan yang menyangkut pandangan hidup manusia. Sebab hukum harus selalu dikembalikan kepada tujuan awalnya untuk menciptakan keadilan. Penelitian ini membahas konsepsi Sidharta tentang bangunan dan sistem hukum dalam mengkaji masalah penegakan hukum di Indonesia. Metode penelitian yang digunakan dalam penulisan ini adalah penelitian deskriptif, yang bertujuan untuk mengkaji penegakan hukum di Indonesia ditinjau dari kajian filsafat hukum dan penegakan hukum dilihat dari konsep Sidharta dalam menciptakan hukum yang berkeadilan.

**Keywords:** *Law Enforcement, Justice, and Divinity.*

## I. INTRODUCTION

Legal concepts that develop today are a continuation of law based on central political power. Soetandyo saw this shift in three stages, namely when the law was based on morality that occurred before the occupation, then there was a transformation in the colonial period, and finally during the independence period where colonial law was later developed and taught in law schools (Wignjosoebroto, 2013). Then what happened was what Satjipto Rahardjo revealed:

"... the old system, which is liberal, has caused" diseases "themselves, as has been widely criticized in the United States. In Indonesia, in the context of eradicating corruption, it is often said, that courts have become a haven for corruptors (Swardhana, 2010).

In looking at or arguing about the law (both as a science and as a practice), we look at images that exist and are built by law (both as institutions and institutions). The reality that exists about the legality of presenting products or services is carried out by law enforcement agencies so far, and the image projects more the value of the achievement or failure. Unfortunately, the condition of Indonesian law is imaged by filling in the rottenness of law. Such an image is not wrong because our legal status is indeed in a critical and severe condition (Raharjo, 2006).

If we observe, law enforcement in Indonesia is still not going well and is so alarming. The problem of law enforcement (law enforcement) always tends to imbalance the dynamic interaction between legal aspects in expectations or das swelled, with elements of the application of the law in reality das sein (Rif'ah, 2015). The weakness of law enforcement in Indonesia today can be reflected in various resolutions of significant cases that have not been completed, one of which is the practice of corrupt corruption, but ironically the main actors are very few who are legally enforced. This fact is inversely proportional to some cases involving small people. The reality of such law enforcement will undoubtedly harm the hearts of little people which will lead to public distrust, especially for law enforcement officials themselves. Law enforcement officials are vulnerable to the practice of bribery, making the law in this country, can be traded, like the BLBI case which until now has not been clear the starting point, E-KTP case involving many parties in the legislative council, and several other significant cases which stalled. Seeing these conditions, it seems that we must reflect again on the ultimate goal of law itself, namely to create justice.

Furthermore, Satjipto Rahardjo stated that law was indeed started from the text (code), but we should not stop there. General legal books require creative accuracy or sharpening when applied to real events in society. In the end, whether the rule of law can provide benefits to humanity, it does not rely on the sound of articles of the constitution, but on the behavior of law enforcers who can act beyond the call of duty. Borrowing words Ronald Dworkin, we need to take rights seriously and do a proper reading of the law. Law with new texts is the beginning of a long journey to realize the goal so that the law can bring justice and benefit to humanity (Rif'ah, 2015).

When departing from the assumption of justice to be an objective value that must be fulfilled, of course, this will not just run smoothly by the perspective of the ideals of a nation's law. Moreover, objectively something is considered to have a meaning of value if the fulfillment of factors or elements of utility (benefits) and importance

(interests) and subjectively when fulfilled the need and estimation factors (E. Fernando <sup>4</sup> M. Manullang, 2007). Arief Sidharta revealed from the philosophical level that, a reflection of legal philosophy was carried out to be able to find out the irregularities that exist in the application of the law. The focus is on the tendency to reflect systematically on the "legal reality" that must be considered as the realization (manifestation) of the presupposition of law (legal ideals) (Arief Sidharta, 2007). Thus the results of the feeling from the reflection of legal philosophy will later look at the orientation of the value of justice concerning the view of human life because that is where it will be fulfilled as well as the substantial and formal elements of the ideals of law that are social.

In explaining law enforcement in Indonesia itself which is full of irregularities in law, Sidharta explains this through what is called a legal gap. The legal difference is very open because the legislators have never been able to adequately estimate the variants of concrete events that will occur in the future. If the provision does not correctly answer the need to complete a real game, then this normative provision can be expanded or narrowed down to the critical area (Arief Sidharta, 2013). The legal study community called this process a legal discovery to fill the gap in the right hole itself.

Based on the description above, it can be seen that the apprehensive condition of law enforcement in Indonesia must be returned to the conception of justice itself. In this case, the author will limit his discussion of law enforcement in Indonesia in the concept of Sidharta which is viewed from the perspective of legal philosophy. Based on the background of <sup>2</sup> these problems, problems can be drawn to be examined as follows: (1) How can law enforcement in Indonesia be viewed from the study of legal philosophy? (2) How is law enforcement based on the concept of justice having faith?

## II. METHODS

<sup>1</sup> The research method used in this paper is descriptive research. This research is a study that tries <sup>5</sup> describe variables that are examined independently without being associated with other variables both comparing and connecting. This research was also carried out using a philosophical approach. Secondary data used in this writing is to use document studies as the main instrument. The formal data source is mainly the opinions of experts (doctrine) written in textbooks and also from books in the field of legal philosophy (Shidarta, 2006).

## III. FINDINGS

### Law Enforcement in Indonesia Judging from the Legal Philosophy Study

<sup>6</sup> Seeing the development of law enforcement in Indonesia which is still not running well, one of them is <sup>6</sup> due to law enforcement which is always interpreted as merely enforcing the law so that procedural justice is used as a reference in the law enforcement process. When viewed from a philosophical approach, the essence of law enforcement is to realize what the law wants to achieve. The heart of the purpose of the law itself lies in justice.

Legal philosophy itself is a part of truth-tracking presented in the scope of philosophy. Philosophy is a systemic activity of thinking that can only be satisfied to receive the results that arise from considering actions themselves. Philosophy does not limit itself

only to sensory, physical, psychological or spiritual symptoms. He also does not only question "why" and "how" these symptoms are, but also the foundation of those more profound symptoms, their characteristics, and their nature. He seeks to reflect on theoretical relationships, in which the symptoms are understood or thought (Arief Sidharta, 2007).

Talking about law enforcement concepts from a review of legal philosophy can be assessed from law enforcement factors especially judges as human beings who will understand the constitutional values that live in society. Judges about law enforcement are two things that are interrelated and cannot be separated, namely "law and justice," as a prominent legal philosopher Gustav Radbruch explains that: "The law is the will of desire to / to serve justice (Otje Salman, 2012). Furthermore, the duty of judges in law enforcement will be closely related to the issue of legal philosophy as said by Roscoe Pound that one of the objects of the philosophy of law is: "The application of law (Roscoe Pound, 1953). Through legal discovery, judges are required to make an interpretation of the reality in providing fair decisions based on truth and to realize the sense of justice itself by using a conscience. This conscience is essential as a factor that can prevent and maintain the discovery of the law that must be improved and honed so that it can accept guidance from God.

Back to the conception of justice, that humans want the truth. Philosophers give an understanding of justice varying according to their views and goals (Tasrif, 1987). Aristotle gave the opinion that sentence is a virtue related to the relationship between humans: legalist, distributive, and commutative justice. Thomas Aquinas, the truth is divided into two (2), namely global righteousness (generalist *Justitia*) and first justice (*Justitia species*). While Roscoe Pound, dividing justice into 2 (two) parts, namely impartial truth and administrative justice. While Paul Scholten, that justice should not conflict with a conscience, the law without justice is like a body without a soul. Philosophical thinking of truth relating to the philosophy of law is also closely related to John Rawls's thought which revealed 3 (three) main factors, namely: (1) Balance of justice (*gerechtigheit*); (2) Legal certainty (*rechtssicherheit*); and (3) Use of the law (*zweckmassigkeit*) (Soetandyo Wignjosebroto, 2002).

The study of justice will always be faced with a legal antinomy between truth and legal certainty. It is said as antinomy because justice and legal certainty cannot be realized at once in the same situation (Peter Mahmud Marzuki, 2008). It is not uncommon in reality in the community, as seen in some cases which are decided controversially by judges, where the law at the level of philosophy is closely related to justice, but when manifested in the practical realm it is not compatible with the value of truth.

As a unitary state in the form of a republic, where sovereignty is in the hands of the people and is based on law (*rechtsstaat*), it is not based on mere power (*machtsstaat*). The ruler is only the executor of something that has been decided or desired by the people (Soehino, 1996). It should be, law enforcement in Indonesia must also be as desired by the people. The conception that upholds the value of justice is already possessed by the State of the Republic of Indonesia as contained in the Pancasila found in the fourth paragraph of the Opening of the 1945 State Law of the Republic of Indonesia.

Pancasila as the basis of philosophy, outlook on life, state foundation, and clean sources of Indonesian law that animates Indonesian law. It is this Pancasila which is

the justification for the development of legal science in Indonesia based on the ratio-empirical-intuition-revelation epistemology. According to Moch Koesnoe, in the Preamble and the 1945 Constitution, the fundamental values of our national law are contained in the law. In summary, the fundamental values include: (1) The first primary value: the law has a protective character and is not just a rule; (2) Second primary value: the law embodies social justice for all Indonesian people. Social justice is not merely a goal. However, a concrete handle in making legal regulations; (3) Third primary value: the law is from the people and contains populist character; (4) Fourth primary value: code is a statement of high morality and morality both in the form of regulations or in its implementation as taught in religious and customary teachings our people (Muhammad Khambali, 2014). These values should be implemented in the reality of law enforcement in Indonesia that is carried out by the religious and customary teachings of the Indonesian people, where the purpose of the law in Indonesia must always be returned to the essence of the law's goal of creating justice in society.

### **Law Enforcement based on the concept of Godly Justice**

If seen from the empirical legal application that considers the legitimate use directly to the reality in society by measuring whether the law is successful in directing the behavior of the community and law enforcement officers succeed in enforcing the law, then at the level of reality, the law is still ineffective (Christiani Widowati, 158AD). Law enforcement in Indonesia which is far from being expected is inseparable from political influence in legislation. This affects not only law enforcement but also the characteristics of legal products, as well as the manufacturing process. The implementation of functions and law enforcement is not always in line with the development of its structure. This is if the measure of legal progress in Indonesia is the unification and codification of the law, then from time to time, the productivity of legislation will increase. But from the other side in terms of legal functions, there has been a decline (Satjipto Rahardjo, 1996).

As quoted by Sidharta, the argument stated by Gustav Radbruch, that he describes the ideas that are packaged through three aspects, namely legal certainty, benefit, and justice. The links between the three become very dynamic when they are associated with the relationship of strict legal rules with the underlying social relations. In legal substance, there are and reflected various social symptoms and values that give birth to it. Therefore, law and legal rules, also dogmatically, can only be understood about the social relations it regulates and its underlying values (Arief Sidharta, 1994).

The establishment and enforcement of law based on the values of justice and order and its effectiveness in society by law enforcers are inseparable from the connection of three influences that refer to the factors of legal enforceability described by Friedman, which includes legal structure, a legal substance, and culture law. All three attract each other in the community.

In an effort to explain law enforcement itself, it can be started from the building of a legal system described by B. Arief Sidharta, which is more focused on the element of legal substance that comes from the ideals of the Pancasila law as the basis of the nation's philosophy and outlook which contains fundamental values our national legal system which is a legitimate recommendation. This democratic ideal is then operationalized into reality through the principles of federal law in the process of establishing positive law through legislation and jurisprudence. The principles of

national law consist of principles of universal law, policies that are distilled by customary law, legal principles derived directly from Pancasila, and principles of technical-sector law. The ideals of the Pancasila law and the principles of this law that act as "guiding principles" and the test stone of the process of establishing legislation and establishing the rule. In short, according to B. Arief Sidharta, the legal system built was hierarchically pyramidally composed of the ideals of the Pancasila law, the principles of national law, the rules of positive law, and the rules of customary law (Shidarta, 2006).

What is described by B. Arief Sidharta, can be painted in more detail by adding elements of substance, structure, and legal culture as in Friedman's concept? *First*, is the legal structure symbolized by the pillars that support the establishment of a legal system. Agencies such as the DPR and the President and other government bureaucracies such as the police and prosecutors, as well as the judiciary and legal aid agencies, all of which are viewed from the institutional aspect are what is meant by the legal structure.

*Second*, is a legal substance. This element is represented by layers which are hierarchically composed of various positive legal norms. At the top, there is a guiding star, namely the ideals of the Pancasila law. *Third*, is a legal culture. This element provides the environment for the functioning of the legal structure and substance. Without a living environment called this legal culture, the architecture and content of the law will not be able to survive. This environment is more or less is the behavior and practice of code (Shidarta, 2006).

These three elements are seen from the concept of legal study interrelated with each other in the building of legal systems in Indonesia, where Shidarta's legal studies are distinguished into participants (medespeler) and observers (toeschouwer). Particularly for participants, it is distinguished between those who become theoretic law bearers and practical law bearers. The practice of this practical law is directly related to the process of law enforcement in the community, namely legal functionaries who work with a favorable legal system in Indonesia. It is true that a solid law carrier, especially a judge is possible to make legitimate discoveries, even so, the reasoning must be returned to the positive legal system in ensuring that the verdict can be implemented in the perspective of the legal system in Indonesia (Shidarta, 2006).

It is this practical law that can be in the form of parliament, judiciary, legal aid institutions, and government bureaucracy that fills the building of the legal system in Indonesia within the legal structure and establishes laws in building legal substance. And what is equally important is the legal culture itself which has a significant effect on the right and wrong of law enforcement in Indonesia. How big the benefits of law can be formed in realizing the values of social justice which is the embodiment of the costs of Pancasila itself.

This is what gives the divine pattern of a law enforcement process. This Dimension of Godhead has been stated in the Opening of the Third Paragraph, the 1945 Constitution which has become the religious basis of the Indonesian nation, that Indonesian society is a society that is thick with spiritual values (Otje Salman, 2012). This idea has explained that the relationship between man and the Creator has been established through explicit provisions, which Thomas Aquinas taught that, "the world is governed by the divine order, the whole world community is governed by divine reason. Divine law is the highest" (Satjipto Rahardjo, 1996). Without an excellent

legal culture or environment, the structure and substance of the law is a building that is not valuable in the construction of proper law enforcement.

Pancasila as a system of all things, because conceptually contained in the precepts are closely related and cannot be separated. Pancasila values in the most visible form are religious life, in the end, the construction of legal experience both in structure, substance, and culture should be derived from divine values so that justice rests on the divinity itself which has all the religions and beliefs that exist in Indonesia; Islam, Christianity, Hindu Buddhism, Confucianism, the mysticism and Jews. The existence of this religious spirit is part of the spirit of Indonesian law which revives philosophical, theoretical and legal aspects.

In the view of Anthon F. Susanto, which illustrates the relationship of various arrangements between ideology as an internal order and law as an external order which is the result of the interaction or embodiment of the civil order. According to him, the whole precepts are described as circles starting from the first precepts which are the innermost parts, then the next ring which is numbered according to the rules in the Pancasila so on. The soul of the whole teaching is in the thickest part, which is the core (core) of all precepts, is the first principle (Anthon F. Sutanto dan Otje Salman, 2009). The consequences of all of these include: *First*, the first precepts reflect the deepest spiritual values, so they are not easily changed. *Second*, the Second Precept is described as another circle outside the core circle, with the substance starting from humanity, unity, consensus meeting, also fair prosperous. *Third*, the process of reciprocity and change starting from the outermost part of the economy or the welfare of society, on the contrary, the direction of the arrow from the inside out shows a relationship, that the precepts in the Pancasila are all inspired by the first precepts. *Fourth*, there is a balance between the interests of individuals and the interests of the community and the interests of the authorities, which are guided by the divine precepts. Similarly, the balance model which was developed in the Islamic state system during the reign of the Prophet. The balance of individuals, ruling societies controlled by divine will.

Thus, godly justice is a concept that makes aspects of spirituality transformed into aspects of humanity, unity, deliberation and social justice. The character of this concept is based on the spirituality of the nation, the inevitability of a good change of change originating from its ideological sources or because of the demands of society (democracy), a balance between individual and group interests, which are controlled by God's will.

#### IV. CONCLUSION

The development of law enforcement in Indonesia is still not running well, one of which is due to law enforcement which is always interpreted as merely enforcing the law so that procedural justice is used as a reference in the law enforcement process. When viewed from a philosophical approach, the essence of law enforcement is to realize what the law wants to achieve. The heart of the purpose of the law itself lies in justice. Pancasila as the basis of philosophy, outlook on life, state foundation, and clean source of Indonesian law that animates Indonesian law which is the justification for the development of legal science in Indonesia. The values of Pancasila should be implemented in the reality of law enforcement in Indonesia which is carried out by the religious and customary teachings of the Indonesian people, where the purpose of the



law in Indonesia must always be returned to the essence of the law's goal of creating justice in society.

The practice of practical law that can be in the form of parliament, judiciary, legal aid institutions, and government bureaucracy is what fills the building of the legal system in Indonesia in the legal structure and establishes laws in building legal substance. Besides that, what is equally important is the legal culture itself which has a significant effect on the right and bad of law enforcement in Indonesia. How big the benefits of law can be formed in realizing the values of social justice which is the embodiment of the costs of Pancasila itself. Without an excellent legal culture or environment, the structure and substance of the law is a building that is not valuable in the construction of proper law enforcement.

Faithful justice is a concept that transforms aspects of spirituality into aspects of humanity, unity, deliberation and social justice. The character of this concept is based on the spirituality of the nation, the inevitability of a good change of change originating from its ideological sources or because of the demands of society (democracy), a balance between individual and group interests, which are controlled by God's will.

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