

# Dialectic Between Law and Morals in Examining Corruption Cases and Law Enforcement in Indonesia

Yagie Sagita Putra<sup>1</sup>, Pujiyono<sup>2</sup>, Joko Setiyono<sup>3</sup>  
{gieceputra@students.undip.ac.id<sup>1</sup>}

Universitas Diponegoro, Indonesia<sup>1,2,3</sup>

**Abstract.** 'Quid leges sine moribus' Where would we be without morality if we had laws? The interpretation of that adagio theology presumes that to fulfil one's commitment to the All-Powerful God, one must uphold the law honestly and justly. Because the law will be completely worthless if morals do not accompany it, morality is the driving force behind the fight against corruption's domination. In investigating instances of corruption and the administration of justice in Indonesia, this article aims to investigate the tensions that arise between law and morality. The research will take a normative approach, supported by secondary data, conceptual work, and law philosophy work. Quantitative research will be done on the case to determine whether there is a connection between law and morality in the context of law enforcement against corruption.

**Keywords:** Law, Moral, Corruption

## 1 Introduction

The ancient Roman adage *Quid leges sine moribus* states that the law has little value if it is devoid of morality. This adage demonstrates that law and morals cannot be separated; the law must incorporate moral values; in other words, the law is a crystallisation of moral values. According to Van Apeldoorn, it is insufficient for the law to be interpreted as a rule that binds its residents; it must also contain aspects of justice and other principles that are useful for protecting citizens fairly and ensuring legal certainty for all citizens, without exception [1]. Legal standards derived from the community's prevailing values, which include ethical and moral principles, are one of the most fundamental mechanisms of externalising justice in the community. Consequently, law enforcement in the community must also be accompanied by ethical and moral principles [2].

The social reality reveals a contradiction between *das seins* and *das sollin*, in which we can no longer turn a blind eye to the fact that many law enforcement agents blatantly violate the law under the guise of law enforcement. Sometimes the infractions are worse than the accused's mistakes [3]. Corruption should be prosecuted legitimately in order to achieve justice. This frequently conceives of recent crimes in the form of extortion, bribery, and buying and selling, police officers harassing women sexually, Satpol PP committing devastation and violence under the guise of policing, and judges who accept bribes in corruption cases. The case of the prosecutor in the Gayus Tambunan case, a tax mafia, and numerous other instances of bribery, extortion, and cooperation with law enforcement agents under the guise of law enforcement [4].

If later in society, there are numerous anarchic actions in response to social phenomena, such as people taking vigilante action against pickpockets and thieves, or on a larger scale protest in the form of demonstrations, brawls by the community, social institutions, students, and workers, it is a logical consequence that must be understood and addressed wisely, because that attitude is an outpouring of an a priori sense of the community towards law enforcement officials, who are viewed negatively. Because, in the name of law enforcement, they violate the law to complete this action or protest, this is the current state of Indonesian law [5].

It is asserted that this reality has occurred thus far, among other reasons, due to a lack of law philosophical understanding, where all parties of law enforcement and the community, including government officials and members of the legislature, should understand the value of morality that accompanies legal norms because, at the outset of studying law, it is taught that the law is a crystallisation of social values that develop in a society containing individuals who share those values. To generate justice, according to HLA Hart, the law must incorporate three aspects of value: obligations, morality, and norms.

The law cannot be divorced from its moral dimension [7]. According to Murphy and Coelman's *The Philosophy of Law*, if you wish to conceive of justice in society, you must satisfy the moral element [5]. It is unlikely that the law will offer purpose to people's lives when implemented by those who do not recognise the importance of morality [8]. According to philosophers, moral legislation will give significance to people's lives if officials enforce it with high moral standards. Inadequate oversight of the morale of law enforcement officers during the law enforcement process affects society's unsatisfied sense of justice [9].

## **2 Formulation of the Problem**

Based on the description of the background of the problem above, the author will focus on the problem: *how is the dialectic between law and morals in examining corruption cases and law enforcement in Indonesia.*

## **3 Method**

This research is doctrinal legal research that uses primary legal materials. Data collection techniques used is literature study. The analytical method used is descriptive qualitative.

## **4 Discussion**

### **4.1 Studying Corruption Cases of Constitutional Court Judges**

A vicious circle of public iniquity encircled Akil Mochtar and his coworkers. Corruption involving judges, members of the DPR, regional heads, candidates for regional heads, lawyers, political parties, etc., confirms that corruption in Indonesia is the most disturbing reality because it poses a threat to the nation's existence, as stated by Samuel P. Huntington, who described corruption as a disease of democracy and modernity. James Wolfensohn, a former president of the World Bank, referred to corruption in Indonesia as "the

cancer of developing countries." According to Wolfensohn, corruption as a chronic cancer disease impedes Indonesia's economic recovery and destroys the country's law enforcement institutions.

Akil Mochtar's actions fall under the category of enormous corruption, which is the most pervasive and damaging form of corruption. This type of corruption can be traced back to high-level government operations that distort policies or central state functions and allow the culprits to profit at the expense of the greater community. In addition, the corruption of Akil Mochtar and his colleagues falls under the category of political corruption, which is defined as a form of abuse of power involving the manipulation of policies, institutions, and rules or procedures related to the allocation of resources and financing by policymakers in order to maintain their power, status, and wealth.

Prof. Taverne once declared, "Give me an honest and intelligent judge, and I will render a fair decision even with the worst laws." The dignity of a judge in particular and law enforcement in general rests on the nobility of his moral integrity and expertise, which ultimately reflects in the calibre of his judgements. A judge with great moral integrity and who adheres to the idea of professionalism can avoid making a bad and misdirected decision since it is based on betrayal and misuse of the executed mandate.

Abuse and betrayal of trust by a judge can take innumerable forms, including corruption, collusion, and nepotism, as well as other moral behaviour deviations that can undermine the linkages of law enforcement that he should be undertaking as a representative of God for justice seekers.

According to a hadith transmitted by Abu Dawud, it states: "There are three types of judges; one will enter heaven and the other two will enter hell. The judge who will go to heaven is a judge who understands the true nature of the issue and then makes decisions based on the truth. Meanwhile, the judges who will go to hell are those who know the true problem but cheat and refuse to determine with the truth, and those who do not know the real problem but decide based on their ignorance (HR Abu Dawud and Ath Thahawi) ".

Akil Mochtar was both a judge with a significant mandate and a key figure in the implementation of justice and the Chairman of the Constitutional Court of the Republic of Indonesia. He presides over an institution with significant authority in deciding cases involving judicial review of laws against the constitution, disputes over authority between state institutions, dissolution of political parties, disputes over election results, and deciding on the DPR's accusation that the President or Vice President has violated the law or no longer meets the qualifications to serve in those capacities.

Akil Mochtar was a lawyer, a doctor of legal science, an anti-corruption crusader, and the originator of combining poverty with amputation to punish those who commit corruption. The public undoubtedly recalls what Akil Mochtar declared on March 9, 2012, in front of the Constitutional Court "This is my notion. Instead of the death penalty, the corruptor should be impoverished and have one of their fingers amputated." In light of his scientific background, which was approaching the plenary session, the public had high hopes that he would be able to fulfil his responsibilities as a judge and Chief Justice of the Constitutional Court with dedication and honesty.

However, Akil Mochtar committed treason and abused the confidence placed in him by sanctioning bribery, gifts, and money laundering. His acts undermined the public's faith in the Constitutional Court institution that has been developed up to this point, harming all segments of the Indonesian populace that had placed complete faith and great expectations in him.

No wonder Akil Mochtar's handling of corruption and money laundering was a great crime that must be prevented and eradicated remarkably. On October 3 2013, the Corruption

Eradication Commission arrested Akil Mochtar. On February 23 2015, the Supreme Court sentenced him to life in prison, an Rp. 10 billion fine, and revoked his right to be elected and vote.

#### **4.2 Understanding of Morals and Law**

The law is institutional, while morality is contested and individual. The law is authoritarian and employs authoritarian solutions to problems. While morality is distinct and independent, in the sense that it is always possible to argue to reach the same conclusion, morality is yet subject to arguments. The law is heterogeneous and binds us without exception, whereas morality is autonomous and binds us to our own decisions and inclinations. The terms moral and ethics (moral principles) have the same meaning in the Dictionary of Philosophy (1995), even though their origins are distinct. Moral derives from the Latin term *mores*, and ethics is derived from the Greek term *ethos*. Both terms have the sense of customs, which refers to human behaviours deemed to be good or actions regarded as proper, fair, and acceptable. [10] The International Encyclopedia (1967) defines ethics as "the branch of philosophy concerned with behaviour, the determination of good and evil" [11]. The New Webster Dictionary of the English Language (1970) defines ethics as "the science that deals with the nature and grounds of moral obligation; moral philosophy that teaches mankind their duties and their justifications; the science of duty" [12].

In Black's Law Dictionary (1999), moral absolutism is "the idea that a person's actions are always right or bad, regardless of the circumstances or consequences." In the meantime, "moral obligation" refers to "a duty that is based solely on one's conscience and is not legally enforceable"; in contract law, "moral obligation may support an assurance in the absence of traditional consideration, but only if the promisor has received an actual benefit from the promisee." The definition of 'ethical' is "related to the moral obligations owed by one person to another." While 'legal ethics' is defined as "the standards of minimally acceptable conduct within the legal profession, involving the duties that its members owe one another, their clients, and the courts" [13], 'legal professionalism' is defined as "the standards of minimally acceptable conduct within the legal profession, involving the duties that its members owe one another, their

The term moralist is defined in "the theory of moral development" (1997) as the teachings of morality, character, or behaviour. Morality refers to decency, whereas ethics is the study of human behaviour and good and bad human activities (ethics is the study and philosophy of human conduct with an emphasis on determining right and wrong, one of the normative sciences). In order to differentiate the two concepts, the term moral is used to refer to the action (moral act), whereas the study of morals is frequently referred to as an ethical code. Ethical theory is more abstract than ethical practice [14].

Within the law, there exists a distinct legal morality consisting of the reflection of society-wide moral opinions, which are developed in practice in law and constrained by legal institutions and teachings. This topic of legal ethics is a speciality of jurists and legal scholars. Frequently, this morality must be protected against the majority's opinion and significant political and social interests, such as the principle of due process in the court system against political interference. As defined above, excellent law enforcement governance can be viewed as the art or moral style of good law enforcement in this study.

Implementing the definition of the term "good" in the phrase "good law enforcement" necessitates additional moral-law-related criteria.

### **4.3 Moral Values in Law Enforcement**

Understanding its underlying ideas is essential to comprehending effective law enforcement administration. From the principles of effective law enforcement, it will be feasible to establish performance standards for law enforcement. Suppose the implementation of law enforcement has been in contact with all elements of the principles of good law enforcement, referring to the principles of democracy with its elements such as legitimacy, accountability, protection of human rights, freedom, transparency, distribution of power, and control of society. In that case, the implementation can be judged to be effective. Therefore, a law enforcement implementation can be morally sound if it adheres to democratic values.

Four of the democratic ideals and constituents are the most important interdependent conditions. In other words, a law enforcement application can be considered morally sound if it fits four criteria: legitimacy, accountability, transparency, and involvement. First, law enforcement is legitimate or principle-compliant, so the benefits and drawbacks may be anticipated in advance (predictable). Second, the community can hold law enforcement implementers accountable for their actions (accountable). Third, the procedure is not conducted secretly, which may imply complicity (transparency). Fourth, the procedure is receptive to critical public opinion (participated).

The four criteria are not independent of one another. The predictability of law enforcement will establish whether it has been applied rationally and objectively as part of a constructed normative system, collectively by an institution, agency, or organisation with their bureaucratic characteristics, or individually by an official. Therefore, it can be held accountable.

Community engagement is only possible if something has been executed with a degree of openness. In the interim, accountability standards can only be implemented if community participation opportunities are initiated. Inadequate is also the norm of transparency if it does not empower public engagement and demand accountability. The implementation of community engagement is impossible without openness. It is easier to accomplish accountability with community control and involvement in the law enforcement process. Is it true that the public interest has become the highest priority in law enforcement? This is a crucial topic that requires an answer. This is significant since law enforcement still needs more transparency and clarity. Given these circumstances, the community's capacity must be increased (empowered) [15].

In reality, "good law enforcement" is largely determined by the attitudes and actions of law enforcement personnel. Since honesty does not have a constituent, developing honesty is essential to human resource development. Faith and integrity have a significant impact on one's honesty. As a result, the government must enhance its human resources' capabilities through their field of responsibility, their welfare, and their attitudes and behaviour so that they can think properly and accurately.

### **4.4 Implementation of Law Enforcement Moral Values**

The broad concept of law enforcement encompasses not just judicial authorities' actions but also those of the executive, administrative, and legislative branches. Due to this, the discourse on the moral style conditions for the execution of excellent law enforcement is also incorporated into the law formation and enforcement process.

The significance of understanding good law enforcement, along with its rights and responsibilities, so that the public is aware that the standards required to evaluate the performance of law enforcement officials exist and are utilised effectively to carry out optimal

social control, thereby guaranteeing the quality of law enforcement officials' decisions. The amount of democracy in a country will rise if law enforcement agents make decisions that match the criteria of predictability, accountability, transparency, and widespread participation. [15]

In a democratic and socially-oriented legal system, every law enforcement procedure must be conducted by authorised personnel by moral implementation norms. Both law enforcement personnel and interested public members must be aware of the criteria for maintaining a standard for the existence or absence of good law enforcement in law enforcement procedures affecting their lives.

In addition to having a thorough awareness of the particulars and complexities of effective law enforcement, law enforcers and government officials will act cautiously to preserve their choices' moral-political and moral-legal integrity. In the interim, by understanding what constitutes good law enforcement, the public will be able to maintain standards and determine whether or not the legislative body, both at the central and regional levels, has surmounted and can execute a good law enforcement moral style. Members of the legislative body's compliance with the approved processes and procedures for implementing the national legal system will be measurable by the general public. Compliance with current mechanisms, procedures, and systems will ensure the fulfilment of requirements for predictability and accountability.

In addition to understanding what good law enforcement means, the public will be able to observe and maintain standards regarding whether law enforcement implementers, such as judges, prosecutors, police, and lawyers, have acted by the moral requirements of good law enforcement. The community's knowledge and comprehension of anything positive in the legal field can be used to evaluate the process of settling several cases that have been or will be settled through the courts.

In the judicial process, indicators that can be used to observe and maintain standards for the moral style of good law enforcement are answers to legal questions, including: "Have the actions of the police or prosecutors at the investigation and investigation level been completed as expected? Furthermore, predictable? "; "Have the police taken any legal actions for which they should be held accountable? "; and "Have the police taken any legal actions for which they should be held accountable?" Has the implementation of court trials, including the steps of the indictment, prosecution, and punishment, been carried out in line with the law? [15]

In a limited sense, law enforcement difficulties encompass legal and judicial issues. Specifically on procedural law, formal methods, and procedures. If formal protocols and procedures have been followed, even in a literal and ambiguous sense, legal officials will be seen to have behaved appropriately. Important participants in the law enforcement process include judges, attorneys, prosecutors, and the police. Law enforcers are fundamentally human individuals whose work culture, credentials, and qualities can be observed. It might be inferred that the actual issue with law enforcement depends on the police themselves.

In reality, the problem of law enforcement is a matter of the style and ethics of process management, which necessitates an awareness of its deeper significance. The problem of law enforcement is strongly tied to the community's interests in a state's daily life. Public engagement, public accountability, public transparency, and public predictability are essential aspects of law enforcement from a democratic perspective.

In terms of the moral style of good law enforcement, if the understanding of the rule of law is intended to control the procedural compliance of government officials and the rule of law is placed as the highest legal norm (supreme), it must be understood that the rule of law is

intended to be enforced in the interest of and to make it easier for the public to acquire informative knowledge of a range of predictability regarding the actions of law enforcement of the rule of law.

Because the issue of the moral style of good law enforcement is relevant to the community's interests, the public must be aware of the obligations and rights they have to monitor and evaluate the performance of law enforcement officials in executive bodies as well as officials who fill the ranks of the bureaucracy, civil servants, or military, as well as legislative and judicial bodies. This awareness must be fostered so the community may evaluate it by existing criteria. Only under these conditions, the right to insist on predictability, accountability, transparency, and participation, can the public evaluate the performance of law enforcement officials and prevent them from engaging in deviant behaviour.

To achieve effective law enforcement, the legislative process must be geared toward establishing the rule of law. The formation of law as a means of realising the rule of law requires that the law, including law enforcement, be positioned as the primary instrument that will direct, maintain, and oversee the government's operations.

## 5 Conclusion

The process of law enforcement must be methodical and directed, with a focus on clear concepts and a high level of integrity. In addition, law enforcement's purpose should be to increase the number of legal guarantees and certainties in society; in this way, justice and the judicial protection of human rights can be truly experienced by the community. An implementation that is directed at the process of achieving goals is necessary for effective law enforcement. This implementation must also include the actualisation of the values that underlie and become a reference for the behaviour of the law enforcement process, which aims to achieve legal goals. All of these things were developed in the context of realising good law enforcement governance, maintaining consistency with the countless dimensions of values encompassed in the state constitution, which are the basis for existence and behavioural or moral reference, good law enforcement systems and processes, and realising good law enforcement governance. As a result of this circumstance, there has been a push toward the integration, consistency, and principled harmonisation of laws as well as the execution of those laws.

## References

- [1] Juanda, E. (2017). Law and Power. *Galuh Justisi Scientific Journal*, 5(2), 177–191. 2020). *Philosophy of Law: Dialectic of Modernist Discourse*. Muhammadiyah University Press.
- [2] Suadi, HA, & SH, M. (2018). *Sociology of Law: Enforcement, Reality and Values of Legal Morality* (First Edition). Prenada Media.
- [3] Gultom, BM, & SH, SE (2017). A Judge's Critical View on Law Enforcement in Indonesia 3 (Vol. 3). Main Library Gramedia.
- [4] Syahroni, M., & Sujarwadi, T. (2018). *Corruption, Not Culture but Disease*. Depublish.
- [5] Murphy, JG (2013). *Retribution reconsidered: More essays in the philosophy of law* (Vol. 54). Springer Science & Business Media.

- [6] Ghozali, I. (2019). Legal and Moral Dialectic Viewed from the Perspective of Legal Philosophy. *Murabbi*, 2(1).
- [7] Tanuwijaya, F. (2014). Judge's verdict that impoverishes corruptors. *Legal Matters*, 43(2).
- [8] Peffer, RG (2014). *Marxism, morality, and social justice*. Princeton University Press.
- [9] Dedek, E. (2016). *Police Discretion in the Framework of the Restorative Justice Paradigm in the Criminal Justice System*. Bhayangkara University, Greater Jakarta.
- [10] Yuliani Liputo, (ed.), *Dictionary of Philosophy*, Youth Rosda works, Bandung, 1995,
- [11] *Encyclopedia International*, Grolier Incorporated, New York, 1967, (6).
- [12] *New Webster Dictionary of the English Language*, Grolier Incorporated, New York, 1970
- [13] Bryan A. Garner et.al., *Black's Law Dictionary*, St. Paul Minn, West Group, 1999.
- [14] Burhanuddin, *Individual Ethics, Basic Patterns of Moral Philosophy*, Rineka Cipta, Jakarta, 1997.
- [15] Soetandyo Wignjosoebroto, 'The Law and Morals of Good Governance', *Journal of Legal Analysis* 2002, Don't Wait for the Sky to Fall, Jakarta, [Hukumonline.com](http://Hukumonline.com).