

Legal and Moral Relations in Law Enforcement in Indonesia

Hardodi¹, Yusriyadi², Tri Laksmi Indreswari³
{hardodi24@gmail.com¹, yusriyadi@lecturer.undip.ac.id², trilaksmi72@gmail.com³}

Universitas Diponegoro, Indonesia^{1,2,3}

Abstract. Most law enforcers in Indonesia are trapped in the influence of a narrow positivism paradigm, which views the law as limited to what is enclosed in legislation. Law is considered unable to conceive justice, therefore the resulting decisions often overlooked morals. Law and morals cannot be separated in law enforcement in Indonesia due to the fact that the source of Indonesian law is Pancasila, where the values of the Pancasila philosophy are moral such as justice. In the conventional flow of legal purposes, there is a flow of ethical states that the purpose of the law is to achieve justice. This justice is based on human morality. Consequently, it is worthwhile to analyse the relationship between law and morality. Is there a moral component to law enforcement in Indonesia? In this research, the author uses a descriptive normative method. The conclusion attained is that the connection between law and morals cannot be separated, both are interrelated and need each other. Law enforcement in Indonesia is indeed influenced by the positivism paradigm, thus they tend to overlook morals. This is contrary to the values of Pancasila. Pancasila as a source of national law, it is relevant that law enforcement officers must be moral in enforcing the law.

Keywords: Law, Moral, Law Enforcement.

1 Introduction

As a state of law, Indonesia upholds the values of the law (Article 1 Indonesia Constitution). Based on its form, the law is divided into two, particularly written law and unwritten law. Written law is a law that has been collated, written, and stipulated as legislation. Whilst unwritten law is the opposite of written law. The difference between written law and unwritten law is that written law has definite (written) rules, binds every individual, has law enforcement tools, is conceived by the authorities, is coercive and the sanctions are severe. Despite the fact that the unwritten law is constantly the rules are unwritten and uncertain, whether or not there are uncertain law enforcement tools, conceived by the community, are not forceful and the sanctions are buoyant. There is, nonetheless, a need to emphasize that the law referred to in this study encompasses law in its broadest sense. At the present time, public interest in discussing the law turn out to be increasingly widespread, particularly with regard to the law enforcement process, which appears to have not yet achieved its legal objectives. As far as the law enforcement in Indonesia is attentive, most are indeed influenced by Continental European legal tradition (*civil law*) colonial legacy. Consequently, the law is considered unable to conceive justice due to the reason of the dominance of the paradigm of positivism and modern legal science views the law as limited to what is encompassed in the manuscripts of the legislation and has no connection with morals

[1].

This perspective is not in line with the philosophy of Pancasila as the ideology of the Indonesian nation as well as a source of national law. National law should not separate law and morals in light of the fact that in the values of Pancasila there are morals such as justice as explained in the ethical stream. The ethos genre stated that the purpose of the law is to achieve justice [2]. This justice is considered to be based on human morals [3].

In natural law theory, it asserts that there is an absolute relationship between law and morality the purpose of law according to natural law is that it must encompass moral values [4], particularly in order to guide people towards virtue and obey the law because they feel morally obligated thus they have the ability to conceive society morally good.[5]

In order to understand how law and morality relate, as well as moral involvement in law enforcement in Indonesia, it is necessary to conduct research on how law and morality interact. Does law enforcement in Indonesia involve morals? This research is entitled "**The Relationship between Law and Morals in Law Enforcement in Indonesia**".

2 Method

In order to answer the formulation of the problem in this research, the author uses a normative research method, which is descriptive. This research is expected to present an ideal constructive for law enforcement in enforcing the law.

3 Discussion

3.1 Legal and Moral Relations

In order to make it easier to know the relations between law and morals, it is necessary to first understand the meaning of law and morals. In Indonesian, the word law is defined as a norm or rule, such as rules, benchmarks, and guidelines used to judge human and object behaviour [6]. This understanding is more directed to the law in written form such as statutory regulations.

Etymologically, the word law comes from the word "*ha ka ma*" which means to refuse. From there, formed the word "*al-Hakamu*" which means rejecting injustice or persecution. In this context, the law is defined not only as regulations but much more broadly. In terminology, the law is a rule and measure of action that leads these actions to their proper destination. In the event that the word law is correlated with Islamic teachings, then what is meant by law in Islamic law is the book of Allah relating to human actions (*mukallaf*), both in the form of orders, prohibitions, choices, and legal provisions of causality [7].

According to Utrecht, the law is a set of rules (orders and prohibitions) that regulate the order in a society and must be obeyed by that society. In the meantime, according to Van Apeldoorn, the law is complex to define. Looking for an understanding of the law, the same as we seek the meaning of a mountain. The difference is that the law cannot be seen in its form or form, while we can see mountains. Hence, the mountain boundary seen from our point of view is a rise in the earth's surface, rather steep and in all directions higher than its surroundings, whilst the law cannot be seen from our point of view, because the law itself cannot be seen. According to him, in reality in society there will be two groups who have

views on the law; *First, Ontwikkelde Leek* particularly the view that the law is the law. For this group, the law is nothing, but a series of articles enclosed in the law. This view is called the view of legalism as well, in light of the fact that it is too exalting glorify the law. *Second*, the man in the street group states that the law is a courthouse, judges, lawyers, prosecutors, bailiffs, and thus on. Nonetheless, Van Apeldoorn himself stated that the law is society itself in terms of social life. This limitation is conceived only as a temporary guide for people who want to study law [8]. The author agrees with Van Apeldoorn that the law is difficult to define. Nevertheless, the law can be given an understanding, what is difficult is reaching a universal agreement on the definition of law. This is influenced by the abstract nature of the law, the broad scope of the law, and the many languages in the world. From the description above, it can be understood that law is a rule, benchmark, measure, guideline, both written and unwritten, which prohibits humans from committing acts of injustice and orders them to do good deeds. Law is for humans, not the other way around [9]. The existence of law is nothing, but a means used by humans to maintain the relationship between humans with one another, hence, as not to harm each other.

In Latin, moral means (plural, mores) refer to habit. The word moral refers to how a cultured society behaves. Whilst the word morality is a Latin adjective *moralist*, has the same meaning as moral, only there is a more abstract tone. The words morality and decency have the same meaning, thus in that sense, the emphasis is more on the use of morality, in light of the fact of its abstract nature. Morality is a moral trait or the totality of principles and values relating to good and bad [10].

There are a number of terms that are often used interchangeably to show the same meaning, the terms moral, character, character, ethics, character, and morality. In the big Indonesian dictionary, "moral" is defined as a generally accepted state of good and bad regarding actions, attitudes, obligations, character, and morals. The moral is defined as a mental condition that is revealed in the form of action as well. Therefore, morality means the teaching of decency [11].

Moral existence is closely related to humans and the pattern of human behaviour personally in life, both good and bad. A person who does not do bad will be considered moral, whilst someone who does bad will be considered immoral. In Islamic terminology, the meaning of morals can be equated with the notion of "morals", and in Indonesian, morals, and ethics mean the same as manners or decency [11] The moral which is equated with morality can be seen in the book *Sirah Nabawiyah* which tells about the Prophet Muhammad, which in the book describes the morals or character of Muhammad, such as eloquence, clarity of speech, gentleness, generosity, ability to control himself, likes to forgive when holding power, patient when pressured, always chooses easy things when faced with two choices, never takes revenge except in matters of religion, charitable, patriotic, brave, turns his eyes to those who are not *muhrim*, does not talk much, shy, fair, able to restrain himself, honest, trustworthy, not arrogant, consistent, caring, merciful, gentle, trustworthy, not evil [12]. In principle, morality or morality is related to individual actions or behaviour. In contrast to the law which covers general and talk about commands and prohibitions, right and wrong. In terms of its function, in drafting and enforcing laws and regulations, a moral person is needed. For this reason, the relationship between law and morals is very closely related, thus they cannot be separated. Law requires morals, otherwise, morals need law. Law without morals is tyranny, whilst morality without the law is anarchy and utopia that leads to animalism. Only law embraced by decency and rooted in decency can establish humanity [6].

Law by its nature is moral, which means that what is commanded or prohibited by law is moral as well. Nevertheless, what is prohibited by morals is not necessarily prohibited by law.

In relation to national law, the derivation is Pancasila. Where in the values of Pancasila there are justice, humanity, and tolerance which are part of morals. Nonetheless, law and morals are not the same. The relationship between law and morality can be described in several aspects [13].

- 1) Despite the fact that law and morality are different, in some important respects they have in common, for example having the same content, prohibiting killing and interfering with other people's property, both of which are considered important in the social order;
- 2) Law and morality have an important and even absolute relationship, in light of the fact that absolutes are only natural absolutes (*natural necessity*) is not a logical absolute. The important relations between law and morality can be seen from the following facts:
 - a. In fact, the law embodies moral ideals;
 - b. Morality and law have an independent relationship;
 - c. The law must embody moral values;
 - d. Moral values influence law;
 - e. The law is definitive, embodies morality,
 - f. From the facts about human nature and the world in which they live, the rule of law and morality have the same minimum.

Law and morals have similarities in regulating human actions. Law (written law) regulates human actions in accordance with applicable regulations, which are set by the state with the aim of prospering the community and providing protection and security. Whilst morals are the rules that regulate human actions regarding good and bad behaviour as well. The moral goal is to improve the quality of humans as human beings. The law means little if it is not imbued with morality. Without morality, the law will be empty. Therefore, in the aspect of forming or enforcing the law, law and morals must continue to pay attention to the dialogical relationship [13].

The application of legal and moral relations is not only carried out by judges but all related parties from all levels. In criminal cases, for example, investigators must pay attention to aspects of legal justice, social justice, and moral justice before the case is intensified. The family approach and mediation or known as the principle of restorative justice were attempted earlier. Such an approach is an alternative for resolving criminal cases, in which in the mechanism (criminal justice procedures) the focus of the crime is changed to a process of dialogue and mediation by involving parties including the perpetrator, victim, family of the perpetrator or victim, and other parties which is related. The aim is to conceive an agreement on the settlement of criminal cases and attain a fair and balanced legal decision for both the victim and the perpetrator. Restorative justice is based on the principle that law enforcement always prioritizes restoration to its original state and restores patterns of good relations in society.

3.2 Moral and Law Enforcement in Indonesia

Discussions on morals and law enforcement continues to grow among law observers, not only law scholars but also society in general. This is influenced due to the reason that law enforcement tends to overlooked morals, despite the fact that morality and law are interrelated and cannot be separated, as described previously. Law requires morals to influence legal products and law enforcement behaviour, whilst morals require the law to influence the good and bad views of society.

For this reason, in upholding the law, morals are needed as a guide in realizing the objectives of the law, namely legal certainty, expediency, and justice,[14] due to the fact that the essence of law enforcement is the process of realizing ideas about justice, legal certainty,

and social benefits into reality [15].

Thus far, people think that law enforcement in Indonesia has not achieved its legal objectives, in light of the fact that the perspective of law enforcement in Indonesia, most of them is still trapped in the influence of the Continental European legal tradition (*civil law*) colonial legacy, which is overshadowed by the paradigm of positivism and modern legal science [1] who views the law as only a text rule and is clean of morals. Whereas in the Indonesian context, law and morals cannot be separated.

There are a number of factors that make it difficult for legal objectives to be realized simultaneously, enclosing

1) Law

The law implemented is a law that cannot maintain a sense of justice, utility, and legal certainty.

2) Law enforcement (Advocates, Police, Prosecutors, and Judges)

The dominance of the positivism paradigm over law enforcement, where morals are overlooked due to the reason that the main reference is written law. Where written law is often formed after a legal event that has not been regulated.

3) Society in general

Lack of legal awareness for the community, therefore legal education is needed.

The three factors above are more or less the same as what was stated by Lawrence M. Friedman, which is widely known and has been published in many scientific papers. Lawrence stated that the effectiveness and success of law enforcement depend on three elements of the legal system, namely the legal structure (*structure of law*), legal substance (the *substance of the law*), and legal culture (*legal culture*).

Nevertheless, in the situation of law enforcement in Indonesia, the influence of the Continental European legal tradition (*civil law*) under the shadow of the positivism paradigm dominates law enforcement. Hence do not be surprised, in the event that there are indeed countless practices of using the law that have no conscience [16]. Law enforcement in Indonesia should implement the values of Pancasila. One example of a law enforcement process that practices the values of Pancasila is the process of resolving legal problems based on the customs of the local community. Traditional elders act as advisors, and mediators as well as a judge who judges and decides on the parties' disputes without going through a court, this is what is called a people's court [17].

In light of the fact that the case settlement process must be completed through the judiciary, it does not matter as long as law enforcers think progressively in enforcing the law, not sticking to written rules. Due to the fact that progressive legal thinking frees us from the way of law that has been accomplished thus far [17].

It should be noted that enforcing the law is not the same as implementing laws and procedures [9]. Therefore, law enforcement officers are not only mouthpieces of the law with the principle of *legal positivism only* but must think progressively. Law enforcement officers, particularly judges, have space to find the law of a case being investigated due to the reason the truth of the law cannot be interpreted solely as the truth of the law but must be understood as the truth of the principle of justice that underlies the law. Despite the fact that in the context of deciding a case by a judge, it is known as *contra legem* namely a mechanism that clearly contradicts the community's sense of justice as well, in light of the fact that the judge is expected to be the last bastion of all processes of law enforcement [18].

4 Conclusion

Legal and moral relations cannot be separated, both are interrelated and need each other. Law requires morals to influence legal products and law enforcement behaviour, whilst morals require the law to influence the good and bad views of society. Thus far, law enforcement in Indonesia is indeed influenced by the positivism paradigm, therefore they tend to overlook it moral. This is contrary to the values of Pancasila. Pancasila as a derivation of national law, it is appropriate that law enforcement officers must be moral in enforcing the law.

References

- [1] Sameko, F. A. (2011). Justice Versus Legal Procedures: A Critique of Modern Law. In *Scientific Oration in Context of Graduation of STHM Batch XIII* (p. 2).
- [2] Mas, M. (2011). *Introduction to Law*. Ghalia Indonesia.
- [3] Tanya, D. P. (2018). *Hubungan Hukum dan Moral*. Researchgate. <https://www.researchgate.net/project/Hubungan-Hukum-dan-Moral>
- [4] CKL, P., & Bello. (2014). The Relationship between Law and Morality According to HLA Hart. *44th Year Journal of Law and Development, July-Sept*(3), 5.
- [5] Wewo, J. A. (2019). Hukum Kodrat Dan Hukum Positif Dalam Mewujudkan Pemilihan Umum Kepala Daerah Serentak 2020 Yang Berintegritas. *Jatiswara*, 34(3), 250–259.
- [6] Djamil, F. (1997). *Filsafat Hukum Islam*. Logos Wacana Ilmu.
- [7] Ali, M. D. (2002). *Hukum Islam Pengantar Hukum Islam dan Tata Hukum Islam di Indonesia*. Jakarta: Raja Grafindo Persada.
- [8] Kansil, C. S. T. (1983). *Pengantar Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka Jakarta.
- [9] Rahardjo, S. (2007). *Let the Law Flow*. Jakarta: Kompas Media Nusantara.
- [10] As, A. (1992). *Introduction to Moral Studies*. Rajawali Press.
- [11] Tim Penyusunan Kamus Pusat dan Tim Pengembangan dan Pengembangan Bahasa Kementerian Pendidikan dan Kebudayaan. (1994). *Kamus Indonesia*. Balai Pustaka.
- [12] Al-Mubarakfuri, S. S. (2021). *Sirah Nabawiyah: Sejarah Hidup Nabi Muhammad*. UMM Qura. Article 1 UUD.
- [13] Rafiqi, I. D. (2020). *Hukum dan Moralitas: Sebuah Relasi dan Wacana Otentisitas dalam Konteks Keindonesiaan*. Isfdiscourse. <https://isfdiscourse.org/law-dan-moralitas-an-relasi-dan-wacana-autentisitas-%0Adalamkonteks-keindonesiaan/%0A>
- [14] Mertokusumo, S. (1999). *Mengenal Hukum Suatu Pengantar* (4th ed.). Liberty.
- [15] Rahardjo, S. (2000). *Studi Hukum*. Image of Aditya Bakti.
- [16] Warassih, E. (2017). *Pemikiran Hukum Spiritual Pluralistik*. Thafa Media.
- [17] Rahardjo, S. (2010). *Penegakan hukum progresif*. Penerbit Buku Kompas.
- [18] Hilman, D., & Ratnawaty, L. (2017). Membangun Moral Berkeadilan Dalam Penegakan Hukum Di Indonesia. *YUSTISI*, 4(1), 59.