



ISSN 2809-672X (Online)
IUS POSITUM (Journal of Law Theory and Law Enforcement)

<https://journal.jfpublisher.com/index.php/jlte>

Vol. 3 Issue. 1, January 2024

doi.org/10.56943/jlte.v3i1.468

Understanding Law Enforcement in the Perspective of Expediency and Justice

Dr. Yahman

yahman@ubhara.ac.id

Universitas Bhayangkara Surabaya

ABSTRACT

The fundamental concept of law enforcement is to maintain order by maintaining the values of society with the norms outlined in the rule of law. This research aims to identify the rules and norms of law enforcement in Indonesia. This is normative juridical research combined with statutory and conceptual approaches. Based on the research results, it is concluded that from the subject perspective, law enforcement is defined as a particular law enforcement institution's attempt to assure and ascertain that legal rules are implemented properly. Meanwhile, in terms of its object, law enforcement concerns the enforcement of formal written regulations. Furthermore, in implementing their tasks and authorities, legal authorities not only use certainty, but also equity and utility. In the perspective of the expediency approach, law enforcement officials use progressive positivism instruments, such as restorative justice as a method of legal resolution.

Keywords: *Expediency, Justice, Law Enforcement, Indonesia*

INTRODUCTION

Currently, the constitution of Indonesia is a legal state as stipulated in Article 1, Paragraph 3 of the 1945 Constitution. The concept of the rule of law refers to the term *rechtsstaat* in the heritage of the scientific legal tradition. In a global context, there are two principal concepts regarding the rule of law, including *Rechtsstaat* in the Continental European tradition and Rule of Law in the Anglo Saxon tradition. From a historic perspective, the former Dutch colony of Indonesia was supposed to adopt the Continental European system.

The legal state concept of Indonesia is distinguished from the legal state and *rechtsstaat* conceptions. This can be observed from the philosophical basis, the nature of sovereignty, the powers of state organs, and human rights. There are at least six main structural elements of a democratic Indonesia, such as Pancasila; legal supremacy; democracy; limitation and dispersal of state power; independent and free judicial authorities; and human rights protection. Thus, Indonesia is a democratic country governed by Pancasila, and all forms of state and societal action must be based on the law.¹

The role of law enforcement agencies is necessary through state institutions such as the police, prosecutors, judicial bodies, and advocates. In addition to these official institutions, Customs and Border Administration, Tax Administration, and Immigration Administration were also established to assist the implementation of law enforcement.² Besides that, there is the role of the community as law enforcers which is not regulated in the laws and regulations.

In the judicial system, judges play an important role as judicial officials. Decisions made by judges should be respected and considered correct according to the principle of *res judicata pro veritate habetur*, which means that judges' decisions must be upheld. The purpose of a judge's decision should be to achieve legal certainty, justice, and expediency. Unfortunately, judicial decisions are often controversial and unable to resolve problems, instead triggering new controversies in society. In accordance with legal objectives, law enforcement aims to ensure certainty, equity, and value for the public. Conceptually, law enforcement involves harmonizing the norms in the law with the values embraced by society. This is necessary to maintain and sustain order in society.³

In this research, the author focuses on law enforcement objectives related to the expediency. The author observes that the principle of expediency is in the midst of certainty and justice. This can be more understandable as legal certainty

¹ Putra Kaslin Hutabarat, "Legal Philosophy in Constructing the Pancasila Legal System in Indonesia," *Jurnal of Etika Demokrasi* 7, no. 2 (2022): 297–307.

² Naufal Akbar Kusuma Hadi, "Penegakan Hukum Di Indonesia Dilihat Dari Perspektif Sosiologi Hukum," *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 2 (December 29, 2022): 227, <https://doi.org/10.20961/hpe.v10i2.62834>.

³ Moch. Muslihuddin and Yahman, "Law Enforcement Against Health Protocol Covid-19 Violations In Indonesia (Case Study Decision Number: 173/PID.SUS/2021/PT.DKI)," *IUS POSITUM: Journal of Law Theory and Enforcement* 1, no. 3 (2022): 62–71.

involves written norms, which are expected to ensure justice in society. However, discussing how these norms provide benefits to society can be a long discussion. It is important to remember that laws are established to protect the interests of society, as that is the main purpose of the existence of law.

RESEARCH METHODOLOGY

This is a normative juridical research, in order to determine the principles, norms or *das sollen* of law enforcement in Indonesia. The approach method used in this research is statutory and conceptual approach to identify law enforcement in the perspective of expediency. Since this is a normative juridical research, it is necessary to provide legal materials. Legal materials are authorized documents consisting of all legal publications such as regulations, government decrees, textbooks, legal dictionaries, journals, and commentaries on judicial decisions.⁴

This research's primary legal materials included legislation consisting of the 1945 Constitution, Law No. 8/1981 regarding penal procedure, Law No. 48/2009 regarding judicial authorities, Law No. 2/2002 regarding the Indonesian National Police, Law No. 16/2004 regarding the State Attorney's Office of Indonesia, Law No. 11/2011 regarding amendments to Law No. 16/2004 concerning the State Attorney's Office of Indonesia, and other legislation and court decisions that have permanent legal effect that are relevant to the research topic. Meanwhile, there are also secondary legal materials which consist of articles, journals, theses, dissertations, books, and experts' opinions.⁵ While tertiary legal materials to support other legal materials in the form of online sources such as legal websites and news portals.

RESULT AND DISCUSSION

Law Enforcement

Law enforcement is an attempt to actualize legal ideologies and constructs that are expected by communities into actuality. It is a process that involves several factors.⁶ Furthermore, law enforcement is a harmonizing activity between values that are described in regulations as the last step of elaboration of values to create, maintain, and preserve the harmony of life. However, In Raharjo's perspective, law enforcement is the enforcement of ideas or concepts about equity, fairness, social expediency, and so on. Therefore, law enforcement is an attempt to actualize these thoughts and concepts into community real life. Meanwhile, Juwono argued that the function of law enforcement in Indonesia is executed by

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 13 (Jakarta: Kencana, 2017).

⁵ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2015).

⁶ Indah Sri Utari and Ridwan Arifin, "Law Enforcement and Legal Reform in Indonesia and Global Context: How the Law Responds to Community Development?," *Journal of Law and Legal Reform* 1, no. 1 (October 31, 2019): 1–4, <https://doi.org/10.15294/jllr.v1i1.35772>.

the police, prosecutors, judicial authorities, and advocates. In addition to these institutions, there is a Customs Administrations, Tax Administrations, and Immigration Administrations that are established to facilitate law enforcement in Indonesia.⁷ There are two categories of law enforcement concepts, such following below:

a. Subject matter

When a person whether conducts or not a legal deed that is based on applicable legal norms, it means that he or she is implementing legal rules. However, legal principles can only be understood as an attempt to ensure that legal rules are implemented as intended by a particular law enforcement personnel.

b. Object matter

Generally, legal principles consist of principles or aspects of equity, certainty and expediency within the law-enforcement community. However, law enforceability only involves the enforcement of official and prescribed regulations only.

Law Enforcement Officials

1. Judges⁸

Judges are the only profession in the world that gets the title Your Honor. This honor is assigned for the ability of judges to admit, review, and determine the cases. When deciding, judges are required to say “For the sake of justice based on God Almighty.” This mention is one of the reasons why judges are often referred to as God’s representatives. Judges should be able to make decisions by considering three crucial things, which are justice (*gerechtigheit*), certainty (*rechsecherheit*), and expediency (*zwachmatigheit*) in order to increase the quality of judges’ verdicts and the professionalism of judicial institutions.⁹

2. Prosecutors¹⁰

The position of prosecutors as law enforcers is regulated in several laws and regulations, these include Law No. 8/1981 concerning Criminal Procedure; Law No. 16/2004 concerning the Public Prosecution Service; Law No. 11/2021 amending Law No. 16/2004 concerning the Public Prosecution Service. The understanding of prosecutors as legal defenders is derived from their role in the judicial process as public

⁷ Hadi, “Penegakan Hukum Di Indonesia Dilihat Dari Perspektif Sosiologi Hukum.”

⁸ Hadi.

⁹ Adeng Septi Irawan, “Enlightened Judges A Strategy to Realize World Class Modern Judiciary,” Mahkamah Agung Republik Indonesia Pengadilan Agama Sukamara, 2022, <https://pa-sukamara.go.id/berita/artikel/951-enlightened-judges-a-strategy-to-realize-world-class-modern-judiciary>.

¹⁰ Pemerintah Pusat Indonesia, “Undang-Undang Nomor 11 Tahun 2021 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia, Pasal 1 Angka 1” (Jakarta, 2021).

prosecutors who prosecute by prosecuting files received from investigators.

3. Police¹¹

There are various departments of the police with their own duties and roles. Within a judicial terms, the department of police involved is the investigator. The investigators' role is to investigate and obtain the necessary evidence to assist in identifying criminal offenses and finding the perpetrators. Regarding law enforcement in the traffic aspect, the traffic division is stipulated under Law No. 22/2009 regarding road traffic and transportation. This law regulates law enforcement against the drivers. In the field of criminal prosecution, police officers from the Criminal Investigation Agency are involved. There are also other departments within the police force that serve a law enforcement function.

In implementing law enforcement, it must be guided by legal supremacy as stated in the 1945 Constitution Article 1 Paragraph 3 that Indonesia is a legal nation, which is not limited to the conceptions of legal constitutional and *rechtsstaat*. The rule of law basically has the principle of legal certainty, which means that legal rules must be issued and announced in an understandable and logical manner. This is intended to prevent doubts or conflicts of interpretation, so that there is no conflict between norms. According to Utrecht, legal certainty serves two purposes: first, general rules provide guidance for individuals on permitted or prohibited acts; second, general rules provide legal protection for individuals from arbitrary government actions, as they define both the legal system and legal certainty. They explain all that the state can demand or do against individuals. The general characterized of legal states means that the law does not aim to accomplish equity or benefit, but instead is concerned with the establishment of legal certainty.

Apart from legal certainty, there is another aspect of law called legal justice. The purpose of law is to organize life together peacefully, especially if the rules are fair. This implies that the rules are fair and protect everyone's interests. Rahardjo argues that the concept of equity involves the values of balance between rights and obligations. In addition, Wantu asserts that equity is basically the act of simply assigning all things to their proper place and giving everyone their rights, based on the principle that all people are equal before the law.

Legal expediency is an underlying basis that complements equity and reliability of the law. When applying legal certainty and justice, it is necessary to also consider the principle of expediency. For instance, in imposing the death

¹¹ Sekretaris Negara Republik Indonesia, "Undang-Undang (UU) Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia" (Jakarta, 2002), <https://peraturan.bpk.go.id/Details/44418/uu-no-2-tahun-2002>.

penalty on a person who commits murder, consider whether this punishment is beneficial to the defendant and the community. If capital punishment is deemed more beneficial to the public, it should be handed the death penalty.

Law is a set of rules established to govern human behavior in order to run smoothly, harmlessly, and fairly. As with any other knowledge, laws do not simply emerge out of thin air. Laws are based on human communication to prevent or overcome potential negatives in human behavior. Although the law is supposed to be obeyed, its ultimate goal is to deliver justice.

Laws may be imperfect and injustice, but as long as they are in place, they must be respected and obeyed. Breaking the law destroys respect for the law and the rules themselves. Therefore, the expediency of the law needs to be considered, so that the implementation of law enforcement benefits everyone without causing restlessness in society. Although the rule of law is occasionally unideal and incompatible with people's lives, the ratio between benefits and sacrifices must be proportional in law enforcement.

The principle of legal expediency is the foundation that supports justice and legal certainty. In law enforcement by the authorities, the use of restorative justice approaches can be a way for them to resolve criminal offenses. Thus, this principle allows law enforcement agencies to perform their duties and functions more effectively. Marshall describes restorative justice as a process where everyone involved in a specific offense is gathered to determine for themselves and the community on a particular issue the long-term consequences and effects of the offense.¹²

Restorative justice, as explained by Abdurrahman, is a manner of solving crimes by repairing the harm to the victim, rather than merely imposing punitive measures. The central principles of restorative justice are aimed at restoring the proper relationship between offender and victim, considering victims' suffering.¹³ Restorative justice is a solution where the main focus is on the interests of the victim in resolving a legal issue. In this approach, case resolution involves efforts to improve the victim's condition and provide forgiveness, which are the determining factors. It also recognizes the specific circumstances of the offender as an important consideration in resolving the case.

Legal implementation with the restorative justice approach in law enforcement can be conducted by the police and the prosecutor's office. In implementing restorative justice principles in the police, before a person is considered a suspect in a criminal offense, investigators must present at least two legitimate pieces of evidence, as stipulated in Criminal Law Procedure. Therefore,

¹² Yusi Amdani, "Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Oleh Anak Berbasis Hukum Islam Dan Adat Aceh," *Al- 'Adalah* 13, no. 1 (2016): 61–76, <https://media.neliti.com/media/publications/56839-ID-konsep-restorative-justice-dalam-penyele.pdf>.

¹³ Hamidah Abdurrahman, "Restorative Justice Versi Polisi," *Kompas.com*, 2022, <https://nasional.kompas.com/read/2022/11/09/13102661/restorative-justice-versi-polisi>.

the person who is reported and then deemed as a suspect can be examined and tried in court. In court, it will be determined whether the person is guilty or innocent. In the handling of cases by investigators or police, if they apply the Restorative Justice approach as part of the development of Progressive Positivism Theory, then the victim and suspect can resolve the problem through consolidation without involving the court process. In this case, the Investigator or Police act as a mediator, in order to restore good relations between the perpetrator and the victim by paying attention to the suffering experienced by the victim.¹⁴

The Prosecution has a distinctive feature that is a development of the restorative justice concept, with the aim of harmonizing the rehabilitative value and rehabilitating the offender. In the restorative justice approach adopted by the Public Prosecution Service, the focus is on balancing the recovery of victims and the rehabilitation of offenders, resulting in justice and improved conditions for all parties involved. This aims to achieve equity in appropriate with the expectations of society and avoid law enforcement that does not provide any benefits.

The aspect of expediency is not only found in prosecutor's role as a law officer. The aspect of expediency is also present in consideration of judges in deciding a case based on the aspects of legal certainty and justice. This aspect can be identified in the case of an elderly woman from Banyumas named Mrs. Minah who was accused of stealing 3 cocoa pods from the Rumpun Sari Antan (RSA) Plantation.¹⁵ The case began when Mrs. Minah found 3 cocoa pods in the plantation where she worked. The 55-year-old woman intended to pick the cocoa pods to sow as seeds on her cultivated land. Then, she placed the cocoa under the tree mentioned. Shortly afterwards, the plantation's cocoa foreman confronted her about the three cocoa pods that were lying under the tree. Despite her actions, Mrs. Minah confessed and apologized to the foreman and handed back the three cocoa pods. Later that week, she received a letter summoning her to the police on suspicion of theft.¹⁶

The investigation continued until the case finally proceeded to the Purwokerto District Court. During the trial, Mrs. Minah was widely reported by various media since she was not provided with legal assistance and ended up being charged with theft (Article 362 of the Criminal Code) of 3 cocoa pods weighing 3 kilograms with a calculated price of IDR 2,000 per kilogram. As a result, the judges of Purwokerto District Court sentenced Ms. Minah to 1 month and 15 days with 3 months probation. The trial of Case No. 247/PID.B/2009/PN.Pwt was widely discussed and caught the public's attention because it was a relatively minor case that was processed through the courts. It got

¹⁴ Abdurrachman.

¹⁵ Fikrotul Jadidah, "Kasus Nenek Minah Ditinjau Dari Perpektif Teori Hukum Positivisme," *IBLAM LAW REVIEW* 2, no. 3 (September 30, 2022): 129–42, <https://doi.org/10.52249/ilr.v2i3.98>.

¹⁶ Ady Anugraha, "Ini Kasus Nenek Minah Yang Disinggung Calon Kapolri Listyo Sigit Prabowo," *Liputan 6*, 2021, <https://www.liputan6.com/news/read/4463927/ini-kasus-nenek-minah-yang-disinggung-calon-kapolri-listyo-sigit-prabowo>.

to the point that the Chief Justice shed tears when reading out the woman's verdict. Based on this court case, issuance of Supreme Court Regulation No. 2/2012 concerning Amendment of Minor Crime Limits and Fines in the Criminal Code relating to Minor Crimes.¹⁷

CONCLUSION

Indonesia adheres to a legal system that is not limited to legal state and *rechtsstaat* concepts. The use of law as a state institution also requires the role of law enforcement agencies to ensure the implementation of the law. The concept of law enforcement in view is distinguished into two. from the subject perspective, law enforcement is defined as a particular law enforcement institution's attempt to assure and ascertain that legal rules are implemented properly. Meanwhile, in terms of its object, law enforcement concerns the enforcement of formal written regulations

Law enforcement agencies are comprised of judges, prosecutors, and police which are stipulated throughout several Indonesian legislations. The law enforcement agencies adopt several approaches in order to execute their tasks and responsibilities. In the aspect of expediency, the approach taken by law enforcers includes the principles of justice and legal certainty. Meanwhile, one of the expediency approaches implemented within the legal system can involve resolving cases using restorative justice as a settlement method.

REFERENCES

- Abdurrachman, Hamidah. "Restorative Justice Versi Polisi." Kompas.com, 2022. <https://nasional.kompas.com/read/2022/11/09/13102661/restorative-justice-versi-polisi>.
- Amdani, Yusi. "Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Oleh Anak Berbasis Hukum Islam Dan Adat Aceh." *Al-Adalah* 13, no. 1 (2016): 61–76. <https://media.neliti.com/media/publications/56839-ID-konsep-restorative-justice-dalam-penyele.pdf>.
- Anugrahadi, Ady. "Ini Kasus Nenek Minah Yang Disinggung Calon Kapolri Listyo Sigit Prabowo." *Liputan* 6, 2021. <https://www.liputan6.com/news/read/4463927/ini-kasus-nenek-minah-yang-disinggung-calon-kapolri-listyo-sigit-prabowo>.
- Fachri, Ferinda K. "Kasus Nenek Minah, Pembuka Fenomena Penerapan Restorative Justice." *hukumonline.com*, 2023. <https://www.hukumonline.com/berita/a/kasus-nenek-minah--pembuka>

¹⁷ Ferinda K. Fachri, "Kasus Nenek Minah, Pembuka Fenomena Penerapan Restorative Justice," *hukumonline.com*, 2023, <https://www.hukumonline.com/berita/a/kasus-nenek-minah--pembuka-fenomena-penerapan-restorative-justice-lt64ad8fa40c796/>.

fenomena-penerapan-restorative-justice-lt64ad8fa40c796/.

Hadi, Naufal Akbar Kusuma. "Penegakan Hukum Di Indonesia Dilihat Dari Perspektif Sosiologi Hukum." *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 2 (December 29, 2022): 227. <https://doi.org/10.20961/hpe.v10i2.62834>.

Hutabarat, Putra Kaslin. "Legal Philosophy in Constructing the Pancasila Legal System in Indonesia." *Jurnal of Etika Demokrasi* 7, no. 2 (2022): 297–307.

Ibrahim, Johnny. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2015.

Indonesia, Pemerintah Pusat. "Undang-Undang (UU) Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana." Jakarta, 1981.

———. "Undang-Undang Nomor 11 Tahun 2021 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia, Pasal 1 Angka 1." Jakarta, 2021.

Indonesia, Sekretaris Negara Republik. "Undang-Undang (UU) Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia." Jakarta, 2002. <https://peraturan.bpk.go.id/Details/44418/uu-no-2-tahun-2002>.

Irawan, Adeng Septi. "Enlightened Judges A Strategy to Realize World Class Modern Judiciary." Mahkamah Agung Republik Indonesia Pengadilan Agama Sukamara, 2022. <https://pa-sukamara.go.id/berita/artikel/951-enlightened-judges-a-strategy-to-realize-world-class-modern-judiciary>.

Jadidah, Fikrotul. "Kasus Nenek Minah Ditinjau Dari Perpektif Teori Hukum Positivisme." *IBLAM LAW REVIEW* 2, no. 3 (September 30, 2022): 129–42. <https://doi.org/10.52249/ilr.v2i3.98>.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Cet 13. Jakarta: Kencana, 2017.

Mubarok, Nafi'. "Penemuan Hukum Sebagai Pertimbangan Sosiologis Hakim Agama Dalam Menerapkan Hukum." *Al-Qanun* 17, no. 2 (2014): 369–402.

Muslihuddin, Moch., and Yahman. "Law Enforcement Against Health Protocol Covid-19 Violations In Indonesia (Case Study Decision Number: 173/PID.SUS/2021/PT.DKI)." *IUS POSITUM: Journal of Law Theory and Enforcement* 1, no. 3 (2022): 62–71.

Utari, Indah Sri, and Ridwan Arifin. "Law Enforcement and Legal Reform in Indonesia and Global Context: How the Law Responds to Community Development?" *Journal of Law and Legal Reform* 1, no. 1 (October 31, 2019): 1–4. <https://doi.org/10.15294/jllr.v1i1.35772>.