



ISSN 2827-8151 (Online)

SRAWUNG (Journal of Social Sciences and Humanities)

<https://journal.ifpublisher.com/index.php/jssh>

Vol. 3, Issue. 1, (2024)

doi.org/10.56943/jssh.v3i1.469

Criminal Law Enforcement through the Perspective of Community Justice: Theoretical Analysis and Practical Implementation

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ABSTRACT

The enforcement of law in Indonesia has become less equitable these days. Law enforcement tends to ignore justice, whereas justice should be a basic and legal reality. The judiciary as the main institution in law enforcement will lose its function when the law is perceived as an institution that can be manipulated, commercialized, and some legal experts have referred to it as the territory of the jurisdictional mafia. The jurisdictional mafia protects itself by referring to legal supremacy. However, in order to achieve the rule of law, justice and utility are compromised. This research aims to identify the theoretical analysis and practical implementation of criminal law enforcement through the perspective of community justice. This research used normative methods, with a conceptual and statutory approach. The result indicated that there is a crisis in the implementation of justice, especially in the implementation of law enforcement, due to the existence of an invalid paradigm among those who enforce the law. In addition, the law enforcement officials, especially judges, tend only implement the law in a literal manner. Furthermore, law enforcement apparatus has not completely comprehended that the main purpose of equitable law enforcement is to create law to realize human welfare and harmony.

Keywords: *Justice, Law Enforcement, Society*

INTRODUCTION

Nowadays, Indonesia is going through multiple issues, one of them is trust issues of law enforcement. Law enforcement prioritizes legal certainty (*rechtssicherheit*) by ignoring aspects of justice (*gerechtigkeid*); and legal expediency (*zweckmassigkeit*) for the public (Zulfadli et al., 2016). The adage stated that the objective of law is the realization of justice in the 21st century development context has changed. Contemporary nationalism, which emphasizes the power of reason, apparently has not satisfied human comprehension on the meaning and significance of justice (*rechtsvaardigheid*) in the dynamics of legal development in society. It becomes clear that laws or regulations, especially in their implementation, should prioritize justice (*rechtsvaardig*). However, the reality is the occurrence of injustice. Although law should be closely related to the concept of justice (*iustitia* in Latin), the concept has not been fully realized in practice among law enforcement officials (Prasetijo Rijadi, 2018).

Besides the crisis in law enforcement, there is a tendency towards disregard for the law which has led to a lack of respect and trust from the public towards the legal system. Some examples of people's perceived distrust of the law involve:

1. Legal instruments that are perceived as not reflecting social justice cause people to argue that both legislative and executive products do not fully represent the principles of social justice.
2. The lack of self-reliance and impartiality of the judiciary has led to doubts about the fairness of the judicial process.
3. Inconsistent and discriminatory law enforcement, there are inconsistencies and discrimination on the law enforcement that make people doubt the sustainability and justice in handling cases.
4. Legal protection that has not satisfied the community, the community perceives that the legal protection provided has not reached a satisfactory level because their needs and rights have not been fully guaranteed.

All of these together create a pervasive distrust in society towards the effectiveness and fairness of the legal system, negatively impacting the integrity and sustainability of law enforcement in Indonesia (Umam, 2021). Hence, they are considered as an institution that has not functioned optimally, especially when implemented by its apparatuses. There is still a tendency to enforce the law only from the perspective of legal certainty, ignoring justice values and human benefits. Law enforcement that is only based on legal certainty actually leads to the law losing its true meaning, as a system that should provide justice, benefits, happiness, and ensure the fulfillment of human rights. Implementation that only focuses on legal certainty can cause an imbalance for the public's perception of the actual legal system's purpose. Therefore, it requires a paradigm shift in law

enforcement to ensure that aspects of justice, benefits, and protection of human rights also receive full and proper attention.

However, the substance and core of law is justice, which is justice that applies to many people. Judicial authorities, especially judges, should be able to understand the implicit morale values of each legislation, for example, the expectation of justice by justice seekers (*iustitiabelen*) and the public. Rahardjo stated that there is no eternal law because the law is only a definite formulation, while it must be handled by an ever-changing life. Law focused on these statements will be outdated from the changes in society, and the law needs to control these changes. This phenomenon is known as *het recht hinkt achter de feiten aan* which can be interpreted as the law lagging behind the factual developments in society (Mahawijaya et al., 2023). Many cases of corruption, collusion and nepotism in Indonesia that cannot be resolved thoroughly indicate the inability of law, and it even has the impression that the law has no courage and is in the supremacy of the authorities. In general, there is a legal crisis in Indonesia. The crisis also includes the phenomenon where law is being traded, and even used as a business, giving the assumption that justice only belongs to certain groups, hence the term “justice (not) for all.” The term “not” reflects that in reality, justice does not always prevail for everyone, even though the principle states that “justice for all.”

LITERATURE REVIEW

Theory of Justice

The justice issues are always an interesting and never-ending problem to be discussed. All legal problems cannot be separated from the times and the demands of society on the basis of various interests. The justice issue will certainly be a different issue in a traditional agrarian society with a modern industrialized society. The consequence is that formulating justice is difficult to apply globally. According to Aristotle, justice is a virtue related to human relations (Arthur, 2019). Whereas, according to Plato, justice is incomprehensible to ordinary human beings (Nurhayati et al., 2023). The development of unfairness through community changes. Aristotle stated that justice is distinguished between “distributive” justice and “corrective” or “remedial” justice, which is fundamental to all theoretical discourses of its subjects (Arthur, 2019).

Distributional equity relates to people’s equitable distribution of social goods and services based on their social position, and their equal treatment before the rule of law. Aristotle in *Niconzachea*, he considers that justice between the disputants is a fundamental requirement for an honorable policy life. He categorized into three kinds of justice, such as distributive, restorative, and commutative. The commutative equity principle regulates transactions between those concerned in exchanges or trades. For instance, first, there is comparative equality between the goods being exchanged, and second, there is comparability;

everything exchanged must be comparable. Therefore, money is used, and becomes an intermediary (Sugiharto, 2019). Aristotle stated that justice is defined as “treating equals equally and unequals unequally, in proportion to their inequality.”

In general, the term of justice (*iustitia*) comes from the term “fair” which means not one-sided, impartial, on the right side, appropriate, not arbitrary. Based on several definitions, it can be interpreted that the definition of justice is all matters relating to attitudes and justice demands that people handle each other as their rights and obligations dictate, such treatment is not indiscriminate or preferential; instead, all people are treated the same way in accordance with their rights and obligations. Roscoe Pound stated that justice is defined as the concrete results that it provides to society. He considered that the result should be satisfaction of as many human needs as possible at the least possible sacrifice. The theory of justice based on *Arsitoteles* as stated by Theo Huijbers is as follows:

1. Justice in the distribution of public positions and property. There is geometric similarity applicable here. For example, a regent's position is twice as important as the sub-district head, then the regent must get twice as much honor as the sub-district head.
2. Justice in trading. According to him, the price of goods depends on the position of the parties.
3. Justice as arithmetical equality in private and public spheres. For example, if someone steals, then he must be punished, regardless of the position of the person concerned. Nowadays, if an official is deemed to be corrupt, he should be punished regardless of his position.
4. Justice in legal interpretation. Since the law is universal, excluding all conclusive matters, the judge must interpret it as if he or she were engaged in a specific case. According to Aristotle, the judge must have *epikeia*, which is defined as the feeling of propriety (Santoso, 2014).

John Rawls defined justice as fairness (Fanton, 2020). His opinion is based on the social contract theory of Locke and Rousseau, and the deontological teachings of Immanuel Kant. Some of those statements on justice such following below:

1. Equitable justice is also the outcome of equitable options. According to Rawls, people cannot know their actual position in society, their goals and life plans, or whether they belong to the community and generation (the veil of ignorance). Therefore, people choose the principle of equality because of this aspect of their lives.
2. Justice as fairness results in pure procedural justice. There are no standards to determine the fairness of a procedure apart from the

procedures themselves. Justice is derived not from its result, but from the system (or the process) itself.

3. There are two principles of justice. The first is the principle of equal freedom. It involves (1) freedom of political engagement (right to vote, right to stand for election); (2) freedom of speech (including freedom of the press); (3) freedom of opinion (including religious belief); (4) freedom to be oneself; and (5) the right to defend personal property (Lingga & Jebaru, 2023).

The second principle consists of two components, which are (1) the difference principle; and (2) the principle of fair equality of opportunity. The main of first principle is that social and economic distinctions should be organized to provide the most benefit to those most disadvantaged. The term socio-economic distinctions within the distinction principle focuses on inequalities in human prospects for the basic constituents of well-being, earnings, and potential power.

Theory of Legal State

According to Plato, the ideology of state of law comes from the state of a country led by a person who is obsessed with wealth, power and honor; the government behaves arbitrarily and has no regard for the misery of its people. Plato's concept contains a state that is free from greedy and evil state leaders, so that justice can be respected (Eveleth, 2022). The common meaning of the rule of law is that the powers of a state are controlled by law, which implies that all attitudes, behaviors, and actions, whether by government employees or civilians, should be law-based. In European legislation, the term Rule of law or Government of Justice is used to state that a country is a state of law. Both of these terms do not include the word state but the terms of the rule of law are linked to the notion of power or government (Waldron, 2023). Moh. Yamin defined the state of law (*rechtstaat*) or government of law as the power of government only based on and derived from the law and not based on the authority of weapons, arbitrary power, or the belief that the power of the body can decide all disputes in the State. According to A.V. Dicey, there are three elements of the rule of law, such following below:

1. Supremacy of Law

Supremacy of law is the normative and empirical acknowledgement of this principle of law, which means that all issues are resolved with the law as the ultimate guide (Jumadi, 2019). Under the legal perspective, the ultimate state leader is not a humans, but instead a constitution as the highest law. Normative assertion of a legal state is realized through legal regulations. Meanwhile, empathic assertion of legal supremacy is realized in the behavior of some of the people that the law is actually indeed supreme, even in a republic that

adheres to a pure precedential nature, the constitution is actually more appropriate as the head of state. Therefore, the presidential system of government has no difference between the head of state and the head of government in parliamentary system.

2. Equality under The Law

Equality under the law is defined as the equality of everyone's position in law and government, which is recognized both normatively and empirically. The principle of equality means that all discriminatory attitudes and behaviors are recognized as prohibited, except those specific attitudes and behaviors. Meanwhile, affirmative action is used to encourage and accelerate certain groups of people to achieve an equal level of development with more advanced societies.

3. Due Process of Law

Every country that has adopted legal principles, the principle of legality (Due Process of Law) is required in all legal administrative actions that must be valid and clearly written laws and regulations. Therefore, legislations must be valid and must precede such legislative regulations. Therefore, every administrative act or procedural of a state officer must be based on rules and procedures.

The Indonesian state legislature is a legal state (Rechtsstaat), not a powerful state (Machtsstaat). They contain recognition of the supremacy of law and the constitution, the principle of separating and limiting authorities under the constitutional system regulated in the constitution, the guarantee of human rights in the constitution, the principle of independent and dispartionate judiciary that ensures the equality of every citizen under the law, and guarantees justice for everyone, including the misuse of authority by the authorities (Asshiddiqie, 2019).

Legal Enforcement Theory

Goldstein divides criminal law enforcement into 3 types, such following below:

1. Total enforcement, it refers to comprehensive enforcement as defined by the substantive criminal law. Total enforcement is impossible because law enforcers are constrained by criminal procedural law, such as the norms of arbitration, arrest, imprisonment, confiscation, and preliminary examination. Substantive criminal law provides limitations such as the need for prior complaint as a condition for prosecution in complaining delicts (klacht delicten). This limited scope is referred to the area of no enforcement.
2. Full enforcement, after the entire scope of criminal law enforcement is reduced to a non-enforcement area, it is possible for law enforcers to optimize legal enforcement.

3. Actual law enforcement, Joseph Goldstein stated that it is not a realistic expectation because of its limitations on time, human resources, investigative tools, and others. Everything leads to the need for discretion and the rest is called actual law enforcement.
4. Criminal law enforcement is a systemic process that must appear as criminal law implementation which involves several structural sub-systems such as police officers, prosecutors, courts, correctional institutions and legal constitutions, the implementation of law must be interpreted from three dimensions.

The required instruments used during law enforcement which include legal structure, legal substance, and legal culture are described such following below:

1. The legal enforcement is considered as a normative system, that is, implementing each legal rule that describes social values that are supported by criminal sanctions.
2. The implementation of law is perceived as an administrative system that includes interactions between law enforcement officials who are sub-systems of the judiciary.
3. The implementation of law as a social system, which means that criminal offenses should also be considered through thinking perspectives of the society.

Legal Protection Theory

Legal protection as one of legal functions, where the concept of law can provide justice, discipline, assurance, expediency and balance. There are some statements submitted by several experts on legal protection, such following below:

1. According to Raharjo (2014), legal protection means protection of human rights that are infringed by others and this protection is provided to society in order for them to obtain all the rights guaranteed by law.
2. According to Mandjo & Sarson (2021), legal protection is defined as legal actions to protect the community from arbitrary actions of government authorities that are not in accordance with legal principles, in order to create public interest and stability so as to enable human beings to achieve their dignity as human beings.
3. According to Njoto (2023), legal protection is defined as an activity to protect people through harmonizing the relationship of values or rules that are manifested in attitudes and actions in organizing discipline in the association of life among human beings.
4. According to Philipus M Hadjon (2019), law is associated with authority. There are two types of authority, which are governmental

authority and economic authority. Concerning governmental authority, the issue of legal protection for the people (the governed), against the government (ruler). Meanwhile, regarding economic authority, the issue of legal protection is the protection of the weak (economy) against the strong (economy), for example protection for employees against entrepreneurs.

RESEARCH METHODOLOGY

This research used normative research combined with statistical and conceptual approaches. Normative research is a form of research that aims to set standards or norms for a specific behavior or outcome (Efendi, Jonaedi & Ibrahim, 2016). Meanwhile, the statutory approach is a method that is often used in a legal research to analyze and interpret statutory provisions (Poespasari et al., 2023). It involves examining the relevant statutory provisions related to the legal issues being studied. On the other hand, conceptual approach is a theoretical framework or process for analyzing and resolving legal issues (Dwi & Efendi, 2023). It involves developing concepts, principles, and models that will serve as the foundation for future research and practice.

RESULT AND DISCUSSION

Equitable Law Enforcement

One of the demands of reform is the realization of law enforcement that is consistent and not co-opted by authority. Law enforcement does not only occur during the implementation of law (law enforcement), but can also begin at the formulation or lawmaking phase. According to Raharjo (2014), law enforcement is an attempt to actualize legal thoughts and concretes into deeds. On the other hand, law enforcement is an attempt to transform legal intentions into truth. These legal intentions are the legislative thoughts formulated into legal regulations. Thus, law enforcement is not only a response to law violations, but also an implementation of the ideas and concepts contained in the law. Law enforcement efforts should be part of legal implementation that should be aligned with public legal awareness. Community legal conscience is highly affected by their justice system.

In this case, law enforcement should consider the aspects that affect law enforcement efforts, such following below:

1. Legal Material (Legislation)
Determine that laws are implemented in accordance with applicable regulations and laws.
2. Law Enforcement Apparatus (Judges, Prosecutors, Police, Advocates, and Correctional Institutions)

Assess the quality and integrity of law enforcement officials, such as judges, prosecutors, police, advocates, and correctional institutions.

3. Legal Facilities and Infrastructure

Ensure the availability and quality of facilities and infrastructure that support law enforcement, such as courtrooms, investigation facilities, and correctional institutions.

4. Legal Culture

Understanding and responding to the legal culture of the community in the application of law. It includes the values, norms and attitudes of the community towards law and justice.

Furthermore, considering these aspects, law enforcement can be more effective and recognized by the community as a equitable process that is in accordance with their needs and values (Republik Indonesia, 2019). Legal culture implicates the legal ideals of society, public legal awareness, and the professional ethics of law enforcement officials. The realization of public order is highly depend on the existence of legal authority. Meanwhile, legal awareness is highly affected towards the establishment of legal authority, while legal awareness (*rechtsbewustzijn*) is highly affected by the community's perceived justice. However, the complex relationship between legal culture, legal awareness, public sense of justice, and the authority of law enforcement officers creates an ecosystem in which the success of law enforcement and the creation of public order are interrelated. In this context, strengthening a legal culture based on justice, enhancing people's legal awareness, and ensuring high ethics in the practice of law enforcement officers are critical steps to achieving success in law enforcement and creating sustainable public order. According to these statements, Atmasasmita identified these four genuine fundamental problems that must be addressed immediately. The four problems are desribed such following below:

1. Legal System Reactualization
2. Legal Apparatus Institutional Arrangement
3. Legal Culture
4. Bureaucratic Enablement (Sumirat, 2020).

Resolving these four issues can improve the work performance of legal systems and apparatus, and also strengthen the legality culture in society. Bureaucratic empowerment is also becoming more important to achieve effectiveness and efficiency in law enforcement (Ansori, 2017). UNDP (United Nation Development Program) offers some characteristics in implementing an effective governance, which are participatory, legal supremacy, accountability, transparent, resiliency, consensus-oriented, equitable, efficient and effective, and visionary. The implementation of these characteristics of good governance is expected to create a transparent, participatory and responsive government system,

with an orientation towards justice and the welfare of society in general (Dasmaran & Sudiby, 2019).

Satjipto Rahardjo has stated that the issue of legal certainty is not only about the law, but human behavior. Legal certainty has been a big issue since the law was made official. Indeed, thousands of years before the writing of law, discussions about law were focused on the concept of justice. On the other hand, when there were no formal legal writings, the main concentration in legal discussions was on the principles of justice. This perspective represents a general change in focus from justice to legal certainty as the legal system became more formalized and prescribed. Nowadays, the challenges encountered in the legal context are often related to the achievement of a balance between justice and legal certainty within a formally structured and regulated legal system.

Legal Justice for Society

Law, justice and the welfare of society are three important terms for the realization of an equitable and prosperous society. This concept can be identified in the Preamble of the 1945 Constitution. The existence of a legal state (*rechtsstaat*) of the Republic Indonesia, as implied in the Preamble of the 1945 Constitution, leads to human welfare, especially for Indonesian people. Furthermore, in the second preamble of the 1945 Constitution, it declares that “The struggle of Indonesian independence movement has reached a blessed moment, and the Indonesian people have been delivered peacefully to the independence of the independent, united, sovereign, equitable and prosperous State of Indonesia.”

The Preamble of the 1945 Constitution emphasizes that an independent and federated country of Indonesia must be on the basis of equity principles and public welfare. The preamble indicates a commitment to build a country that is not only free and sovereign, but also equitable and prosperous for all Indonesians. Prioritizing law, justice and welfare, it is expected that people can get the benefits of the independence that has been achieved. Therefore, the task of the government is implementing the mandate of the 1945 Constitution through the formation of various legal products. The legal products contain content and objectives to achieve public welfare. The implementation of the mandate of the 1945 Constitution in legal products is the basis for realizing the principles of justice, sovereignty, equality and welfare desired by Indonesian society. These legal products may consist of laws, government regulations, policies and other legal instruments designed to provide guidelines and frameworks for a better society.

Therefore, the state participates in organizing public welfare, a concept known as the “welfare state” (*welvaartstaat*). The moral lesson behind the 1945 Constitution is that the state has a responsibility to not only create legal regulations, but also to contribute actively in improving public welfare. Therefore, the government must comprehend and accurately evaluate this moral lesson. The

implementation of laws and regulations should not only ensure compliance with the rules, but also have a positive impact on community life and welfare. Societal and cultural changes in science and technology can affect the way law is understood and applied. Therefore, legal science should continually evolve and synergize with the development of science and society in general. Enlightenment from these changes can enable legal science to remain relevant, responsive to change, and able to make a positive contribution in solving the challenges of legal development. The statement represents the perspective that law has a close relationship with humans and its purpose is fundamentally for human welfare and well-being. Legal issues cannot be separated from human interactions, and it is directed at achieving human empowerment through its focus on the values of equity, prosperity, and, at the most profound level, human well-being.

Under the existence of law, the primary objective is to empower human beings and create conditions that support these values. Law is considered a tool or means to produce the greatest possible pleasure for humanity. In this case, the law is expected to provide protection, justice, and a basis for harmonious social life. The understanding that law aims to provide maximum benefits for human welfare and well-being is an important foundation in the formation and implementation of the legal system.

CONCLUSION

Some conclusions derived from this research included: (1) Law enforcement is currently characterized by an outdated paradigm among legal authorities, especially in the achievement of equity. This paradigm prioritizes legal certainty aspects and ignores aspects of justice and expediency. On the other hand, the apparatus of law enforcement, especially those directly involved in the judicial process, tend to be more concerned with compliance with regulations and procedures, so that the concept of justice is often marginalized; (2) law enforcement officials, especially judges, tend to be focused on the concept of making rules, which means that they only implement the law literally. They are often reluctant or lack the courage to implement the rule breaking paradigm, which involves the implementation of law by making a sideways step towards the values of justice and humanity. This rule breaking paradigm is also known as progressive law enforcement, where the interpretation of the law is not limited to the legal statutory, but instead includes considerations of ethics, justice, and human values; and (3) law enforcement apparatus has not completely understood that the main purpose of equitable law enforcement is creating law to realize human welfare and harmony.

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