

HUMANISTIC CRIMINAL LAW ENFORCEMENT TO ACHIEVE SPIRITUAL JUSTICE

Maroni, University of Lampung
Nenny Dwi Ariani, University of Lampung

ABSTRACT

The religious nation of Indonesia is rooted in the ideology of Pancasila, in which craves the existence of Spiritual Justice as an application of the values of Belief in the One Supreme God. Therefore, it is necessary to enforce humanistic criminal law through the establishment of criminal legislation that contains values and principles of humanity and ideology of Pancasila that is religious, humanitarian and society-friendly. In addition it is also required the maximum performance of law enforcement officials in handling each case by 'picks up the ball' and 'wholeheartedly'. Supremacy of law is not interpreted as Supremacy of the Law, yet rather Supremacy of Justice. The view of law enforcers like this is very important considering that if criminal law enforcement is done indiscriminately and cursively, then the provisions of the criminal law will be lost as prime guarantor and will even become the prime threatened. The existence of such conditions is expected to compel law enforcement such as choosy, cringe and 'physical and non-physical torture' as it has happened in the past. It is expectedly not happens in the future anymore, so spiritual justice can be realized.

Keywords: Law Enforcement, Humanistic, Spiritual Justice.

INTRODUCTION

Law enforcement including criminal law enforcement is a series of processes of applying abstract values, ideas and legal ideals to legal objectives. The purpose of law or ideals contains moral values such as justice and truth. In addition to the law can be enforced the legal order must be in accordance with the community where the law will be enforced (Rahardjo, 2008). Given the nation of Indonesia as a religious nation because every citizen embraces the religion based on the Supreme Godhead, as formulated in the First Precept of Pancasila, therefore Indonesian law must also have a spiritual characteristic that reflects religious values. Moreover, criminal law enforcement is always in touch with human rights, so the success of its enforcement is expected because this is where the meaning of "Indonesia Country based on the law" is at stake (Sunarto, 2008).

Based on the failure of law enforcement conventional crime which is positivistic because it is only limited to the fulfilment of formal procedure in eradication of crime and susceptible to deviation (Muladi, 1995)¹. Therefore, a new approach in criminal law enforcement is required that places the interests of the nation and the state or the economic and social rights of the people in addition to the interests and rights of individual suspects or defendants. The new approach is 'humanistic law enforcement' through the application of progressive legal principles (Nawawi, 1998)². The existence of humanistic criminal law enforcement is expected to realize the spiritual

justice that is created based on the application of the values of Belief in the Almighty God in the process of law enforcement (Barda, 2011)³.

The research method used in this paper is normative juridical by using legislation approach, doctrinal approach, conceptual approach and comparative approach. Operationally this approach is done by literature and documentary studies on legal principles, legal norms and legal theories relating to legal issues studied. This research focuses on research of legal inventory and discovery of legal principles.

DISCUSSION

The study of criminal law enforcement which is humanistic using progressive approach, the focus of the study is the regulation and the behaviour of law enforcement apparatus. While the study of spiritual justice is restricted only based on the divine value according to Islam. The criminal law as the reflection of progressive law principles are the criminal law which its arrangement using other than socio-legal studies approach, also should mind 3 basic policies in order to enforce criminal law; such as (1) policy about what forbidden acts to be overcome as it considered dangerous or disadvantageous; (2) policy about what sanction that may be imposed against forbidden acts' subject and its implementation; (3) policy about criminal justice procedure/mechanism in the framework of criminal enforcement process (Muladi and Barda, 1992).

The criminal applicable laws and regulations arrangement without considering the references as mentioned above will deliver criminal applicable laws and regulations which lost its criminal legal nature, even the intended legislation can be used as a tool to commit crimes or covertly legalized crimes. In this connection according to Packer, if criminal law is used indiscriminately and coercively, then the principles of criminal law will lose its nature as prime guarantee even will be the prime threatened (Packer, 1968). This happened a lot in Indonesian applicable laws and regulations during the New Order as found by Masyarakat Transparency Indonesia, until 1998 there were more than 64 of Presidential Decree nuances of collusion, corruption and nepotism that protect one's interest or certain groups (Warassih, 2005).

The effort in order to not create a negative effect on its enforcement, so since the arrangement must consider or accommodate the humanity value as the realization of society legal interest where the criminal applicable laws and regulations are enacted. The socio-legal studies utilization in criminal law had been known in Indonesia, it is identified by various applicable laws and regulations related to socio-legal perspectives, such as: (1) Law No 1 Drt. 1951 article 5 (3) sub b; (2) Judicial Authority Law No. 48 of 2009; (3) Article 18B (2) Constitution 1945 (2nd amendment).

The second base of progressive law is the behaviour of law enforcement officers. The behaviour of the criminal law enforcement apparatus as a manifestation of the perspective of progressive law is the maximal performance of criminal law enforcement officers in order to realize substantial justice, welfare and the interests of the people. Supremacy of law is not translated as Supremacy of the Law, but Supremacy of Justice. Therefore the performance of the criminal law enforcement apparatus in progressive legal perspective are in line with the demands of the workings of the judicial apparatus as mandated by Law No. 48 of 2009 on Judicial Power, Article 5 paragraph (1) that judges and constitutional judges are obliged to dig, follow and understand the values of law and sense of justice that live in society.

The implication of the Pancasila values which inspire the law enforcers realizes the law enforcement process toward the enforcement of law, the justice and protection of the human dignity, order, peace and legal certainty in accordance with Pancasila and the 1945 Constitution. Oriented to human rights and human responsibilities, it is expected that law enforcement practices such as '*pilih tebang*', '*gregetan*' and 'physical and non-physical torture', will not be found in the future. In addition, the performance of law enforcers will be done by 'picking up the ball' and handling a case in a 'wholehearted' way. This is done considering the purpose of the law, among others, justice, welfare and partisanship to the citizens (Maroni, 2012). This is important for the law enforcers to make a commitment considering that until now there are still many criminal cases such as those that occurred during the colonial era. The case of Sengkon and Karta who have served a sentence of more than 5 (five) years for being convicted of murder but apparently are not the perpetrator. There are also cases of wrong verdicts against married couples named Risman Lakoro and Rostin Mahaji, the residents of Boalemo Gorontalo District (Radar, 2007).

The principles of criminal law enforcement as mentioned above are in accordance with the legal politics of the judiciary in Indonesia based on Law No. 48 of 2009 on Judicial Power which has established the principles of the administration of judicial powers as regulated in Article 2 which stated that: (1) Justice is performed "for the sake of justice in the name of God"; (2) State courts impose and enforce law and justice according to Pancasila. Based on these principles, the legal values, which should be developed in the administration of the judiciary in order to implement and enforce law and justice based on Pancasila, is to realize the justice based on belief in the one supreme God. Justice based on the belief in God Almighty in this paper is defined as the essential justice/material/substantial which is real justice without any engineering.

The definition of justice according to Islamic concepts can be found in the Qur'an. It is identified that Qur'an uses a different meaning for a word or term related to justice. Synonymous words such as *qisth*, *hukm* and so on are used by the Qur'an in the sense of justice. In this case Allah SWT says which means: Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded (Al-Quran Surah An-Nahl).

Justice is not only demanded Muslims but also for those of other faiths. This is in accordance with the word of Allah SWT: O you who have believed, be persistently standing firm for Allah, witnesses in justice and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do (Al-Quran Surah Al-Maidah). So that the justice in Islam itself bases on moral ethical principles and always seeks to realize substantial justice by realizing individual and group happiness, happiness of life and inner life and happiness in the world and the hereafter (Mahmutarom, 2010). This means that justice is upheld not just formal justice, but substantial justice (Barda, 2011). That justice can be realized through humanistic criminal law enforcement.

CONCLUSION

For the realization of humanistic criminal law enforcement, it is necessary to implement the policies and principles of humanity and ideals of Indonesia which is Pancasila in every process of criminal applicable law and regulations formation. These values include religious, humanitarian and social.

In the application stage is required the maximum performance of law enforcement apparatus in the realization framework of substantial justice based on spiritualistic values (spiritual justice) that are handling a case by 'pick up the ball' and 'wholeheartedly'. In this connection Supremacy of law is not translated as Supremacy of the Law, but Supremacy of Justice.

The existence of criminal applicable law and regulations and also the performance of law enforcement apparatus oriented towards human values, law enforcement practices such as 'pick-cutting', 'gregetan' and 'physical torture' and 'non-physical' as it had in the past, in the future will not be found again. With the existence of these conditions which lead to the realization of legal justice Indonesian society, namely 'Pancasila justice' which contains the meaning of 'Justice of Pledge', 'Humanistic Justice', 'Democratic, Nationalistic and Social Justice'.

ENDNOTE

1. The criminal justice system can be criminogenic in the event of uncontrolled criminalization, unclear criminal purposes, limited affectivity and the presence of criminal disparities.
2. According to the progressive law perspective that law aims to make people happy. Compare with Barda Nawawi Arief's opinion that the concept of people-oriented punishment (the concept of individual/personal punishment) prioritizes the philosophy of coaching/offenders ("The Treatment of offenders") which gives rise to humanistic pendants, purpose-oriented punishment-oriented improvement of the maker.
3. That justice based on the Godhead The Almighty means justice based on God's guidance which contains principles: (1) Equations; (2) objectivity; (3) no favoritism; and (4) is impartial.

REFERENCES

- Al-Quran Surah Al-Maidah.* (8).
Al-Quran Surah An-Nahl. (90).
 Barda, N.A. (2011). *Scientific approach and religious approach in order to optimize and reform law enforcement (criminal) in Indonesia.* Agency Publisher Undip Semarang.
 Mahmutarom. (2010). *Reconstruction of the concept of justice (studies on the protection of victims of crimes against life under Islamic law, community construction and instruments international).* Agency Publisher Undip Semarang.
 Maroni. (2012). *Reconstruction of criminal justice bureautration based on public services to make justice.* Dissertation PDIH Undip.
 Muladi. & Barda, N.A. (1992). *Criminal theories and policies.* Alumni, Bandung.
 Muladi. (1995). *Kapita selekta criminal justice system.* Agency Publisher Undip Semarang.
 Nawawi, A.B. (1998). *Some aspects of policy enforcement and development of criminal law.* PT. Citra Aditya Bakti. Bandung.
 Packer, H.L. (1968). *The limits of the criminal sanction.* Stanford University Press. California.
 Radar, L. (2007). *Tak Ada Sanksi Bagi Hakim Salah Vonis.*
 Rahardjo, S. (2008). *The state of justice that makes the people happy.* Genta Press. Yogyakarta.
 Sunarto. (2008). *Kebijakan penanggulangan penyerobotan tanah oleh masyarakat di provinsi lampung.* Unila Press.
 Warassih, E. (2005). *The rule of law: A sociological study.* PT. Suryandaru Utama.