

Law Enforcement of Discriminatory Health Protocols

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ABSTRACT

This research aims to review the enforcement of health protocol law that is considered discriminatory, in Indonesia. The research method used is the normative legal research method. Used the study of legal sociology and legal politics to analyze the data obtained by researchers. The results showed that law enforcement of violators of health protocols appeared to be effective to community groups that were socially stratified at the lower levels and that social morphology was at a distance from the authorities or law enforcement. Discriminatory and unfair enforcement is clearly not in line with the paradigm of the rule of law. Efforts must be made to foster and enforce fair behavior among the legal apparatus by instilling the values of professionalism and ethics.

Keywords: Law Enforcement; Discriminatory; Health Protocols.

1. INTRODUCTION

Interesting to note the release of the Commission for Missing Persons and Victims of Violence (KontraS) in welcoming the 75th Anniversary of Bhayangkara Polri, Wednesday (06/30/2021). KontraS assesses that there has been a practice of cutting down law enforcement conducted by police officers against civil society during the Covid-19 pandemic. In his press conference, KontraS Researcher Tioria Pretty said, his party noted that during June 2020 to May 2021, there were at least 14 cases of forced dispersal of actions leading to arrests in the name of the implementation of health protocols during the Covid-19 Pandemic. However, the pretext of pandemics and law enforcement efforts used by police officers is unfortunately not fair and instead cut down. Because police enforcement tends to target civilians rather than public officials who have clearly violated many health protocols. As a comparison of President Jokowi's arrival to Maumere, people flocked to gather and many of them did not implement health protocols, such as wearing masks. However, the police chose not to follow up on the incident and seemed silent by not taking any steps. The incident shows the inconsistency of the Police in enforcing the law in Indonesia. The non-implementation of sanctions for violations committed by public officials is a real form of law enforcement discrimination.

Kontras criticism of the performance of the Police in the enforcement of the discriminatory Covid 19 health protocol (prokes), which the Police uses Law No. 4 of 1984 on Infectious Disease Outbreaks and Law No. 6 of 2018 on Health Quarantine as a legal basis in ensnaring violators of health protocols, of course, must still be tested further about objectivity and validity. But the contrast's conclusions seem to complement the

government's performance report card during 2020 which is relatively worse than the previous year, especially in terms of combating corruption and democracy. As The Economist Intelligence Unit (EIU) report on the Democracy Index 2020 and Transparency International (TI) released the Corruption Perception Index 2020. In the 2020 Democracy Index, Indonesia was ranked 64th out of 167 countries with a score of 6.30, making it on par with Africa's small kingdom, Lesotho. While in the Corruption Perception Index 2020, Indonesia is ranked 102 along with Gambia with a score of 37. Whereas in 2019, Indonesia's GPA received a score of 40.[1].

It seems that the negative public perception of the lameya law enforcement prokes covid 19 by the Police is not coming to an end, even more excess along with the imprisonment of Habieb Rizieq Shihab who violated the prokes in the case of Ummi Bogor Hospital who was sentenced to 4 years in prison, because it was considered a crime. Similarly, the rise of public protests against the ruler through the medium of murals (graffiti) that were forcibly removed by police officers and PP Satpol, while murals that do not contain criticism are still allowed to unfold.

Moving from the illustration above, the following article intends to explain the issue of law enforcement that is considered discriminatory through the approach of legal sociology and legal politics.

2. DISCUSSION

a. Mito Prinsip Equal Before the Law

A country that carries the paradigm of the rule of law, according to Gustav Radbruch in his book entitled *Recht Philosophy* states that legal norms are idealized as instruments that carry the values of justice, expediency, and certainty. The law is established as a tool of order or order in civilized state entities whose estuary is a virtue

or benefit to all citizens. Similarly, *law enforcement* is theorized to be fair and not cut down, no one is immune to the law (*no ones above law*) and guaranteed the opportunity to access justice for all groups (*equal under justice*). In short, the ideal taste of law has all the values of virtue and justice and runs in line with implementation in everyday life.

Yet another world of mind (*das sollen*) another real world (*dassein*), in fact in sociological reality, the implementation of the law is diametrically opposed to its ideal mission aka discrepancy. The law is no longer fair and equal but tends to be discriminatory. According to the Greek philosopher Anacharsis The law is fortified like a cobweb tub that swiftly devours small prey, but stutters when ensnaring snapper prey. In other words, the occurrence of law enforcement discrepancy that is supposed to represent equality and fairness is still a luxury even tends to myth in a republic whose constitution claims to be a state of law.

In the same relative perspective Robert Lefcourt gives a sharp critique of the adigium of the law which states that everyone is equal *to the law* which he thinks is just a myth, because in reality it can easily be seen that criminal courts are almost exclusively directed only at the workers and the poor or the elderly who have no power than the other way around.

b. Disorientation of Law Enforcement

The call for *biased* law enforcement to the elite is explained neatly by Donald Black in his book *Behavior of law*. Black theorized that society as an object of law enforcement is not equal or singular, but the construct of relations is vertical and horizontal. Vertically the structure of society there is social stratification like a pyramid, (i) the elite group in a minority position but has economic logistical resources and access to power therefore occupy the upper strata; and (ii) lay groups as the majority occupying the lower castes, because they lack relative access and adequate economic logistics [2].

Law enforcement, Black said, is only effective against social groups in the lower strata, and otherwise ineffective against elite groups that occupy the top of stratification because they have access to power or finance. Meanwhile horizontally, law enforcement is influenced by aspects of social morphology, meaning that individual or group relationships with the legal apparatus vary the distance of intimacy [2]. Thus law enforcement tends to be effective against individuals or groups that have a more tenuous social distance or social morphology than against individuals who do not have social distance from the law apparatus.

It seems that Black's view above is in line with Satjipto Raharjo (1982) [3] And William J. Chambliss (1971) who asserted that legal guarantees can only be reached and respected by those who belong, but this is not the case with those from the lower layers. In other words, the higher the position of a group economically and politically, the more likely it is that its views and interests

will be reflected in the law, and moreover the implementation of the law in reality will be much safer against groups of people who have no power than to the opposite [4].

From this it can be understood why then we witness the discriminatory treatment of law enforcement against violators of health protocols looks effective to community groups that are socially stratified at the bottom level and morphologically socially there is a distance with the authorities or law enforcement. such as: street vendors, online taxis, stalls, street murals etc. In fact, the law apparatus of both the police and Satpol PP do not have a psychic burden and conflict of role (*conflict of role*) when community groups or individuals who are the object of law enforcement do not have bargaining power and social closeness. Unlike the case, if repressive treatment is directed at groups that have bargaining power and are able to influence the authority of power, then this is calculatively much more risky to the position of law enforcement itself.

c. Politics as a Legal Resource

In the political perspective of law, where law is interpreted as a political product. Legal and political relations are not symmetrical. This means that the subordinate legal system of the political system, including aspects of law enforcement is often influenced by the aroma of political interests. Although politics itself is essentially a way of managing power to realize common virtues, but in practice politics is often overcome by *conflict of interest*, pragmatist, and dishonesty. As a result, practical politics that are run in an elegant manner actually produces expectations. The impact on the social subsystem of law becomes a loss of its identity that carries the principle of equal, impartial, fair, guaranteeing human rights. In this situation, it became relevant to Karl Marx's thesis, that the law is a tool for the possession of capital / ruler to control the tuna modal / society group. The practice of perversion and transgression by the elite class of power is considered something ordinary because it judges itself as having the authority of power. Law is power and power is law itself. This is what Marx described as the original face of the very capitalistic state power. The law is the reflection of the interests of the ruling class.

At least according to Arbi Sanit, political determination of the law includes three things, namely [5]: (i) at the time of the formation of invitations, where the values / norms to be posted, then the word break is determined by parliament (*enacted law by parliament*), for example: omnibus law legislation; Revision of the KPK Law, despite many rejections from elements of society, the DPR continues; (ii) at the time of recruitment of legal officials, where the filling of positions always involves legislative institutions, for example: the filling of KPK commissioners, KY, and even the selection of supreme judges is determined by commission III of the House of Representatives; and (iii) at the time of law enforcement, that is, who wants to be

targeted to be a patient, through political intervention either directly or indirectly in law enforcement. As was the case with Habib Rizieq Shihab who was considered an opposition group and critical of power. Though many people consider the repressive actions of law enforcement in the form of prosecution of these figures on the basis of violations of prokes covid 19 considered inappropriate and inappropriate and excessive. Thus this is clearly a form of law enforcement colored by concentrated political influence.

d. Fair Law Enforcement

The enforcement of discriminatory and unfair (fair) law is clearly not in line with the paradigm of the state of law whose essence is *rule by law not by man*, or in the perspective of the 1945 Constitution pre amendment of the state law (*recht staat*) is not identical with the state of power (*macht staat*). so that constitutionally or ethically the legal profession, the enforcement of discriminatory laws must be immediately stopped and returned to the direction of the state that is listed in the 1945 Constitution whose values are imbued by Pancasila as a state's fundamental norm [6].

Socio-politically discriminatory law enforcement has massive destructive power and endangers the lives of society and the state. As Barrington Moore Jr. theorized (1978) [7] that unjust or discriminatory law enforcement is not only the reason for *social disorder and disobedience*, but also the root cause of *social revolt*. The course of human history shows how the line of governments collapses and the state dissolves not because of the decline of poverty or the backwardness of civilization, but more due to the absence of the presence of justice.

Effectively enforcing fair and equal law aka unfair is not an easy matter, but also not impossible, even an inevitability. Prototype model of equal and fair law enforcement is not a utopian or *wishful thinking* alone, because the noble human figure in the history of human civilization, the Prophet Muhammad (pub). exemplifies how to enforce the fair law even against his own family. In a hadith he said: "The people before you who perished for not being just, indeed if my daughter Fatimah bint Muhammad stole, I would have cut off her hand myself."

Then how to foster and enforce fair behavior among the legal apparatus, especially the Police and Satpol PP. According to the author, the main key is to foster the professionalism of the legal apparatus, meaning that professional ethical values become vital tools and references in grounding the law; namely the law as a tool of social control must be treated as *ultimum remedium* (*the last treatment*) and enforced proportionally; Second, open the public space for dialogue and criticism of the ruler, because the essence of a democratic legal state is the guarantee of freedom of expression of citizens. so that criticism and evaluation that come from *pressure groups* such as NGOs and from the campus intellectual community to remind the government that

deviates as well as the law apparatus that applies unfairly or discriminatory, not worry about the risk to be criminalized; in addition to of course all components of the state that have checks and balances function optimally; Third, the need to present a political recruitment process that produces leaders / rulers who are visionary and with integrity and statesmanship, because these leadership criteria are expected to be able to bring justice not only socio-economic, but also legal justice.

3. CONCLUSION

law enforcement of violators of health protocols appeared to be effective to community groups that were socially stratified at the lower levels and that social morphology was at a distance from the authorities or law enforcement. Discriminatory and unfair enforcement is clearly not in line with the paradigm of the rule of law. Countermeasures are carried out in the following ways: *first*, instilling the value of professionalism and ethics in law enforcement; *second*, the state must open public spaces as a forum for society in providing criticism of law enforcement of law enforcement of law enforcement; *Third*, began a political recruitment process that will produce a visionary and integrity state government figure.

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