

Legal Effectiveness and Legal Functions in Indonesia

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Abstract:

Purpose:

This study aims to describe the Effectiveness of Law and Legal Functions in Indonesia. Law serves as justice, certainty and expediency. In the practice of law administration in Indonesia, there are times when there is a conflict between legal certainty and justice. This research will examine the effectiveness of law and legal functions in Indonesia, based on the object of research to be studied, and then this research will be based on positive law.

Methodology:

This research uses a descriptive qualitative approach with library research methods. Legal certainty is concrete and tangible, while justice is abstract. Therefore, in solving a legal problem, the values of justice must be prioritized.

Findings:

The results of this study show that the effectiveness of law enforcement in Indonesia is influenced by several factors, namely the legal factors themselves, law enforcement factors, factors of facilities or facilities that support law enforcement, and community factors.

Implication:

The influence of law and the concept of purpose: It can be said that the concept of influence means the attitude of action or behavior associated with the rule of law in reality, a positive effect or effectiveness that depends on the purpose or purpose of the rule of law. A legal purpose is only sometimes identically stated in a rule and is not necessarily the real reason for the rule-maker.

INTRODUCTION

Law is a social engineering tool used to change people's patterns and behavior to follow the regulations required by law. So far, many violations and crimes have occurred in the community, such as cases of red light breakthroughs that road users mostly carry out. Indeed, there is a study of the law relating to society, a branch of legal science that is not referred to as the sociology of law but as the Sociology of Jurisprudence. The sociological study of law shows that law reflects people's lives. Law is part of the working apparatus of the social system. The function of this social system is to integrate the interests of community members to create an orderly state. This results in the fact that the law must achieve justice, that is, harmony between the values of legal interests (Panjaitan, 1998).

The rapid development of society, technology, and information in the twentieth century and the generally difficult-to-follow legal sector have caused people to rethink the law. By deciding its attention to the interaction between the legal sector and the society in which the law is applied. However, the issue of public legal awareness is still one of the most critical factors in the effectiveness of a law in a country. When we want to know the extent to which the effectiveness of the law can be measured, we must also know the extent to which the law is obeyed. If most of the target has adhered to a law, then the rule of law is adequate. However, whether or not a law is obeyed depends on one's interests, which are various.

A. Understanding Legal Effectiveness. Effectiveness comes from the word practical, which means achieving success in achieving predetermined goals. Effectiveness is always related to the relationship between the expected results and the actual results achieved. So, legal effectiveness can be interpreted as the effectiveness indicator in that achieving predetermined goals or objectives is a measurement of achieving a target according to what has been planned (Usman, 2009).

According to Hans Kelsen, when talking about the effectiveness of the law, the validity of the law is also talked about. Legal validity means that legal norms are binding, that people must act according to those required by legal norms, and that people must obey and apply legal norms. Legal effectiveness means that people act according to legal norms as they should and that those norms are applied and obeyed (Usman, 2009).

The law aims to achieve peace by realizing certainty and justice in society. Legal certainty requires formulating generally accepted legal rules, which means that these rules must be strictly enforced or implemented. It means that the law must be known with certainty by the citizens of society because it consists of rules established for current and future events that apply generally. Thus, in addition to the duties of certainty and justice, the element of Usefulness in law is also concluded. It means that every citizen of society knows exactly what things are permissible and what is forbidden to be done; in addition, citizens of society are not harmed by their interests within reasonable limits (Soekanto, 1985).

Answering the complexity of Indonesian law is challenging, and achieving accuracy is even more difficult. Several symptoms can be presented to give clues and a relatively broad picture. Since 1945, Indonesia has undergone a process of transformation in the field of law; since that year, among others, many new laws have been made, in addition to many decisions of judicial bodies that have differed from the jurisprudence of the colonial era. However, there are still many legal rules from the colonial era that remain firmly and vaguely applicable. Even if some have been abolished, it is still challenging to abolish the old mindset that is still oriented toward the legal system in Indonesia, which has been heavily influenced by new ideals that have arisen and grown since the proclamation of independence in 1945 (Soekanto, 1985).

What is a new idea about the content of national law still needs to be established, mainly because Indonesian society consists of parts of society that have different social and cultural characteristics, which also results in differences in ways and views of life. Moreover, the role of law has been weakened since the physical revolution, which caused social and cultural changes in Indonesian society, which to some extent caused disorganization and the anomie state is a situation in which the citizens of society do not have a measure or guidelines for their activities in the sense of which activities are suitable and which are bad. This situation worsened in the following period, especially before 1966. The physical revolution after 1945 did not abolish the colonial era's laws.

Even if one is abolished, there is no successor law, mainly because the primary purpose of the physical revolution is to achieve and maintain the law of liberty. The weaknesses of the old legal system dating back to the colonial era were only realized in the early 60s. However, since then, legal life and development have been less profitable due to the exploitation of political activities. 1960-1965 was marked by a decline in the law's authority, so the community's citizens also lost their trust. A revolution experienced by the Indonesian nation is a process that takes place quickly, is complex and even violent in changing values, social structures, political institutions, policies, and leadership.

The changes that followed in the later stages were instead a process of reform aimed primarily at fostering and developing the new foundations and values produced by the revolution. The work and problems faced by the reform pioneers were more complicated because they concerned consolidation, formation, and development, in which he often had to deal with elements of societies with deeply entrenched interests (Soekanto, 1985).

The period of declining legal authority changed after sections of society spearheaded by students succeeded in stopping the legitimacy of the government under the leadership of Ir. Suharto. Public confidence in the authority of the law is slowly recovering, although only partially. At that time, voices began to be heard from various groups of society who, among others, wanted to re-establish the rule of law, better known as the re-establishment of the rule of law. This situation is mainly because society has reached the peak of its suffering due to severe economic conditions and the absence of its suffering due to severe economic conditions, as well as the absence of order in the sense of uncertainty about what constitutes the rights and duties of the citizens.

Thus, to end this lameness, among others, efforts are needed to re-establish the rule of law; the problem is not that easy; it is necessary to emphasize in advance what is meant by the rule of law. The term or understanding of the rule of law can be used for at least two meanings: formal and material (ideological). In a formal sense, the rule of law means organized public power, which means that any system of rules based on a hierarchy of orders is a rule of law. In this formal sense, the rule of law may be the most effective and efficient tool for running a tyrannical government (Soekanto, 1985).

The rule of law in a material or ideological sense includes measures of good law and bad law, which, among others, include the following aspects:

1. All community citizens must observe the rules of law made and applied by legislative, executive, and judicial bodies.
2. The rule of law must be in harmony with human rights.

3. States must create social conditions that enable the realization of human aspirations and a reasonable respect for human dignity.
4. There are precise procedures for obtaining justice for the arbitrary actions of the ruler.
5. The existence of a free and independent judiciary that will be able to examine and correct any arbitrary actions of the executive and legislative bodies (Luthan, 1997).

B. Theory of Legal Effectiveness. Theory of Effectiveness (Soerjono Soekanto) Law, as a rule, is a benchmark regarding appropriate attitudes, actions, or behavior. The method of thinking used is deductive-rational, giving rise to a dogmatic way of thinking. On the other hand, some view the law as an orderly attitude of action or behavior. The method of thinking used is inductive-empirical, so the law is seen as a repeated act in the same form with a specific purpose.

The effectiveness of law in action or legal reality can be known if someone states that the rule of law succeeds or fails to achieve its goals. It is usually known whether its influence has succeeded in regulating the attitude of specific actions or behaviors so that they are by their purpose. Legal effectiveness means that legal effectiveness will be highlighted from the goal to be achieved, namely legal effectiveness. One of the efforts that is usually made so that the community complies with the rules of the law is to include sanctions. These sanctions can be in the form of negative or positive sanctions, which means to cause stimulation so that humans do not commit despicable actions or perform praiseworthy actions (Luthan, 1997).

Certain conditions must be met in order for the law to have any influence on human attitudes, actions, or behavior. The conditions that must exist are, among other things, that the law must be able to be communicated. Legal communication is more focused on attitude because attitude is a mental readiness so that a person tends to give a good or wrong view, which manifests in actual behavior. If what is communicated cannot reach the problems directly faced by the target of legal communication, difficulties will be encountered. The result is that the law has no influence at all or even has a negative influence. Their needs cannot be met and understood, resulting in frustration, pressure, or conflict (Luthan, 1997).

C. Legal Functions. The law regulates one's actions or relationships with people in society. For erection, the law describes its work in its various functions. Thus, the function of law is to regulate and regulate associations in society and solve problems that arise. The functions of law, according to Lawrence M. Friedman, are divided into 3, namely (Friedman, 1997):

1. (social control);
2. (dispute settlement);
3. (social engineering).

Mochtar Kusumaatmadja, followed by Soerjono Soekanto, also proposed several legal functions. "In Indonesia, the function of law in development is as a means of community development. It is based on the assumption that order in development is considered essential and indispensable. In addition, law, as a rule of law, can channel the direction of community activities to the desired goals of the change. Of course, the above functions of law should be carried out in addition to the function of law as a system of social control (Soekanto, 1982).

Theo Huijbers stated that the function of law is to preserve the public interest in society, safeguard human rights, and realize justice in living together. Peters, as quoted by Ronny Hanitiyo Soemitro, states that the function of law has three perspectives, namely (Soemitro, 1985):

1. The perspective of social control rather than law. This goal is called the goal from a policeman's point of view of the law.
2. The social engineering perspective is a review used by officials because the focus of attention is what officials/rulers do with the law.
3. The perspective of the emancipation of society rather than the law. This perspective is a bottom-up review of the law and can also be called the consumer perspective.

Based on the description of legal functions by legal experts above, legal functions can be compiled, namely:

1. Provide guidelines or direction to community members to behave.
2. Social control.
3. Dispute Settlement.
4. Social engineering.

The function of law as a guideline or direction of behavior may not require much information, considering that the law has been characterized as a rule, namely: "as a code of conduct, which implies behavior that should or

is expected to be realized by society if citizens of the community carry out an activity regulated by law." Law as a means of social control, according to A. Ross, quoted by Soerjono Soekanto, "includes all forces that create and maintain social ties. Ross adheres to the imperative theory of the functioning of law, with many linking it to criminal law (Soekanto, 1981).

Social control of the law can be interpreted as a system that educates, invites and even forces citizens to behave according to the law. In other words, from the point of nature, social control can be preventive or repressive. Preventive is an effort to prevent deviant behavior, while repressive aims to restore disturbed harmony. Law as a means of dispute resolution. Disputes or disputes between families can occur in society and fracture family relationships in a joint affair (company), which can dissolve cooperation. Disputes can be about marriage or inheritance, contracts, land boundaries, etc. That dispute or disagreement needs to be resolved.

METHODS

This research will examine the effectiveness of law and legal functions in Indonesia, based on the object of research to be studied, and then this research will be based on positive law. This study used several factors that affect the effectiveness of the law. The literature review method (library research) is research based on income-expert opinions. Legal research is finding legal rules, principles, and doctrines to resolve legal issues (Marzuki, 2017). This research uses two legal materials, namely primary and secondary legal materials. It follows the prescriptive character of legal science. Legal research This will use two approaches: Statutory and conceptual approaches.

RESULTS AND DISCUSSION

Factors Affecting Legal Effectiveness

1. Legal Factors. Law serves for justice, certainty and expediency. In the practice of law administration in the field, there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete in tangible form, while justice is abstract, so when a judge decides a case by application of the law alone, there are times when the value of justice is not achieved. So, at least justice is the top priority when looking at a problem regarding the law. Because the law is not solely seen from the point of written law, many rules still live in a society that can regulate people's lives.

If the purpose of law is simply justice, then the difficulty is that justice is subjective and highly dependent on the subjective intrinsic values of each person. According to Prof. Dr. Achmad Ali, what is fair to A does not necessarily feel fair to B. Regarding legal factors in this case, it can be taken as an example in article 363 of the Criminal Code, whose formulation of criminal acts only lists a maximum of 7 years in prison so that the judge can determine the severity of the sentence where he can move within the maximum limits of the sentence. Therefore, it does not rule out the possibility of the judge sentencing the perpetrator of the crime too lightly or striking the difference between the charges and the sentences imposed. It is an obstacle to law enforcement (Soekanto, 1981).

2. Law Enforcement Factors. This factor includes parties who form or apply the law or law enforcement. Those parts of law enforcement apparatuses can provide certainty, justice, and legal expediency proportionally. Law enforcement apparatus includes the understanding of law enforcement institutions and law enforcement officials, while law enforcement officials, in the narrow sense, start from the police, prosecutors, judiciary, legal advisors, and correctional officers. Each officer and apparatus is given authority in carrying out their respective duties, which include activities to receive reports, investigations, investigations, prosecutions, evidence, sentencing and sanctioning, as well as efforts to rebuild convicts (Soekanto, 1981).

3. Factors of Facilities or Facilities That Support Law Enforcement. Supporting facilities can be formulated as a means to an end. Its scope is primarily physical means that serve as supporting factors. Supporting facilities include educated and skilled human labor, good organization, adequate equipment, sufficient finances, etc. If the supporting facilities are met, law enforcement can achieve its goals. The certainty and speed of case resolution depend on the existing supporting facilities in crime prevention and eradication. Improving crime detection technology has a vital role in the certainty and handling of criminal cases, so without these facilities or facilities, it will not be possible for law enforcement to harmonize their proper role with the actual role.

4. Community Factors. Throughout history, the development of the law has been closely linked to the legal consciousness of society. The interaction between these two factors has resulted in a long-term fluctuation

and change in the positive law system. The laws of primitive society, obviously very influential, are even the incarnation of the laws of its society.

Legal awareness in society is not a one-time process but a series of processes that occur step by step. The legal awareness of the community dramatically affects the observance of the law, both directly and indirectly. In advanced societies, people obey the law because their souls know that they need it and that the law has an excellent purpose to govern society properly, rightly, and justly. On the contrary, in traditional societies, people's legal awareness indirectly affects the observance of the law. In this case, they obey the law, not because they believe it is good or because they need it. However, they obey the law more because it is asked, even imposed by its leaders (formal or informal) or because of the dictates of their religion or belief.

So, in terms of this indirect influence, the legal awareness of the community is more to obey the leader, religion, beliefs, and so on. However, in the current development of modern society, there have been shifts that, due to certain factors, cause a lack of public trust in existing laws, resulting in a crisis of legal awareness and public legal obedience, one of which is due to law enforcement factors that make laws or rules as a reason for carrying out actions that are considered by the community to be disturbing even no fewer people who feel they have been harmed by Such law enforcement personnel. Moreover, there are still many people who are unfamiliar with legal issues, so they can easily be used as objects of sufferers.

CONCLUSION

The effectiveness of the law is closely related to law enforcement. For the law to be effective, law enforcement officials must enforce the sanctions. A sanction can be actualized to the community in the form of obedience, with the condition that it indicates that the law is effective.

Sanctions are legal norms that have characteristics as a threat or expectation. Sanctions will have a positive or negative impact on their social environment. In addition, sanctions are personal judgments of a person that have to do with attitudes, behavior, and conscience that do not get recognition or are considered useless when obeyed. The influence of law and the concept of purpose: It can be said that the concept of influence means the attitude of action or behavior associated with the rule of law in reality, a positive effect or effectiveness that depends on the purpose or purpose of the rule of law. A legal purpose is only sometimes identically stated in a rule and is not necessarily the real reason for the rule-maker.

REFERENCE

- Abdul, K. M. (1993). *Hukum Perdata Indonesia*. Bandung: Citra Aditya Bakti.
- Abu, D. B. H. (1993). *Ilmu Negara*. Jakarta: Bumi Aksara.
- Achmad, A. (1996). *Menguak Tabir Hukum (Suatu Tinjauan Filosofis dan Sosiologis)*. Jakarta: Chandra Pratama.
- Achmad, I. (1993). *Hukum Dagang*. Jakarta: Pradnya Paramita.
- Achmad, S. (1997). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Bandung: Transito.
- Adiyanto, B., Kristhy, M. E., Murti, J. W., & Salahidin, S. (2023). Recognition of the Existence of Traditional Legal Communities from the Perspective of Legal Philosophy. *Journal of Political and Legal Sovereignty*, 1(2), 72-77. <https://doi.org/10.38142/jpls.v1i2.82>
- Friedman, L. M. (1997). *Law and Society an Introduction*. (New Jersey: Prentice Hall), Hlm 11-12.
- Lutham, S. (1997). Penegakan Hukum dalam Konteks Sosiologi. *Jurnal Hukum Ius Quia Iustum*, 4(7), 57-70.
- Marzuki, P. M. (2022). The Essence of Legal Research is to Resolve Legal Problems. *Yuridika*, 37(1), 37. <https://doi.org/10.20473/ydk.v37i1.34597>
- Panjaitan, S. P. (1998). *Dasar-Dasar Ilmu Hukum, (Asas, Pengertian, dan Sistematika)*. (Palembang: Universitas Sriwijaya), hlm. 57.
- Prabhawisnu, A. A. G. K., Sujana, I. N., & Wesna, P. A. S. (2023). Notary Authority in Certifying Electronic Transaction Documents. *Journal of Political and Legal Sovereignty*, 1(1), 61-66. <https://doi.org/10.38142/jpls.v1i1.64>
- Rahardjo, S. (1982). *Hukum dan Masyarakat*. Bandung: Alumni. 1982
- Sitri, S. A. (1992). *Pengantar Tata Hukum Indonesia*. Bandung: Eresco.
- Soekanto, S. (1985). *Sosiologi Hukum dalam Masyarakat*. Jakarta: CV. Rajawali.
- Soekanto, S. (1982). *Kesadaran Hukum dan Kepatuhan Hukum*. (Jakarta: Rajawali), Hlm 9.
- Soekanto, S. (1981). *Fungsi Hukum dan Perubahan Sosial*. (Bandung: Alumni), Hlm 44.

Soemitro, R. H. (1985). *Studi Hukum dan Masyarakat*. (Bandung: Alumni), Hlm 10-11.

Usman, S. (2009). *Dasar-Dasar Sosiologi*. (Yogyakarta: Pustaka Belajar), Hlm 13.