

# Law Enforcement in Indonesia: A Review from Legal Apparatus Roles

Ratnawati\*, Sukarno Aburaera, M. Said Karim, Hasbir Paserangi  
Faculty of Law, Hasanuddin University, Jl. Perintis Kemerdekaan KM. 10, Tamalanrea, Makassar, South Sulawesi 90245, Indonesia

## Abstract

Nowadays, the main problems of law enforcement encountered by law upholders in Indonesia seem very complex and varied. They should not be seen and resolved partially. They should be understood, scrutinized and resolved in a comprehensive manner. Enforcing the law is not just implementing the "dead" letters, sentences, or clauses in the legislation as positive laws. Positive laws have deficiencies or vacuums, because the nature of positive laws is not able to keep pace with the dynamic developments of society; even, they are left behind the problems arising in it. Legal vacuums can be filled by judges, so judges in this case turn to be legislators. Law upholders are expected by justice seekers to refrain from discriminatory actions as they will lead to the occurrence of injustice. Discriminatory behaviors occur when there are legal treatments that are more or very legal (more law) on one party and less or not legal (less law) on the other party of the same capacity or position.

**Keywords:** Criminal Justice System, Law Enforcement, Law Upholders

## 1. Introduction

Materially, law enforcement means enforcing all the rules of laws, both of written and unwritten forms as long as they prevail in the community. Law enforcement may formally be interpreted as upholding written laws, but sometimes interpreted as legislation enforcement. However, legislation enforcement is usually interpreted limitedly as legislation enforcement by some individual law upholders while in the legal system the term *legislation upholder* does not exist, but law upholder does. Thus, the first problem faced by law upholders in Indonesia is their narrowed concept or limited understanding of the term *law enforcement*.

Law enforcement also means the implementation or application of the rules of laws both by legal apparatus and bureaucrats and application of laws to cases through judiciary institutions. When mistakes happen to the application of laws, criticisms or analysis are directed only to legal apparatus or institutions. In a law enforcement, it is not only the apparatus, bureaucrats, and institutions that are involved or should be involved. What should actually be enforced is the legal system. In any legal system, there are many elements that constitute an inseparable unity, and are interrelated between one and other sub-systems of law. In such conditions, sometimes criticisms or scrutinizes are just focused on one sub-system or element of the legal system. Therefore, the limited understanding among some upholders about law enforcement and application that is actually one of the elements or parts of the legal system is the second problem faced by law upholders in law enforcement in Indonesia.

In addition to the two problems above, there are still many complex problems encountered by law enforcement authorities in Indonesia. And, they require a comprehensive solution. Within a community, for example, people differently respond to applied laws in Indonesia. The law enforcement authorities meant here are police as the authorities in charge of preliminary investigations and full investigations, prosecutors that conduct full investigations and prosecutions, and the court's as a determinant of decisions (*decision making*). When public responses come up in regard to mistakes in the application of law in the form of a decision of freeing or punishing a defendant, for example, then the question is whether the mistake originates from the judge's decision. In a way, public opinions are very influential in forming the views of legal authorities to deal with such a case, and can lead to a bad assumption in the society. Are they able to cope with the problems in the name of laws, and make decisions as fairly as possible against suspects without involving their personal interests, institutional interests, and other interests that stay behind the law? This kind of issue also serves as a problem among the law enforcement apparatus in enforcing laws in Indonesia.

Nowadays, the main problems of law enforcement in Indonesia may originate from either judicial system, legal instruments, law enforcement inconsistencies, authority's intervention, or legal protection. A legal case that is commonly found and felt by ordinary people is the uncertainty of law enforcement, such as the slow process of resolving a case, the lack of transparency in a legal process, and whether or not a legal process is still running or has been terminated. This situation can easily trigger questions in the community, questioning how the process of law enforcement actually takes place. Consequently, this would create public's distrust to law upholders and law enforcement institutions.

Distrust to law enforcement apparatus and law enforcement institutions can lead to potential conflicts in society, such as the emergence of vigilantism, and other destructive behaviors. For example, a crowd dares to judge rollicking thief or pickpocket caught in act. This is a form of insufficient or distrust to law enforcement

apparatus, which results from an accumulation of a variety of similar cases that cannot be settled properly. In their mind, therefore, it is much better for to judge by themselves than hand the thief or pickpocket over to law apparatus. They might be suspicious that If the thief or pickpocket is handed over to law upholders, he/she will be released in only 2 or 3 days later, and repeats the same crime.

## 2. Legal Systems, Law Upholders, and Law Enforcement

In discussing the problems faced by law enforcement apparatus in enforcing laws in Indonesia, we will begin by describing the elements contained in the legal system to show the position of law enforcement apparatus. This also aims to correct the narrow understanding of law enforcement apparatus, or establish a common understanding of the legal system and law enforcement.

Legal system has its own characteristics as a result of differences of behavior patterns, and culture of a country. However, each legal system has a state of consistency. In a system, including laws as a system, conflicts and overlap between laws sub-systems are not expected to occur. And, if they do, the conflicts should not be tolerated and a good legal system has to provide a means for a solution.

To determine the existence of a legal system in a country, Lon L. Fuller suggests eight principles that should be referred to, called "principles of legality", namely:

- (a) *The first and most obvious lies In a failure to achieve rules at all, so that every issues must be decided on an ad hoc basis. The other routes are:*
- (b) *A failure to publicize, or at least to make available to the effected party, the rules he is expected to observe;*
- (c) *The abuse of retroactive legislation, which not only cannot itself guide action, but under cuts the integrity of rules prospective in effect, since it puts them under the threat of retrospective change;*
- (d) *A failure to make rules understandable;*
- (e) *The enactment of contradictory rules or*
- (f) *Rules that require conduct beyond the powers of the affected party;*
- (g) *Introducing such frequent changes in the rules that the subject cannot orient his action by them; and finally,*
- (h) *A failure of congruence between the rules as announced and their actual administration.*<sup>1</sup>

According to Fuller, besides being the requirements for a legal system, all the principles above provide the classification of a legal system which contains certain morality values. Failure to create such a system, not only brings about a poor legal system, but also a system that cannot be called a legal system at all.

Mochammad Koesnoe argued that the legal ideals and principles of law serve as an adhesive for a variety of existing positive law rules, which in turn form a legal system.<sup>2</sup> Similarly, Bruggink stated that a legal order that operates in a society is essentially an ideal embodiment of laws adopted in the relevant community into various instruments of positive laws, legal institutions and processes (the behavior of government bureaucracy), and citizens.<sup>3</sup> To understand further about a legal system, we have to look at the elements contained in it. A legal system has three elements, namely the structure, substance, and legal culture. Lawrence M. Friedman stated:

*"A legal system in actual operation is a complex organism in which structure, substance, and culture interact. To explain the background and effect of any part calls into play many elements of the system".*<sup>4</sup>

The structure, as a key element of a legal system, is the framework of laws including law enforcement institutions, legal procedures, jurisdiction of courts and people involved in it (law enforcement apparatus). The legal structure is a pattern that shows how the law is carried out under the terms of formal legal institutions or law enforcement apparatus. The substance covers rules, norms, and real human behavior patterns existing in the system. The substance is the actual results produced by a legal system. The culture or legal culture is the atmosphere of social thinking and social forces that determine how a law is applied, avoided, or misused. This component consists of values and attitudes of citizens (including the culture of law enforcement apparatus) which are the binder of a law system, and locate the position of the legal system in the middle of the culture of a nation as a whole. Without the legal culture, legal system itself will be powerless, like a dead fish lying in the basket, not like living fish swimming in the ocean.<sup>5</sup>

<sup>1</sup> Lon L. Fuller, 1971, *The Morality of Law*. New Haven and London, Yale University Press. p. 180.

<sup>2</sup> Rachmadi Usman, 2003, *Perkembangan Hukum Perdata Dalam Dimensi Sejarah dan Politik Hukum Indonesia*, Pustaka Sinar Harapan, Jakarta. p. 8.

<sup>3</sup> Bernard Arief Sidharta, 1999, *Refleksi Tentang Hukum*, Citra Aditya Bakti, Bandung, p. 180

<sup>4</sup> Lawrence M. Friedman, 1975, *The Legal System A Social Science Perspectif*, Russel Sage Foundation, New York. p. 16.

<sup>5</sup> Lawrence M. Friedman, 1998, *American Law an Introduction (Indonesian: Hukum Amerika Sebuah Pengantar)*, Translated by Wishnu Basuki, Tata Nusa, Jakarta. p. 7-8.

Another way to describe the three elements of the legal system is analogizing the legal structure as a machine. The substance of laws is what is produced or performed by the machine, and the legal culture is anything or anyone who decides how the machines is actually used. Actually law enforcement is how the elements of the legal system operates in the community. Lawrence M. Friedman claimed:

*"Structure and substance here are durable features slowly carved out of the landscape by long run social forces. They modify current demands and are themselves the long-term residue of other social demands. Legal culture may also affect the rate of use, that is, attitudes toward whether it is right or wrong, useful or useless, to go to court will also enter into a decision to seek formal divorce. Some people will also be ignorant of their rights or fearful of using them. Values in the general culture will also powerfully affect the rate of use: what relatives or neighbors will think about the divorce; the effect on the children and the children's friends; religion and moral scruples".<sup>1</sup>*

Thus, values in a common culture have a very strong influence on the level of use of the rules of law. Therefore, legal culture largely determines whether rules of laws are effective or not in practice. How legal culture largely ascertains the effectiveness of law enforcement is illustrated by, for instance, the settlement of a dispute. In resolving a debt dispute, for example, various means have been provided either by the rules of laws, taking the case to the court or litigation, settling it outside the court (by a peaceful way), mediation, conciliation, or another extrajudicial method that are frequently used, namely, using debt collectors.

The choice in determining which method is used in resolving the debt case is highly dependent on the mindset or culture of law prevailing in the community of the people involved. If they have a legal culture that places peace in priority, they will then go through take a peace path. If they have a legal culture that requires a case sent to a court, then they will have to take the path of litigation. If they have a legal culture or views that are less or no longer trust the courts and refuse a peaceful way, they will involve debt collectors. Another sample case is a handling of a traffic violation, in which a traffic police office confronts a driver that violates a traffic rule. Traffic laws stipulate that all forms of traffic violations must be resolved through a legal process and end up in a court. However, sometimes law enforcement irregularities happen to such a case.

The provisions of traffic offenses are, in fact, sometimes unfulfilled by the two parties. They sometimes make a deal on "peaceful fine in the corner of the street." This kind of legal deviation can just take place because of the influence of culture of law they have, the police officer and the law violator. They have a common law culture in resolving a case, that is, applying a peaceful method even though they both understand and realize that such a traffic violation should be resolved through a court.

Law enforcement in the structure of a modern country is arranged by executive components and implemented by the bureaucracy of executive, so it is often referred to law enforcement bureaucracy. When the state interferes many areas of activities and services in the community, the intervention on laws would also be intensified. With their bureaucracy, executives are a part of the chain to actualize the plans set forth in such regulations. Such a type of state is known as a *welfare state*.<sup>2</sup> In enforcing laws that have been made and provided by legislation makers, the courts are in contrast to the executives. Executives perform law enforcement actively while, it can be said that, courts carry out law enforcement passively because they have to wait for parties who require judiciary services to come to them. Justice seekers come with their cases to be resolved through judicial processes.<sup>3</sup>

Legislations' that have been made and provided by the law-makers cannot always be applied to an incident. The statutory provisions must be given meaning, explained, or interpreted before applying it to a case. The enforcement of such abstract and general legislation is carried out through courts. Giving meaning, explaining, or interpreting the provisions of the legislation is very logical. Concerning this, Sudikno Mertokusumo depicted that even if the legislation is clear, it is not perfect; it is not possible that legislation is complete and thorough. It is impossible for legislations regulate all the activities of human life since human's activities are innumerable. Besides, legislation is the creation of human who has a very limited capacity. There are times when legislation is incomplete and unclear. Nevertheless, legislation must be upheld.

In line with the above statement, Ismail Saleh, Ismail Saleh<sup>4</sup> claimed that: "Enforcing laws is not simply implementing the "dead" letters, sentences, or articles in the legislation as positive laws. Positive laws have shortcomings or vacuums because laws are not able to keep pace with the dynamic development of society] even in some cases, they are left behind the problems that arise in the community. Vacuums of laws can be filled by a judge, so a judge in this case is a legislator." A. Pitlo made a parable as follows:

"Legislation is the partiture of a song. The laws are dead letters. The song will be alive when it is played.

The song will be a good listening when it is played by a master musician. The musician fills a spirit into

<sup>1</sup> Lawrence M. Friedman, 1975, *Op. Cit.*

<sup>2</sup> Satjipto Rahardjo, 1991, *Ilmu Hukum*, Edisi revisi. Citra Aditya Bhakti, Bandung. p. 181.

<sup>3</sup> *Ibid.*, p. 182.

<sup>4</sup> Baharuddin Lopa, 1987, *Permasalahan Pembinaan Penegakan Hukum di Indonesia*, Bulan Bintang, Jakarta. p. 20.

the song."<sup>1</sup>

The parable above emphasizes that such law enforcement agencies as police, prosecutors, advocates, notaries, and judges enforce laws through their own institutions respectively. They have to act as good interpreters against legislation which consists of dead letters, by giving spirit to the letters according to the sense of justice of citizens. This statement also shows that law enforcement by legal institutions are generally viewed on enforcement of legislation both by judges and other legal practitioners.

Law enforcement through the courts does not always apply the provisions of legislation, but courts could also create legal justice, as described by Sudikno Mertokusumo:

“Considering that judges are law makers, besides being legislators, and the independence they have, they can be expected of creativity to create laws appropriate with the developments of community when legislators are impotent in creating rules for the community. Therefore, judges should be given a greater freedom. Therefore, legislators should be let only create or establish laws of a general nature so that judge will not be rigid with them and are free to interpret them.”<sup>2</sup>

In addition to the above statement, Oen Hock Lie, in his inaugural lecture as professor of the Faculty of Law of the University of Indonesia, asserted that:

"Judges, in running their duties, that is, doing justice, participate in making laws. This means that in addition to the laws contained in the legislation, there are also judges of laws (*rechtersrecht*), which is well known by the term of jurisprudence (*juriprudentierecht*)".<sup>3</sup>

A court decision should always be in accordance with the needs of society. Such a view was also given by B. Cardozo who stated that: "Laws and compliances to laws are realities that in every moment apply empirically. We have to find a concept that can be justified by facts".<sup>4</sup> Cardozo expected that courts consider the development of the legal needs of society. Cardozo tended to see the dynamism of judge's decision in keeping with the development of citizens, as he said that "nothing is static, nothing is absolute, everything is flowing and changing, all turns to be something that is not silent."

The view of B. Cardozo is quite crucial to be a point of comparison in law enforcement through courts in Indonesia. Although B. Cardozo was a Supreme Court judge living the world of law that adhered to the principle of "the binding force of precedent" (earlier judge's decision binds to the decision of later judge for similar cases); it seems that B. Cardozo wanted to be free from the precedent bond.

In practice, the Supreme Court has made breakthrough by getting rid of the laws that are considered no longer suitable to the development of society, through its decision dated December 16, 1986 No. 220 PK/Prdt./1986 stating that adhered to only formally formulated legislation will result in things that cannot be allowed by law.<sup>5</sup> Mochtar Kusumaatmadja stated that a good thing is the laws that accorded to living laws in society, which must be in compliance with or is a reflection of the values prevailing in society.<sup>6</sup>

The Law, as a guideline to act or behave in public life, are not only a manual to read, but must also be obeyed, implemented, or enforced. According to Soerjono Soekanto, law enforcement is not simply implementing legislation as it tends to happen in Indonesia. The notion generated the term of law enforcement that becomes very popular. In addition, there is a strong tendency to interpret the rules of law as the implementation of the decisions of judges. This relatively narrow-minded view has a weakness. When it is put into implementation, it could destroy peace in social life.<sup>7</sup>

Law enforcement is essentially a process to make legal ideas or desires come true. The legal ideas or desires in question are the achievement of law objectives, namely justice, expediency, legal certainty, order, balance, and well-being. Society is very concerned with justice in law enforcement; it must be fair. Laws are not synonymous with justice, but laws are general in nature, bind everyone, and consider everyone in the same level. Anybody who steals must be punished, no matter who he/she is. On the contrary, justice is subjective, individualistic and does not generalize, for example, a treatment which is fair for Suto is not necessarily fair for Noyo.<sup>8</sup> People expect of benefits from the implementation or enforcement of law. Laws are for human, and accordingly, the implementation of law or law enforcement must bring benefits or usefulness to society. The implementation of laws or law enforcement should not let anxiety come up in the community.<sup>9</sup>

<sup>1</sup> Setiawan, 1992, *Aneka Masalah Hukum dan Acara Perdata*, Alumni, Bandung. p. 447.

<sup>2</sup> Sudikno Mertokusumo, 1984, *Op. Cit.*, pp. 7-8.

<sup>3</sup> Setiawan, 1992, *Op. Cit.*, p. 445.

<sup>4</sup> Achmad Ali, 1990, *Mengembara di Belantara Hukum*, Lembaga Penerbitan Universitas Hasanuddin, Ujung Pandang. p. 186.

<sup>5</sup> Majalah Forum Keadilan, Nomor 03 Tahun 1989, p. 80.

<sup>6</sup> Mochtar Kusumaatmadja, 1976, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*. Bina Cipta, Bandung. p. 8.

<sup>7</sup> Soerjono Soekanto, 1986, *Faktor-faktor yang Memengaruhi Penegakan Hukum*, Rajawali, Jakarta. p. 5.

<sup>8</sup> Sudikno Mertokusuko, 1993, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta. p. 2.

<sup>9</sup> *Ibid.*



Legal certainty is a protection for justice seekers against arbitrary actions. This means that a person will be able to obtain his/her expected thing in a certain circumstance. Society expects a legal uncertainty as it will put society in a more orderly situation. Laws create legal certainty because it aims to maintain order in society. The requirement of a legal certainty is that laws should be implemented in the way they should. They must not be distorted. Even though the world is crumbling, law must be upheld (*fiat justitia et pereat mundus*).<sup>1</sup>

Laws are also aimed at bringing prosperity to the community. Laws can be used as an instrument to make changes according to what is desired as long as its use is planned or programmed properly in accordance with the aspirations and responses of the public. Laws that are responsive to community development will facilitate the process of achieving the purpose of law enforcement; laws that are responsive suggest that laws are a mirror of society (*law is a mirror society*).

Components involved or influential to the enforcement or implementation of law are law upholders, existing regulations, community members, available infrastructure, and others. So, enforcing law is not only the duty of judges, prosecutors, police, and lawyers, but also of all community members. All the above components, human and social environment are the main keys of law enforcement. Although all the other components have been prepared, good law enforcement will not be realized if the human who have to perform it is not ready. A very interesting byword says that imperfect regulations that are applied appropriately are better than perfect regulations but are executed poorly; but, it would even be better if good rules are implemented properly.

Human is the main key of law enforcement. A discussion of law enforcement that is focused merely on the provisions of laws or regulations without elaborating the key role of human as the agent of law enforcement will end up with an empty picture. The discussion will be meaningful if it elaborates the role of human as the actual actor of law implementations.

Van Doorn stated that talks on law enforcement should attentively cover human factor because law enforcement can be put in effect only by them. Van Doorn depicted the tendency of human in interacting in a group or organization. They are inclined to make their own interpretation on their function in an organization based on their own personality, social origin, level of education, economic interests, political beliefs, and outlook on life. Another factor, in addition to those mentioned by Van Doorn, that is very influential in law enforcement is social environmental of the law enforcement process. Such the environmental issue can be attributed to human as individuals or as a law enforcement agent of a legal institution.<sup>2</sup>

To realize the ideas or elements of abstract laws, a fairly complex organization is required. Through organizations and the processes that take place in it, the community achieves the embodiment of the purposes of laws. The organizations can carry out their duties to make the ideas or objectives of laws accomplished if they have a certain degree of autonomy or independence. They require autonomy in order to be able to manage their available resources to achieve their organizational goals. Conversely, if they are not given autonomy to manage their resources, the resource could turn to be an inhibiting factor in enforcing or realizing the ideas or goals of law.

A statement that can be made and might sound a bit extreme is that the success or failure of law enforcement apparatus in carrying out their duties have actually been started from the time the rules of law are made. For example, when the legislative body makes laws that would be difficult to implement in society, the agency has actually become the architect of the failure of law enforcement apparatus in implementing the laws.<sup>3</sup> Laws can contribute to the failure of their enforcement when they are not equipped with principles for enacting them, have no rules required to implement them, and have vague words that lead to confusion for interpretation and application.

There are a number of factors that may influence a judge in making decisions. Achmad Ali noted that the factors include social background of the judge, educational background, ethnic, environmental conditions at the time of the verdict.<sup>4</sup> Social factor, the environment in which laws are applied, can cause failure to law enforcement. Laws that are made and implemented without a systematic process of socialization and not in line with the local legal culture will cause a deviation or trigger an opposition that lead to the failure of law enforcement. For instance, legislators issued regulations requiring people to do something, such as using a certain type of fertilizer on crops. But, the regulations faced a strong opposition from the community. In such a situation, the response of law upholders would depend on the nature of the opposition at the time. In such a situation, two possibilities could happen. Firstly, the law enforcement apparatus remain determined to execute commands or desires of the regulation, using the power of force. And, secondly, the law enforcement apparatus will succumb to the resistance of the community, by loosening the strictness of the regulation.<sup>5</sup>

---

<sup>1</sup> *Ibid.*

<sup>2</sup> Satjipto Rahardjo, 1983, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*. Sinar Baru, Bandung.p. 26

<sup>3</sup> *Ibid.* p. 25.

<sup>4</sup> Achmad Ali, 1988, *Menguak Tabir Hukum*, First edition, Pustaka Prima Jakarta. p. 175.

<sup>5</sup> Satjipto Rahardjo, 1983, *Op.Cit.* p. 25.

Another factor that affects law enforcement is culture or values espoused in the community. Legislation that contradicts to the living values in the community will not work and be enforced effectively. The procedure which is based on such legislation for settling a dispute or conflict would take a long time and convoluted. And, this will entail a low level of trust from citizens against law enforcement institutions.

Some other factors contribute to a case resolution. Firstly, a part of law upholders adopt conservative formalistic attitude in interpreting the provisions of legislation, similar to the concept of *legism*. Secondly, there is still an erroneous interpretation of the principle of law enforcement that should accord with justice and propriety. Thirdly, there is still a strong intervention from superiors on law enforcement, which is technically judicial in nature.<sup>1</sup> Based on the above discussion, it is clear that there are various factors that affect the implementation or law enforcement. The predominant factor that determines whether or not law enforcement is successful, however, is the human factor.

### 3. Law Enforcement and Discriminatory Legal Conducts

One of the expectations of law enforcement is that law enforcement apparatus applies laws appropriately to realize the objectives of law. As the central actor in law enforcement through law enforcement institutions (police, prosecutors, courts), they are expected to perform law enforcement in line with the sense of justice of the community. Unfortunately, in reality, sometimes we find some law upholders show discriminatory conducts. This implies that the expectations of good law enforcement through legal institutions cannot be realized to the fullest.

Law enforcement apparatus are expected by justice seekers to refrain from discriminatory actions they will lead to the occurrence injustice. Discriminatory behavior happens when a legal treatment applied to one party is more legal (*more law*) and less and/or no legal (*less law*) to the other party while the two parties are in the same capacity or position. In reality, such the legal treatment is called by many as unfair behavior. Many people can define justice, but it frequently happens that they end up with general statements and brief or even just a kind of circle that does not explain any meaning. In his justice theory, John Rawls stated, among others:

*"These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be stabilized. This way of regarding the principles of justice I shall call justice as fairness".*<sup>2</sup>

Donald Black explained the framework of social life such as legal conducts that affect law enforcement and can result in discriminatory legal behavior, as follows:

*"Social life has several variable aspects, including stratification, morphology, cultur, organization, and social control. Stratification is the vertical aspect of social life, or any uneven distribution of the conditions of existence as food, acces to land or water, and money. Morphology is the horizontal aspect or the distribution of people in relation to each other, including their division of labor, integration, and intemaecy. Cultur is the simbolis aspect sush as religion, decoration, and folklore. Organization is the corporate aspect, or the capacity for collective action. Finally, social control is the normative aspect of social life, or the definition of deviant behavior and the response to it, such as prohibitions, accusations, punishment, and compensation".*<sup>3</sup>

Stratification is the vertical aspect of social life, or any uneven or unbalanced distribution from material sources or existing conditions, such as food, access to land or water, and money. Stratification and laws always go hand in hand. Communities that have a sharp stratification will always face harsh law-treatment. But, in the next phase the level of harsh law is gradually getting more lenient when high-status people attack high-status people, low-status people attack low-status people, low-status people attack high-status people, and high-status people attack low-status people. More concretely, it can be stated that the higher the stratification or social status of a person in the society, the more the law will be on his/her side. Thus, the position or social status of a person is highly influential in the process of law enforcement.

Morphological aspect is a horizontal aspect of the social life or distribution of people in their relation to others, including a job description among them, integration and intimacy that goes on among them. Thus, a morphological aspect is associated with the relationship or degree of intimacy (relational distance) of people in their interaction to one another. Morphology can be illustrated as follows: if a case involves people who have a family relationship or a close emotional relationship, there is a tendency that the law will not work properly; even, it the law would be ruled out. On the contrary, if the people involved in a conflict do not have family or have loose emotional relationships, then the law works strongly or strictly. Likewise, when the law enforcement

<sup>1</sup> Musakkir dan Sudikno Mertokusumo, 1997, *Peranan Kebebasan Hakim dan Hubungannya dengan Pasal 178 ayat (3) HIR dalam Proses Penyelesaian Perkara Perdata (Report)*. pp. 595-596.

<sup>2</sup> Rawls, John. 1999. *A Theory of Justice (Revised Edition)*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, p. 10.

<sup>3</sup> Donald Black, 1976, *The Behavior of Law*, Department of Sociology, Yale University, New Haven, Connecticut, Academic Press, New York, San Francisco, London. p. 1-2.

apparatus have a relationship with both litigants or defendants, it would be quite impossible for them to act tough on both sides; it is likely to happen that they will use an informal compromise approach. But, when they do not have relationship or the relationship with the litigants or defendants is loose, it is highly possible that they will apply the law strictly. Thus, opportunities for greater legal alignments will go to litigants or defendants who have a close relationship with law enforcement apparatus than those who do not have a relationship with them.

Culture is a symbolic aspect of social life which includes expressions of what is right, what is supposed to be, what is wrong, what is appropriate and inappropriate. From the view point of culture, that is, religious aspect, appearance, and background, relative to unconventional people, conventional people are more likely to use laws and succeed in their case. When in a case one of the parties involved has a background of social life (ethnicity, education, origin, and others) that is the same with that of law enforcement apparatus, it is likely to happen that the apparatus will not apply the laws to them. On the contrary, the apparatus will apply the laws to the party who has a different background of social life from them. Thus, in a complex legal system, identities and relationships that exist between the parties can be referred to in predicting and explaining how a case is resolved.

Organizational aspect is the corporate aspect in social life and is the capacity to undertake collective actions. Laws can be moving from larger organizations to smaller ones or vice versa. For example, if a member of one group violates a law, the direction of laws will go from a larger organization to a smaller one. So, when the direction moves towards a smaller organization, laws vary directly in line with an organizational distance, but if the direction goes towards a larger organization, laws vary inversely with the organizational distance.

#### 4. Conclusion

The problems of law enforcement encountered by law enforcement apparatus in Indonesia seem very complex. Accordingly, they should not be seen and resolved partially. It should be understood, scrutinized, and resolved in a comprehensive manner. Law enforcement requires professionalism and independence. Law enforcement that is not based on professionalism and limited autonomy will bear discriminatory behaviour of laws that can reduce or even eliminate the trust of society to the authorities and the institutions of law enforcement, a situation that can result in onsets of injustice and vigilantism. Law enforcement apparatus who have a narrow understanding of the meaning of the rules of law should internalize and realize that laws should be seen not only from one approach or point of view, for example from a normative approach, but also from others, such as empirical and philosophical approaches. It should also be noted that legal problems have different characteristics from one to another; each requires a different approach. Law is not for the law, but for human beings as citizens.

Legal communities and public in general should understand and see laws as a whole system in which not only are substances or provisions of the law contained, but also a number of interdependent elements, for instance, legal institutions and law upholders, and legal culture of society and legal apparatus. Thus, criticizing law enforcement should take the whole aspects into consideration, not partial aspects that could form confusing opinions to both law enforcement apparatus and society. Law enforcement apparatus should further enhance their professional capabilities in enforcing laws and avoid as much as possible various aspects that may adversely affect the enforcement; and they should be given the autonomy to perform law enforcement transparently. By this way law enforcement will be away from discriminatory manners.

#### References

- Achmad Ali, 1988, *Menguak Tabir Hukum*, First edition, Pustaka Prima Jakarta.
- Achmad Ali, 1990, *Mengembara di Belantara Hukum*, Lembaga Penerbitan Universitas Hasanuddin, Ujung Pandang.
- Baharuddin Lopa, 1987, *Permasalahan Pembinaan Penegakan Hukum di Indonesia*, Bulan Bintang, Jakarta.
- Bernard Arief Sidharta, 1999, *Refleksi Tentang Hukum*, Citra Aditya Bakti, Bandung.
- Donald Black, 1976, *The Behavior of Law*, Department of Sociology, Yale University, New Haven, Connecticut, Academic Press, New York, San Francisco, London.
- Lawrence M. Friedman, 1975, *The Legal System a Social Science Perspektif*, Russel Sage Foundation, New York.
- Lawrence M. Friedman, 1998, *American Law an Introduction (Indonesian: Hukum Amerika Sebuah Pengantar)*, Translated by Wishnu Basuki, Tata Nusa, Jakarta.
- Lon L. Fuller, 1971, *The Morality of Law*. New Haven and London, Yale University Press.
- Majalah Forum Keadilan, Nomor 03 Tahun 1989, p. 80.
- Mochtar Kusumaatmadja, 1976, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*. Bina Cipta, Bandung.
- Musakkir dan Sudikno Mertokusumo, 1997, *Peranan Kebebasan Hakim dan Hubungannya dengan Pasal 178 ayat (3) HIR dalam Proses Penyelesaian Perkara Perdata (Report)*.
- Rachmadi Usman, 2003, *Perkembangan Hukum Perdata Dalam Dimensi Sejarah dan Politik Hukum Indonesia*,

- Pustaka Sinar Harapan, Jakarta.
- Rawls, John. 1999. *A Theory of Justice (Revised Edition)*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts.
- Satjipto Rahardjo, 1983, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*. Sinar Baru, Bandung.
- Satjipto Rahardjo, 1991, *Ilmu Hukum*, Edisi revisi. Citra Aditya Bhakti, Bandung.
- Setiawan, 1992, *Aneka Masalah Hukum dan Hukum Acara Perdata*, Alumni, Bandung.
- Soerjono Soekanto, 1986, *Faktor-faktor yang Memengaruhi Penegakan Hukum*, Rajawali, Jakarta.
- Sudikno Mertokusuko, 1993, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta.