

Fair Law Enforcement in Actions Corruption Crimes

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Abstract

Law enforcement is a process to realize the wishes in the law so that they become reality and are obeyed by the community. In the prosecution of corruption crimes in Indonesia, investigations are carried out by three different institutions, namely the Police, the Prosecutor's Office and the Corruption Eradication Commission. Where law enforcement of corruption crimes must be able to prioritize the principle of *equality before the law* in order to provide and realize legal certainty and justice for everyone who deals with the law.

This research method uses normative juridical research methods with several approaches, namely the statute *approach*, the conceptual *approach* and the *case approach*, this research also uses legal sources, namely: primary legal materials, secondary legal materials and tertiary legal materials. In describing the discussion, qualitative and comprehensive legal material analysis is used.

The results of the study show that: The philosophy of law enforcement is one of the efforts to achieve or create order, security and order in society, both as an effort to prevent and take action after the occurrence of law violations. However, in the process of law enforcement, law enforcement officials often forget the essence of the purpose of the law itself in order to realize legal justice, legal certainty and legal benefits to suspects or defendants of corruption crimes.

Keywords: Law enforcement, Justice and criminalacts of Corruption

DOI: 10.7176/JLPG/154-02

Publication date: July 28th 2026

1. Introduction

Indonesia is a country of law. This has been expressly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) that "Indonesia is a country of law". This constitutionally regulates that the ideals of the state of law contained in the 1945 Constitution of the Republic of Indonesia are not just a state based on any law. A coveted law is not a law established solely on the basis of power, which can lead to or reflect absolute or authoritarian power. Such a law is not a just law, which is based on justice for the people. In a state of law, the state recognizes and protects the human rights of every individual. This state recognition of the rights of the individual is implied in the equality of standing before the law for all people.

Law enforcement is a process to realize the wishes in the law so that they become reality and are obeyed by the community. The Indonesian people are increasingly yearning for the upholding of authoritative laws, fulfilling a sense of justice and peace that soothes the heart. Law enforcement against crime in Indonesia refers to a punitive approach to legal norms that provide a deterrent effect.

Effective law enforcement according to Lawrance M. Friedman¹ There are three elements, including the substance of the law, the legal structure and the culture or culture of the community. The substance of the law contains regulations and laws used to ensnare criminals. The legal structure contains institutions that are authorized to implement regulations and laws which of course must have good human resources. Culture or Community Culture means the attitude and behavior of the community towards the existence of laws that are enforced in the community, whether the community is classified as a law-abiding society or not. Friedman likened the legal system to a factory, where the "legal structure" is the machine, the "legal substance" is what the machine produces or works on and the "legal culture" is what or whoever decides to turn the machine on and off and decides how it is used. In a legal system, the law enforcement aspect (*law enforcement*) is the center of "activity" in legal life.

Corruption is an extraordinary crime (*extra ordinary crimes*) because it is systemic, endemic with a very wide impact (*systematic and widespread*) which not only harms the state's finances but also violates the social and economic rights of the wider community, so its enforcement requires *comprehensive extra ordinary measures* So that many regulations, institutions and commissions have been formed by the government to deal with it.

Corruption crimes have a special procedural law that deviates from the provisions of the procedural law in general. The Criminal Procedure Law applied is "*lex specialis*", namely the existence of irregularities intended

to speed up procedures and obtain prosecution investigations and examinations at trial.

In the prosecution of corruption crimes in Indonesia, investigations are carried out by three different institutions. The three institutions are the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK). Of the three institutions, only the KPK is the subject of a different crime from other agencies. The KPK based on Article 11 of Law Number 30 of 2002 concerning the Commission for the Eradication of Corruption Crimes Jo Law Number 10 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Commission for the Eradication of Corruption into Law Jo Law Number 19 of 2019 concerning the Second Amendment to the Law Law Number 30 of 2002 concerning the Corruption Eradication Commission, emphasizes that: "In carrying out its duties as referred to in Article 6 letter c, the Corruption Eradication Commission is authorized to investigate, investigate, and prosecute corruption crimes that:

- a. involving law enforcement officials, state administrators, and other persons related to corruption crimes committed by law enforcement officials or state administrators;
- b. get troubling attention from the community; and/or
- c. regarding state losses of at least Rp. 1,000,000,000.00 (one billion rupiah).

Bagir Manan also holds an opinion similar to Pompe who stated, among other things:¹ Fair or just law enforcement will be achieved if the law to be enforced, as well as the law that regulates the means of law enforcement is correct and just. A rule of law will be correct and fair if it is made in the right way and the content material is in accordance with the legal awareness of the community and provides the greatest benefit for the interests of individuals and society in general. A rule of law will be untrue and unjust if it is made only for the sake of power and contains arbitrariness. Based on the background as described above, the problem in this study is: What is the essence of law enforcement in the crime of corruption?

2. Research Methods

The type of research used in this study is normative legal research that is qualitative and supported by a case approach as supporting data. Normative legal research is a study that examines positive legal provisions, legal principles, legal principles, and legal doctrine in order to answer the legal issues faced.² This means that the research refers to the legal norms contained in national laws and regulations (national law) and international law as well as related cases as well as norms that apply and are binding on the community or also concern the prevailing customs in society.³

Normative legal research is essentially focused on providing answers to all research questions or problem formulations and summarily describing the results of the research, rather than answering the research hypothesis.⁴ In this study, the problem approaches used include the statute *approach*, the conceptual approach, the case approach, and the comparative approach.

3. Results And Discussion

a. The Essence of Law Enforcement in Corruption Crimes

1) Fair Law Enforcement

Justice in legal terminology is translated as a state that is generally acceptable to common sense at a given time about what is right. While John Rawls argued in *A Theory of Justice*, justice is *fairness*, i.e. the conditions built on the view that every individual has freedom, the initial *status quo* that affirms fundamental agreement in the social contract is fair. This is the original position of humans when they join a community called the social contract. The main idea of justice in Rawls's view is how the main institutions of society regulate basic rights and obligations and determine the distribution of welfare of the social cooperation that is built.

In relation to state life, the constitution has regulated and determined the purpose of law enforcement by law enforcement officials (investigators, public prosecutors and judges), namely justice. In Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law. So the emphasis is not only on legal certainty, but on fair legal certainty.

¹ W.P.J. Pompe, *Handboek van het Nederlandse Strafrecht*, Zwolle : N.V. Uitgevers-Maatschappij, W.E.J. Tjeenk Willink, 1950, hlm. 42

² Soerjono Soekanto and Sri Mamudji, *Normative Law Research A Brief Review* (Jakarta: Raja Grafindo, 2007), p.24

³ Friedman, Lawrence, *American Law*, W.W. Norton and co., New York, 1984, p. 6

⁴ Irwansyah, *Legal Research on Selected Methods & Practices of Article Writing (Revised Edition)* (Makassar: Mirra Buana Media), p. 103

According to Mahfud MD, when the constitution was amended, the principle of fair legal certainty was emphasized in the 1945 Constitution because in the past, efforts to enforce legal certainty were often used as a tool to defeat justice seekers. In the name of legal certainty, justice seekers are often defeated by the arguments contained in the law; In fact, at that time, many laws were conservative, elitist, and positivistic-instrumentalistic in nature or as a tool to justify the will of the rulers. Therefore, when amending the 1945 Constitution, the MPR is very aware of affirming the principle of the enforcement of justice in the constitution in the judicial process. Law enforcers (investigators, public prosecutors and judges) are encouraged to explore a sense of substantive justice in society rather than being shackled by the provisions of the law (*procedural justice*).

According to ethical theory, law is solely aimed at justice. The content of the law is determined by our ethical beliefs about what is and is not just. In other words, the law according to this theory aims to realize or realize justice. Francois Geny (1861-1959) was one of the proponents of this theory. The main focus of attention of the principle of justice is the fate of the most disadvantaged members of society. The application of this principle of justice is the parameter of public assessment of the performance of law enforcement officials.

That is why, Soetandyo Wignjosoebroto positions justice (*justice*) as the heart of the law.¹ However, according to Hart, the above rule is not by itself clear. For any human situation will be similar to one another in some way and different from the other in other respects. In that condition, the question is what similarities and differences are considered relevant? To fill this gap, Hart asserts that the resemblance and relevant differences between individuals, to which the person who executes the law, must refer to, is determined by the law itself. Hart gave an example, "to say that the law prohibiting murder was fairly established is to say that it applies impartially to all people and only to persons who are similar in terms of that they have done what the law forbids; there is no prejudice or interest that influences the executor in treating them equally". Even if there is discrimination, it must be carried out based on relevant principles, namely a person's capacity, such as mental capacity and reason.²

b. Responsive and progressive law enforcement

Fundamentally, the law functions to stabilize social life, protect the oppressed, and safeguard all parties-rich and poor, powerful and ruled. Therefore, the law is closely linked to the dynamics of social change. In the past, law was identified with justice, so to speak of law meant to speak of justice. However, this situation no longer exists. To speak of law also means to speak of a new reality: legislation consisting of substantive and procedural material.³

The rule of law movement has proven to be very ineffective. Our world and lives remain chaotic, and therefore the law must be oriented toward behavioral regulations. Observations of current legal practices clearly demonstrate behavioral interventions into legal normativity. People read regulations and assume they should act this way, but what actually happens is different. This is what is called behavioral intervention.

Responsive law is a model or theory developed by Nonet-Selznick amidst the Neo-Marxist critique of liberal legalism. Liberal legalism, as is well known, posits law as an independent institution with an objective, impartial, and truly autonomous system of rules and procedures.

Viewed from the perspective of the internal interests of the legal system itself, the argument of its integrity is understandable. But law is not an end in itself. Law is a tool for humans. It is an instrument to serve human needs. In this sense, the isolation of the legal system from the various social institutions surrounding it actually has a negative impact on the aspect of human needs itself. Law easily transforms into an institution that serves itself, no longer serving humans. Law can no longer be relied upon as a tool for change and a tool for achieving substantive justice... The danger signs of the erosion of this authority and the stagnation of substantive justice have become the focus of criticism of law.⁴

Nonet dan Selznick menunjukkan dilema pelik di dalam institusi-institusi antara integritas dan keterbukaan. Integritas berarti suatu institusi dalam melayani kebutuhan-kebutuhan sosial tetap terikat pada prosedur-prosedur dan cara kerja yang membedakannya dari institusi-institusi lain. Mempertahankan integritas dapat mengakibatkan isolasi institusional. Institusi akan terus berbicara dalam bahasanya sendiri, menggunakan konsep-konsepnya sendiri dengan cara-caranya sendiri yang khas yang mungkin sudah tidak dapat dipahami sendiri-ahli hukum berbicara dengan ahli hukum dan kegiatan institusi akan kehilangan relevansi sosialnya. Di pihak lain keterbukaan yang sempurna akan berarti bahwa bahasa institusional menjadi sama dengan bahasa yang dipakai dalam masyarakat pada umumnya dengan bahasa yang dipakai dalam masyarakat pada umumnya,

¹Ratna, 2020. *Law Enforcement and Justice in the Frame of Morality*, Journal Vol. 11 No. 2, Jul-Dec, p. 89

² Ratna, 2020. *Law Enforcement and Justice in the Frame of Morality*, Journal Vol. 11 No. 2, Jul-Dec, p. 89

³ Satjipto Rahardjo, 2006, *Membedah Hukum Progresif*, Kompas, Jakarta. p.. 67

⁴ Philippe Nonet & Philip Selznick, 2003. *Hukum Responsif*, Pilihan di Masa Transisi. Penerjemah Rafael Edy Bosco. Jakarta: Ford Foundation-HuMa.

namun tanpa mengandung arti khusus, aksi-aksi institusional akan disesuaikan sepenuhnya dengan kekuatan-kekuatan dalam lingkungan sosial. Konsep hukum responsif melihat suatu pemecahan untuk dilema ini dan mencoba mengkombinasikan keterbukaan dengan integritas.

Philippe Nonet and Philip Selznick introduced the typology of responsive law as state law that is able to respond to and accommodate the values, principles, traditions and interests of society, thus reflecting the democratic system of government adopted by the government in power, especially in the implementation of its legal development policies.¹

Furthermore, Nonet and Selznick also argue that responsive law can be positioned as a means of responding to social provisions and public aspirations. Due to its open nature, this type of law offers the advantage of embracing social change in order to achieve social justice and public emancipation. Concern about low social aspirations has led to this theory being viewed as a sociological jurisprudential area. "In fact, law responsive people have an understanding of the law beyond the rules or text of a document or simply looking at the words. The end result is the consequences and benefits of the law itself.

4. Closing

Law enforcement is one of the efforts to achieve or create order, security and order in society, both as an effort to prevent and take action after a violation of the law. However, in the process of law enforcement, law enforcement officials often forget the essence of the purpose of the law itself in order to realize legal justice, legal certainty and legal benefits to suspects or defendants of corruption crimes

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¹ Nyoman Nurjaya, "Reorientasi Paradigma Pembangunan Hukum Negara dalam Masyarakat Multikultural: Perspektif Hukum Progresif", Makalah dalam Seminar Nasional Hukum Progresif I, diselenggarakan oleh Fakultas Hukum Universitas Diponegoro bekerjasama dengan Program Doktor Ilmu Hukum Universitas Diponegoro dan Fakultas Hukum Universitas Trisakti, Jakarta. Semarang, 15 Desember 2007, hal. 18-19.

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