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The Dimension of Law as a Social Fact in Relationship with Counter-Terrorism Crimes in Indonesia

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***Abstract*— Nowadays, non-optimal law enforcement against terrorism crimes enhances the government's challenge. In a social perspective, the law is a social fact. The law and social fact, both have an absolute relationship. This study discusses the philosophical and sociological foundation of law concept as a social definition. It relates to conflicts where counter-terrorism crimes are not optimal yet in Indonesia. This study uses a normative legal research method with a conceptual and philosophical approach. Data collection is carried out by examining all primary and secondary legal materials related to the field of law enforcement on terrorism. The results show that perception about law as a social fact is beneficial to find the cause of Indonesian law enforcement failure. Terrorism prevention policies must run in the context of the idea of improving the socio-economic conditions in society.**

Keywords*— *Law, Terrorism, Society.

I. INTRODUCTION

Legal issues and their enforcement are not trivial. State stability, in reality, depends on how the law is formed and presented in the state. Law enforcement is part of the social facts of all Indonesian people. At present, in the context of Indonesia, law enforcement is experiencing slowness in its efforts to achieve the ideal standards of developed countries. As an independent country, Indonesia continuously strives for development in various fields but still severely constrained by the problem of optimizing law enforcement efforts.

Law enforcement itself has the main objective to improve order and legal certainty in society. Then the society level development dramatically affects the pattern of law enforcement [1]. Jimly Ashidiqqie defines law enforcement as a process of making efforts for the legal norm establishing or legal norm functioning as a real guideline for behavior in traffic or legal relations in public and state life [2].

Furthermore, Ashidiqqie parses the review in terms of the subject and the object. From the point of view, the subject can still be viewed from the broad and narrow meanings — the broad meaning in which the process of law enforcement involves all legal subjects in every legal relationship. According to him whoever runs the normative rules or does something or does not do something by basing themselves on the norms of the rule of law, it means that he runs or enforces the rule of law. While in the narrow meaning, law enforcement only interpreted as an effort of specific law enforcement apparatuses to guarantee and ensure that the rule of law runs as it should. He said that in ensuring the enforcement of the law, if necessary, law enforcement officials were allowed to use force [2].

Furthermore, according to Ashidiqqie, the definition of law enforcement from the object view can be seen in terms of the law. For such contexts, the meaning also includes broad and narrow meanings. Law enforcement in the broadest sense also includes the values of justice contained in the sound of formal rules and values of justice that live in society. Whereas in the strict sense, law enforcement only involves formal and written enforcement of regulations [2].

Hikmahanto Juwana said that there were at least eight common practical problems surrounding law enforcement. Those are the problem of making laws and regulations; society seeking victory and not justice; money coloring law enforcement; law enforcement as a political commodity, discriminatory law enforcement; weak human resources; advocates know the law versus advocates know the connection; budget constraints; law enforcement triggered by the mass media [1].

Indonesia is currently facing the threat of terrorism crimes. Crimes in this reality not only endanger the interests of the society but threaten the existence of the state. Law enforcement, in this case, is considered the first choice of government policy related to efforts to counter the crime.

The expectations of factual law enforcement based on the existence in special legislation will govern the prosecution of terrorism crimes. Terrorism as a particular form of crime is based on Law No. 15 of 2003 concerning Stipulation of Establishing Government Regulations in place of Law Number 1 of 2002 concerning Eradication of the Criminal Acts of Terrorism into Laws. Other criminal provisions follow later, Law No. 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Criminal Acts. The existence of these two legal instruments has an essential meaning in the context of national law enforcement. While in the context of international relations, the presence of the two legal instruments affirms the commitment of the government and the Indonesia society. This commitment is related to the seriousness in eradicating terrorism, which has become a global problem. [3].

During an optimal effort by the Indonesian government by presenting several legal products above, in reality, it has not been able to reduce the quality of terrorism crimes. It is referring to the facts that until now, the terrorism incident occurs continuously. The terror organization network, in reality, never disappears but continues to grow. It measured by the number of cases disclosed by the police.

Countering terrorism is not easy. Several previous studies have revealed how complex the issue of terrorism. Joseph Pillat said that the main focus on combating terrorism must

become the center as efforts to investigate factors that cause terrorism [4]. While Jerold Post in his research works explores to reveal the ins and outs of terrorism as a crime from the psychological aspect. According to the Post, the development of terrorism must concede in terms of cultural, historical, and political aspects [5].

In the context of terrorism as a crime and additionally, terrorism as a social phenomenon, some researchers analyze the link between human individuals, religion, and terrorism. In Adamczyk's research, applying a quantitative approach to analyze those linkages [6].

While in the death penalty context is always threatened and applied to the perpetrators of this terrorist crime. The legal products mentioned above do have the threat of capital punishment, which should have a frightening effect on the perpetrators of this crime [7]. The fact is that crime cannot be said to minimize significantly. From this situation, it can conclude easily that the performance of law enforcement in Indonesia is not yet optimal. The challenge then is how to trace the causes of law enforcement not yet maximized related to terrorism crimes. Are there other causes so that this crime continues to occur?

The government has presented various law enforcement policy packages related to counter-terrorism. The efforts undertaken include presenting new provisions related to the threat of a maximum sentence, strengthening and expanding the authority of the Police, TNI, BIN, and BNPT as well as other matters. These efforts have not shown maximum results. Based on this, it should realize that optimizing the results of law enforcement is not easy.

Many people assume that law enforcement will be closely related to the activities of maximizing the entire elements of the legal system while the legal system elements here usually referred to Lawrence Friedman's theory, which consists of legal structure, a legal substance, and legal culture. Law enforcement has not yet been successful, and it does not only revolve around the above problem.

Law enforcement work that has not maximized caused by the failure to understand the law itself by policymakers (in this case, the government). In this context, the law must also understand in the context of its nature as a social fact. This understanding is vital as a basis for consideration of policymaking and implementation of policies on combating terrorism crimes. Based on this, it expected that law enforcement has the potential to run optimally.

Based on the background above , the research question here is first, how is the concept of law as a social fact? Second, what is the practical form of policy related to law enforcement for the crime of terrorism?

In all the practical problems of law enforcement, conceptually all of them lead to humans as legal subjects. Humans in this context have a broad meaning in the sense of being a group of people. Ideally, the law presented by humans and then upheld for the benefit of human welfare.

For the context of Indonesia, in reality, various efforts have been made to organize legal and enforcement issues in the country later. The critical value of the law exists and the importance of upholding the law, up to now, the study continues to be sought to maximize the working power of law enforcement. In the context of the issue of law enforcement, in general, it usually addresses the problem of the legal system. While the legal system itself at least covers the issue of legal substance, legal structure, and legal culture.

At the vortex of the legal system issues referred to, the study began to focus on how the legal making process follows the ideality of the legal material. On the issue of legal structure, the discussion examines explicitly the existence of law enforcement institutions which focus on institutional work power and personal law enforcement. While in the aspect of legal culture, the discussion revolves how the state of society. Concerning the need for constitutional values and how real conditions of society obedience to the law.

Nevertheless, the comprehensive review of the law, in reality, is unable to cover and repair the gaps in the practical failures of law enforcement in Indonesia. Law in Indonesia in the view of the society is perceived simply as something related to the struggle against upholding respect for the rights of individuals, groups which in practice often fail to be facilitated by the state. People, in reality, are often trapped in illegal behavior in fighting for justice, which is the goal of the law — the state is seen as failing to fight for legal equality for the people.

It must be said that from this reality, the real law is not merely a matter of the ideality of substance, structure or culture, just as the discussion of the legal system is known widely in legal studies. Valid law must also be understood from the problems of humanity and society itself. The law, at this point, must be understood in its context as a social fact. Law as a social fact is a particular perspective that examines specifically the existence of law concerning society.

II. METHODS

This research focuses on examining the law in the context of the concept and its implementation using normative legal research methods [8]. While for the discussion use approach, the conceptual approach, and philosophical approach. Legal materials here are textbooks and journals which classified as secondary legal materials. Moreover, supporting material outside the field of law, in this case, several textbooks and scientific articles in the social field [9].

III. RESULTS AND DISCUSSION

A. Understanding the Law as Social Facts

How judicial society can understand from the existence of law as a product of human civilization. The progress of a group or human society's civilization can be seen from the existence of the law. In terms of the form and substance of the law in which they apply. Satjipto Rahardjo said that law is social work in the form of norms containing behavioral guidelines. It is a reflection of human will about how society should be bound and where it should be directed. Therefore, according to him, the law does not contain ideas chosen by the society where the law was created, where the intended ideas are nothing but ideas of justice. [10].

In comparison with what Rahardjo said, much earlier Eugen Ehrlich, who was considered a pioneer in the development of sociological jurisprudence in Europe, said that there was a very close relationship between law and its enforcement and society. According to Ehrlich, as quoted from Rasjidi in Aburaera et al., Positive law will have dynamic behavior if it is then in harmony with the law live in a society. Ehrlich considers that the focal point of the development of law does not lie in the law, the decision of the judge or the science of law but in the society itself [11].

Ehrlich, in reality, assumed that law was subject to specific social forces. He said the law could not be valid because the order in society was based on the social recognition of the law and not because of its official application by the state. Ehrlich mentioned that social order on the fact of the receipt of law which on social rules and norms that reflected in the legal system. Ehrlich considers that those who develop the legal system must connect intimately with the values held in the society concerned [11].

There is indeed a close relationship between law and society. Ehrlich's view is clearly about to break the arguments of the adherents of the legal positivism which see the law narrowly in the ideality of legal normativity itself, which released regularly from the political and social elements in which the law lives. Anshori said that the positive legal flow sees the law as a command of lawgivers (orders from lawmakers or rulers), which is an order from those who hold the highest authority or who hold sovereignty. Law considered as a logical, permanent and closed logical system [12]. Compare it than with what Rahardjo said, which says that the law binds itself to society as its social basis [10]. In line with this, another legal expert, Coleman, said that the law is indeed closely related to the social life of the community. Law is considered a social product of the community [13].

The law is related clearly to the social aspects of society. Savigny, as quoted by Susila, emphasized that the real law does not only grow from "pre-legal norms," but follows from social ethics. The law, as a result, it presents in the institutions practiced by society. It reflects the soul of society. The law, therefore, grows along with the people, develops with it, then finally disappears with the people, when the people lose their identity [14].

In Savigny's perspective, the law not arises because of the command of the ruler or because of habit. However, because of a feeling of justice that lies within the soul of the nation (*instinctive*). The soul of the nation (*Volksgeist*) referred to a source of law. Savigny said that the law not made but he grew and developed with the society (*Das recht wird nicht gemacht, es ist und wird dem volke*) [15].

The above description is quite clear describing the legal attachment to society. It became clear later in this context that law must observe as a social fact. Social facts themselves are interpreted by Durkheim as ways of acting, thinking, and feeling, which are outside the individual and load with a force that causes them to control that individual. Durkheim sees social facts as matters relating to regulation [16]. In this context, law, as well as politics, are included as social facts.

Rahardjo, in his view, stressed that law must also observe as a social institution. Seeing the law as a social institution or institution is different from seeing the law as a mere regulatory system. The law as a social institution or institution wants to state how the law carries out social functions in society and for society such as integrating the behavior and interests of society members [10].

Own social institutions by Robert Melver and C.H. Page define as a procedure or procedure that has been created to regulate relations between people who are members of a society group. While Leopold Von Wiese and Becker interpret it as a network of processes between people and between groups that function to maintain that relationship and its patterns following the interests and interests of individuals and groups [17].

Law, as a social institution in this context, has an essential meaning in maintaining the society entity itself. Regular, orderly human relations in order of people's lives achieved by using the law as a means. Here is the authenticity of the value of the use of law itself conceptually in an approach to the discussion of the law as a social fact.

B. Law Enforcement Terrorism Policy

The problem realizes the value of legal use as described above, in reality, is not easy. Apart from the issue of legal products that may not have been ideal, the following are law enforcement factors, but more than that, the legal benefit issues above in this context can also be caused because in society the legal values related to the concept and implementation have changed. Precisely understanding the social aspects of law as a product of social life is needed.

At some point, it must recognize that the law and its enforcement often meet with extraordinary obstacles because of the negative response of society. The negative response from the society can be seen based on indicators of the number of violations of the legal products that present. Corruption, in reality, can be a simple example. Various approaches have been attempted by the government to push corruption to the lowest point, but in reality, corruption is even more rampant. The government has tried to bring legal products that regulate the types of acts as detailed as possible, establish new state institutions such as the Corruption Eradication Commission, and various other approaches. However, these efforts have not been enough to reduce the number of corruption crimes in the country significantly. The same thing is more or less the case concerning the eradication of narcotics or terrorism in this country.

For the context of law enforcement, it is clear that no matter how good the law and its products created, but if it detached from the social context of society, then it is certain that the law will not be accepted and tends to be ruled out by the society. In the end, this will only bring the conclusion that the law is not adequately present to society. It is a matter here then to determine what the ideal law in the country is related to the concept and its implementation, which can then have an impact on the maximum law enforcement work at this time.

Therefore, it stated before, that law works nonoptimal if it releases from its social context. As the primary adage in law teaches that where there is a society, there is law, Ubi Societas Ibi Ius, so this adage emphasizes the existence of the society as an element of the legal owner and legal user. The law can not separate from these elements, so releasing the law and its products separately from the lives of the society will cause the law to have no binding power and conduct.

Satjipto Rahardjo argues that law as a social institution is bound to society as its social basis. The law must pay attention to the needs and interests of society members and provide services to them, although the law is not always able to give its decision immediately in serving the interests of society [10]. Then what about the society, Rahardjo said that in the context of society not only wants to see justice created and its interests served by law, but he also wants that in society there are regulations that guarantee certainty in their relations with each other. Rahardjo said that the law was required to meet various human needs that are not only justice but also their usefulness and legal certainty, then it becomes the three fundamental values of law as stated by Gustav Radbruch [10].

Interestingly, according to Satjipto Rahardjo, even though all three are the fundamental values of the law. However, among them (justice, usefulness, and legal certainty), there is a *spannungsverhaltnis* tension between one another. According to Rahardjo, this known because all three were different demands and contained different potentials, it is generally true, and it is challenging if the law which presented by promoting the value of justice can provide a balanced pressure for equalization with the value of usefulness and certainty, vice versa too [10].

What is decomposed is based on the fact that the legal product can meet the certainty value as one of the values of society needs. However, in reality, along with the times the legal products are no longer able to meet the value of benefits, let alone the value of justice. At this point, the interests of the society indeed distort the law.

At this point, we can understand that the validity of the law in terms of its validity is relative. The intended relativity depends on the social aspects of the society itself as owners and users of the law. Rahardjo gave an example that evaluating the validity of the law from the aspect of regulation is only one part of the whole other parts. It means that there are still other parts as a condition of legal validity, for example, in terms of usability [10].

In such a context, it becomes clear the influence of social force pressure on the working power of law. The fundamental values of law that include justice, usefulness, and certainty are the essence of various society needs. These various society needs will compete with one another to get recognition. So from these conditions, justice is prioritized by the law at a certain point. Meanwhile, in other situations and conditions, the value of usability or certainty is more visible. Everything depends on the needs of the society of the law.

In connection with the issue of relativity of the validity of the fundamental values of this law, it is worth observing Manullang's view that states that justice cannot achieve if certainly not fulfilled.

Furthermore, what is satisfied according to the law does not necessarily provide justice. Vice versa, if only justice fulfilled without regard to whether it provides certainty (law), it can also destroy the value of justice itself. This Manullang description is still absurd. However, what present remains real is that between these values (justice, usefulness, and certainty) there is interdependence, as well as competing with one another. Sociologically, nothing but nothing more than the values inherent in a society [18].

At this point, how central the position of society concerns the existence and effectiveness of the law. The law is existentially present and can work because the society's needs determine it as such. Rahardjo explained that it is common when we look at the effectiveness of society order in terms of the rule of law. Measures for assessing behavior and relationships between individuals base on the law or legal order. However, in fact, according to him, it must be understood that society is a complicated thing, wherein it consists of various orders.

Here it is obvious how law works cannot separate from its context as a social fact. Viewing the existence of law in concept and its implementation, in the construction of legal propositions as social facts is different from the normative construction of legal propositions. In a context where law enforcement is less than optimal, through conceptual excavation of law as a social fact, it is not only caused by not fulfilling certain conditions. It might even caused by violations of the ideality of the normative nature of the law itself, but it influenc by the pressure of social forces within the society itself. The value of an interest in individuals and society groups, in this case, is the social force in question. The issue of justice, usefulness or usefulness, and legal certainty, in reality, is not only a philosophical problem of law but rather is the essence of sociological issues that refer to the various needs of the society.

By understanding the complexity of legal issues and their enforcement which are not merely absolute in terms of the normative dogmatic inherent in law in the scientific context, it turns out that it must also be view from the law as a social fact, then the problem is how the ideal of Indonesian legal development in the future. It related it is interesting to listen to the views of Barda Nawawi Arief who said that development and law enforcement should not be dichotomized and seen separately from development in the political, social, economic, cultural and other fields. Building law, according to him, mainly builds all norms/order of society and state life in the political, social, economic, security, and so on. He said that legal development should exist and integrated with all fields of life [19].

Barda Nawawi Arief said that the society requires quality development and law enforcement that is substantial and not merely formal quality. The things that must consider in the development context of society law are: the protection of human rights; upholding the values of truth, honesty, fairness and trust between people; absence of abuse of power / authority; clean from the practice of "favoritism", corruption, collusion, nepotism, and justice mafia; realization of judicial power / independent law enforcement and the establishment of a professional code of ethics; the existence of a clean and authoritative government [19].

Barda Nawawi Arief's views are broadly in line with the conclusions of the previous discussion that the real law must not separate from the social aspects of society itself. Indonesia's legal construction in the future must instead awaken from the situations and conditions of the people who need it. It is vital to strengthen the existence of law in society life.

In the context of law enforcement against terrorism, it is not surprising that the results have not been optimal. Terrorism crime grows continuously, simultaneously with society growth [20]. The terror network still thrives in society. Although, the law enforcement work is increasingly being push optimally.

In this context, it should understand that crime prevention is not merely a matter of optimizing law enforcement. Law enforcement can be run optimally if indeed the law has been well received by the society. The law accepted by society is the law that is presented by the society, not as something given by the authorities. It is the legal dimension as a social fact. Reinhard Kneissl said that to uphold the law. Society must have a comprehensive understanding and awareness of all aspects of law and its enforcement [21].

Crime is a social phenomenon. Criminal law is presented to act decisively and ultimately function to organize people's lives to avoid crime. However, overcoming crime must also be understood in the context of law in its dimension as a social fact.

Law is a product of society. So it is with the crime. Crime, in this case, is also a product of society. Therefore, overcoming crime by only relying on policies to optimize criminal law enforcement efforts will certainly not be able to succeed correctly. To countering crime, the conditions of society must improve. It is related to socioeconomic conditions. Improvements to this will result in a better legal concept regarding the crime of terrorism.

According to Wang, compare with the offer of the concept of mass mobilization against terrorism. This concept emphasizes the public's role in countering terrorism. For this effort, according to Wang, counter-terrorism education is a way out to develop an anti-terrorism society [22]. The process of globalization is indeed directly encouraging the presence of difficult socio-economic situations. It has an impact on increasing terrorism activities [23]. The socio-economic condition of the community influences the positive and negative impacts of the development of terrorism [24].

Perpetrators of terror crimes cannot consider as individuals who become the trash of society. Where based on this perception, the person concerned must punish. Crime and the perpetrators must be understood as a product of the society as the law is considered a product of society. In this context, what must be improved is society and not merely the villain. In the context of the state, the responsibility for improving society rests with the government. Understanding of this concept becomes important to produce improvements to the current state of law enforcement that is not optimal for terrorism crimes.

It should say here that the main focus of policies on combating terrorist crimes should explicitly direct towards improving the socio-economic conditions of the people who have great potential to be exposed to radicalism. The better socio-economic conditions of the people will form a positive mindset towards the government of the country. At this point, its hope that terrorism will no longer only be seen as an enemy of the government, but will see as an enemy of individuals and society in the country. Individuals and society will produce new legal values. Where the new law no longer easily tolerates the growth of radical understanding that results in acts of terrorism. The public will automatically reject the concept of radical understanding and acts of terror. At this point, the Government will then be able to easily absorb the values of the communal legal society to be applied as state policy.

IV. CONCLUSION

There is a close relationship between law and society. Conceptually, the law cannot separate from the context of social life. The law builds from the social system of society. Law that conceptualizes as a social fact is conceptually distinct from legal studies in its normative dogmatic context. So placing the law as a social fact, in reality, will be very helpful in trying to find the cause of the failure of the praxis of Indonesian law enforcement. The law from this point of view examines in terms of its relationship with society. It found that the following law changes in reality not only found legislation or court decisions but can also found in society. In the sense of law as a social fact, building law, in reality, cannot be carried out independently, apart from the development needs of other fields, but the law must integral built with other fields. In this context, the law can easily enforce and minimal obstacles.

In the context of countering terrorism crimes, the most important thing is to improve the condition of society itself. Society as the party that produces the law, in reality, is the party that produces crime and the culprit. On this basis, what must be improved is the society. Terrorism prevention policies must run in the context of the idea of improving the socio-economic conditions of society. In this context, the crime of terrorism will handle optimally.

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