

Law Enforcement of Indonesian National Army (TNI) Soldiers with a Progressive Legal Approach

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Abstract

The implementation of law enforcement in the Indonesian National Army (TNI) is still chaotic due to the sectoral ego of each law enforcement officer so that it is necessary to discuss the concept of law enforcement against soldiers who commit violations using a progressive legal approach conceptual. This research is a normative (doctrinal) legal research with a statutory and conceptual approach. Law enforcement in the Indonesian National Army environment requires the development of the approach that used, one of which uses a progressive legal approach. In progressive legal thinking, the law should be able to give happiness to the people and the nation so that the development of soldier morality is needed. Thinking progressively in law means having the courage to get out of the mainstream of legal absolutism thinking, then placing the law in a relative position. Progressivism does not want to make law a technology that has no conscience, but rather a moral institution, in this case human morality. Good physical development but bad mentality makes the direction of the law go astray.

Keywords

Law Enforcement; Indonesian Army; Progressive

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Introduction

In the life of society, nation and state, one of the things that must be enforced is a legal life in society. This view is believed not only because this country adheres to the rule of law, but rather sees critically the trends that will occur in life that is developing towards a modern society. Such conditions demand the existence of a law with a national dimension, including law enforcement in the military environment, which has an Indonesian-minded paradigm, while at the same time accommodating the demands of the times.

The Indonesian National Army (TNI) as one of the organs owned by the Indonesian government is tasked with safeguarding, protecting and defending the security and sovereignty of the State. In carrying out all its responsibilities and obligations to the state, the Indonesian National Army is not spared from various problems. One of the problems that must be faced is the existence of crimes and violations committed by Indonesian National Army soldiers, which of course has implications for the delay in the implementation of service obligations in their units (Hutape, 2016: 373). The Indonesian National Army as the main component in the defense and security of the Republic of Indonesia is part of the community which is also the subject as well as the object of the application of the law (Chalim, MA, & Farhan, F, 2016: 102).

As a state of law, every citizen who commits a violation or criminal act must receive the same treatment without discriminating against the status or position of the person concerned, whether he is an official or not, whether he is part of Indonesian National Army or not. This conception implies that if there are Indonesian citizens who violate the law, the application of sanctions to those who violate is the same (equal), but the difference in law enforcement against them is the legislation or procedural law applied to the person concerned (Gani, 2016; 58).

The implementation of law enforcement within the Indonesian National Army, according to the author's observations, is still chaotic, there is still sectoral ego of each law enforcement officer. Based on the monitoring of the Commission for Missing Persons and Victims of Violence (KontraS) during October 2020 - September 2021, we found 54 violent incidents involving members of the TNI. The dominant form of violence was torture with 31 incidents, followed by shooting with 9 incidents, torture and intimidation with 6 events, then 5 incidents of inhumane acts, kidnapping with 2 incidents, and finally arbitrary arrest (1 incident) (KontraS, 2021: 5).

The tendency to violence is still one of the main problems in the TNI, KontraS considers that the practice of violence carried out by the Indonesian National Army has resulted in various problems of human rights violations. Practices that occur in the field certainly cannot be separated from the culture of violence rooted in military institutions. Based on the data above, the violent practices carried out by military institutions (Indonesian National Army) are dominated by four acts, such as ill-treatment, shooting, torture, and inhumane acts. The practice of these acts of violence has not been accompanied by a fair legal settlement, giving rise to a wide scope of impunity.

Law enforcement in the military environment at an ideal level (should be) able to keep up with the times, able to respond to changing times with all the basics in it, and able to serve the community by relying on the morality aspect of the human resources of law enforcement itself, which in Indonesian law is often called the progressive legal approach. For this reason, in this journal, the author describes the concept of law enforcement against TNI soldiers who commit violations by using a progressive legal approach, as initiated by Satjipto Rahardjo.

Research Methods

This research is a normative (doctrinal) legal research that views the law as a complete system that includes a set of principles, norms and legal rules, both written and unwritten. The approach used is a statutory and conceptual approach, with the collection of legal materials in the form of literature studies. This research is focused on the application of positive legal rules or norms in accordance with the substance of the research material.

Discussion

1. The Concept of Progressive Law Enforcement

The concept of progressive law enforcement is actually simple, namely to liberate, both in the way of thinking and the way of acting in the law, law enforcement officers, so that they are able to let the law flow to complete their duty to serve humans and humanity. Progressive Law demands the courage of law enforcement officers to interpret articles to civilize the nation. If the process is correct, the ideals built in law enforcement are in line with the nation's efforts to achieve national goals. This ideal will keep away from the practice of uncontrolled legal inequality as it is today (Nuryadi, 2016: 2). Law enforcement in the military environment should be able to keep up with the times, be able to respond to the changing times with all the basics in it, and be able to serve the community by relying on the morality aspect of the human resources of law enforcement itself, which is commonly called progressive law.

In progressive legal thinking, the law should be able to give happiness to the people and the nation. Thinking progressively in law means having the courage to get out of the mainstream of legal absolutism thinking, then placing the law in a relative position. The law must be placed in all human problems. Working based on a mindset that is determined by law is indeed necessary, but it is not something that absolutely must be done when legal experts are faced with a problem which if using the logic of modern law will injure the position of humanity and truth.

The progressive legal paradigm sees that the main factor in law is the human being himself, so that the law may be marginalized to support the process of existentiality of humanity, truth and justice. The progressive legal paradigm places humans as the main center of all legal discussions. Acceptance of human factors at the center of legal discussion brings people to care about behavioral factors (behavior, experience) or often

called law for humans. It is really troubling to see the legal condition with all its forms of practice in Indonesia.

The use of law that is all formal-procedural and technical basically forgets a lot about the truth, justice and humanity. The practice of law enforcement in the military environment has not been able to guarantee the achievement of humanity, truth and substantive justice. Progressive law prioritizes the human factor as the center of attention, so when we talk about humans we indirectly talk about truth and justice. Factors of ethics and morality will also be dragged into it, when talking about truth and justice. The progressive legal paradigm rejects the opinion that separates the law from human factors and morality, herein lies the enlightenment carried out by the progressive legal paradigm.

The usefulness of the progressive legal paradigm at the practical level is to make law enforcers become human figures who are actually human, not as robots or computers containing legal software, what is the difference with computers if in practice law enforcers just follow the orders and procedures that are printed in the law. -law. The progressive legal paradigm will direct law enforcers to become wise and wise figures, have comprehensive insights in achieving truth and justice in every problem they face.

In the concept of progressive law, that law in carrying out its important role for the community has a function, namely as an institution that regulates society. Law is an institution that aims to deliver humans to a just, prosperous and happy life (Rahardjo, 2009: 2). Law enforcers in carrying out their functions must use their conscience and prioritize case settlement with alternative methods (alternative dispute resolution) for small and simple cases. The use of coercive measures by investigators and the litigation process to handle cases that can be settled out of court, in fact, often fails to achieve the purpose or function of law enforcement, namely the fulfillment of a sense of community justice and problem solving.

2. Law Enforcement of Indonesian National Army Soldiers Who Do Violations with a Progressive Legal Approach

Law enforcement against Indonesian National Army soldiers in terms of military interests tends to be detrimental and has the potential to cause conflict between civil law enforcement officers and the commander of the Suspect/Defendant being tried. In order to avoid misunderstandings in law enforcement, it is regulated regarding the role of unit commanders in law enforcement as stipulated in Law Number 29 of 1954 concerning National Defense, that the armed forces have their own judiciary and commanders have the right to submit cases (Edy, 2017: 128). In order to reduce the conflict, a law enforcement concept that is in favor of the community (the people) in general (progressive law) is needed.

Before the emergence of progressive legal thought that emerged with an emphasis on aspects of Jurisprudence and Social Science based on Sociological Jurisprudence which was developed by Philippe Nonet and Philip Selznick, Roscoe Pound in his book *An*

Introduction to The Philosophy of Law, published in 1954, gave rise to the idea of law as a tool for reforming society. Law according to Roscoe Pound must be used as a means of reforming society (Pound, 1954: 25). Based on his work in Indonesia, a popular term law as a tool of social engineering was revealed which once controlled the strong currents of legal thought in Indonesia.

Legal definition as a tool of social engineering law is not only a tool of order, but also a tool to build society. As a tool of social engineering, in its implementation there are often conflicts with the law as an abstract norm. Replacing the old value with a new value always creates a gap. When there is a gap between the old values and the new values, compromises often occur, in such conditions the role of law enforcement is the most (Wirawan, 1990: 1). Social engineering is a well-known concept in political science, and recently entered in the science of law. This concept is suitable to be used to change the attitude of society, including the military community, towards the law so that it can be used as an internal discipline. The term social engineering serves to provide a systematic effort by the bearers of state power to influence the attitudes and behavior of the people.

The policy and implementation of social engineering in legal discourse is carried out by utilizing state law and its various sanctions, both criminal and administrative sanctions to influence or change the pattern of social relations between humans in society. The use of the power of criminal sanctions as a means of coercion is often impressive and invites accusations that social engineering implies a manipulative maneuver (Wignjosoebroto, 2008: 119). Based on the concept of law as a tool of social engineering put forward by Roscoe Pound, Satjipto Rahardjo then developed it in Indonesia into a progressive legal concept.

Law as social engineering is the conscious use of law to achieve an orderly or social condition as aspired or to make the desired changes (Rahardjo, 2009: 128-129). Good law, according to sociological jurisprudence, should be in accordance with the living law in society (the living law). Good law should be in accordance with the laws that live in society, and reflect the values that live in society. If the law does not reflect the values that grow in society, it will be difficult and many challenges will be faced in enforcing the law. Concepts like this need to be developed in law enforcement in the military environment.

The implementation of law enforcement in the military environment when viewed from the theory of the types of law presented by Phillippe Nonnet and Philippe Selsnick can be classified into the type of repressive law, because the implementation of military law enforcement is identical to the characteristics of the repressive type of law. A Indonesian National Army who commits a military criminal offense and a general crime, besides having to serve a prison sentence, he is also given additional sanctions, including not being allowed to take part in education and postponing his promotion and not getting a promotion within the specified period until he is dishonorably discharged (Fathurrahman Yasir dkk, 2021: 2463).

Law enforcement institutions in the military environment are part of the practical power. The Military Police as the investigator, the Prosecutor as the prosecutor and the judge as the party adjudicating, and the suspect, both have military status. The second characteristic is that the institutions that carry out law enforcement functions are isolated from the social context which are very useful as a means of community control. Military Courts also have classes or strata of rank, for example, soldiers with the rank of Captain and below are examined and tried at the Military Court, while those for the Major strata and above are examined and tried at the High Military Court.

This type of responsive law in the conditions of the law enforcement system in a chaotic military environment is very relevant to be used as a reference. The considerations that can be used are First, the process of making it is participatory, namely inviting as much community participation as possible through social groups and individuals in society; Second, judging from its function, the law with a responsive character is aspirational. That is, making materials that are generally in accordance with the aspirations or wills it serves so that the legal product can be seen as a crystallization of the will of the community; Third, in terms of interpretation, the law with a responsive character, Usually there is little opportunity for the government to make its own interpretation through various implementing regulations and this narrow opportunity only applies to things that are truly technical in nature. Legal products with a responsive character usually contain important matters in sufficient detail so that it is difficult for the government to make their own interpretation (Dimiyati, 2010: 118).

The concept of responsive law is in line with the criteria of good legislation. The criteria for good legislation are, First, there must be authority from the legislators, Second, the legislation must be made by an authorized body or official, otherwise the legislation is null and void by law. Third, the necessity of conformity of the form or type of legislation with the material regulated, especially if ordered by a higher level or equivalent level of legislation, and Fourth, the obligation to follow certain procedures, if those procedures are not followed, the regulations legislation may be null and void or not/do not yet have binding legal force, and fifth, the requirement does not conflict with the higher level statutory regulations (Manan, 1992: 14-15).

Law enforcement is closely related to the administration of law which needs serious attention. The implementation of law in a society if it follows the division of HLA Hart vary. HLA Hart in relation to the structure in society proposes two models of the structure of society, namely First, which has a simple structure with a social control system that does not have clear forms, but is merely a general attitude found in community members to bind themselves to standard behavior patterns. In the second model of society, according to the level of complexity of society, clear and detailed forms of law enforcement can be found (Hart, 2010: 142-155).

Regarding the relationship between law, freedom and morality, HLA Hart in his book *Law, Liberty and Morality* explains that the development of law is influenced by morals, and vice versa that the development of morality is influenced by law. This shows many

ways in which morality determines the flow of law, sometimes in a closed and slow manner through the judicial process, sometimes openly and in haste through legislation (Hart, 2009: 2). Should some reference to morality be included in the definition of a law or legal system, or is it simply a dependent fact that law and morals often overlap. Is the law open to moral critique, and is certain behavior that is generally considered immoral to justify law enforcement against it? Is it morally permissible to enforce morality by law and should immorality be considered a crime?

With the conditions described above, reforms need to be carried out because the conception of society, including the military community, is moving, and moving much faster than the law, so there is always the possibility that every part of the law requires re-examination to determine whether it is still compatible with society. The conception that law always flows, that law always moves is just one consequence of the fact that it is society that produces law and not law that produces society (Johnson, 2006: 168). In connection with the Indonesian people who are carrying out development, including the development of law and justice, so that the Indonesian people need to carry out reforms, especially reforms in the way of thinking, philosophy and the underlying views, so that they have a social character and reform in order to achieve human welfare and happiness (if we use the concept of Utilitarianism), or commonly referred to as the concept of a responsive legal type.

In the concept of progressive law, the use of coercive measures by the authorities and the formal process of litigation will result in a lose-lose (lose-lose) or win-lose (win-lose) decision. This means that it will be further away from the ideal position of a conflict resolution, namely resolute or reaching a solution, going elegantly without anyone losing face, and there is an aspect of healing (victim healing). Broadly speaking, Soedjono Dirdjosisworo explained that the function of law can be classified into three stages, namely as follows.

- a. The function of law as a tool of public order and order. This is possible because of the nature and character of the law that provides guidelines and instructions on how to behave in society.
- b. The function of law as a means to realize inner and outer social justice. Law with its nature and character which among other things has binding power both physically and psychologically
- c. The function of law as a means of driving development. One of the binding and coercive powers of law, can also be exploited or exploited to drive development. Law as a means of development is a tool for authorities to bring society in a more advanced direction.
- d. The critical function of the law, namely the power of law is not merely to supervise the supervisory apparatus, the government apparatus and including the law enforcement apparatus (Dirdjosisworo, 2010: 155-156).

In relation to the function of law, the role of law in society is very important because law is related to the behavior of community members, so that legal development needs to be carried out parallel or parallel to economic, social, political, socio-cultural, defense and security development and others. Friedrich Carl von Savigny in his book entitled *Vom*

Berufellemenzeit fur Gezetsgebung, states that "Das Recht wird nicht gemacht, aber es ist und wird mit dem Volke" or that law cannot be made, unless it occurs together with the community (Busroh, 2009: 7).

In carrying out legal reform in Indonesia, especially in military law, it should not only refer to normative legal rules by changing the competence and existence of Military Courts, but what is more needed is to make legal breakthroughs that are more effective and efficient. All elements contained in the criminal justice system, starting from the Military Police as investigators, Public Prosecutor as prosecutors and Judges as disconnectors and officers of the military orderly installation, have a mindset, attitude pattern and action pattern in accordance with progressive legal criteria. The concept of progressive law is very concerned with truth, humanity and justice. In progressive law, law is a reality that exists and is present in human life. The concept of progressive law was initiated by Satjipto Rahardjo, states that progressive law has a basic assumption of the relationship between law and humans. Progressive law departs from the view of humanity, that humans are basically good, have the qualities of compassion and have concern for others. Law does not exist for itself as initiated by positive law, but for humans in order to achieve human welfare and happiness (Ibrahim, 2007: 20).

The idea of progressive law is different from the flow of positive law or normative law which uses the means of legislation and logic as a starting point for thinking. The science of positive law and normative law only looks into the law and is busy with discussing and conducting internal analysis, especially law as a building code which is considered as systematic and logical. The usefulness of positive law is nothing more than studying the logical rational structure of a series of regulatory articles. For positive and normative law, the truth lies in the body of regulations. This is what progressive law criticizes, if you look at the law only in the form of articles, it clearly cannot describe the truth of a very complex law.

In the concept of progressive law, the law does not exist for its own sake, but for a purpose that is outside of itself. In the case of sentencing, a punishment must not be an act of violence by one or more persons against a private member of society, the punishment must be social, direct and necessary. The sentence is given as small as possible in the given case, adapted to the crime and determined by law (Beccaria, 2011: 153). Progressive law wants to consciously place its presence in a close relationship with humans and society. Therefore, progressive law leaves the analytical jurisprudence or *rechtdogmatic* tradition. Associated with the concept of types of law from Philipe Nonet and Phillip Selznick, progressive law has a responsive type. In the responsive type, law will always be associated with purposes outside the textual narrative of the law itself.

From a progressive legal perspective, it can be said that studying law only based on articles and detaching it from the study of norms and the aspects that influence them can lead to prolonged frustration and disappointment. The legal expert Von Kirchmann once said that the huge piles of books on the law in the library can be thrown away as priceless trash when there is a political decision in parliament that changes the content of the law

(Mahfud, 2010: 47). Progressive law does not argue that order only works through state institutions, but accepts and recognizes the contribution of non-state institutions.

3. Military Law Development

Law is an institution that aims to deliver humans to a just, prosperous life and make humans happy or what is commonly referred to as the law that favors the people and the law that favors justice, so that the law needs to always be developed or renewed. Legal development, including military law, needs to be carried out commensurately in order to support each other with the development of other fields. In this connection, it is felt that law, including military law, in its form as an institution will emerge as a determining factor in regulating, engineering and providing protection for all aspects of social, national and state life. Therefore, the law should be enforced and developed in a positive and creative way, which in the end can create the image and authority of the law (Kusumaatmadja, 2002: 88).

Development policy in the field of military law is an integral part of the policy of building public trust and respect, an integral part of the policy of developing a good governance system and an integral part of the policy of improving environmental quality and sustainable development. Development in the field of military law is a must for a society or group of military organizations and cannot be contested. This can be interpreted as a series of initiatives, means, and efforts of the Indonesian people, nation and state to carry out and improve various aspects of national life in a sustainable and sustainable manner.

The development of law, including the development of military law, must aim at the welfare of society in general and not only for the interests of the military, bureaucracy and authorities. With regard to legal and community development, Otje Salman explained that:

Legal development must have a positive connotation to the development of community culture. Therefore, the development of law must be a universal policy that is prepared based on the needs of the community itself. The legal development policy must be a scheme that involves public participation, from various groups and groups and becomes a guideline for the government as the mandate holder to realize it (Otje Salman and Anthon F. Susanto, 2007: 152).

To protect the development of national law, a national legal system is needed that is able to regulate various national law development activities in various fields, media, space and time with basic principles, principles, patterns and formal frameworks that are in accordance with the current situation and conditions. In carrying out development in the field of law and justice often face obstacles or problems. Legal problems that often occur are closely related to individual behavior and habits, customs or behavior of the people living in the area, or it can be said that the law works because there are people.

The value system in military society is the basis of the system of normalization and enforcement of military law. Therefore, in carrying out military law reform, it is necessary to pay attention to the individual behavior problems of its soldiers, society, and nation which are part of the culture of a nation. The dynamic military society causes the legal system or value system to always change, so that military law must adapt to the needs of the military community. The law is in the environment of human society, without society there will be no law, but without the law social life can still run. Such constants become sharper and more meaningful when the law in question is modern law. The relationship between law and society is so close that it can be described as two sides of a coin. so that when discussing the law without discussing the community first, it is actually not quite right. Law is a reflection of society as described by Satjipto Rahardjo, as follows:

Since the law is a reflection of the society, it is not easy to force the people to judge in a way that is not rooted in the values and customs of that society. There is always a tug-of-war relationship between applicable and enforced laws and society. Law is not a sterile institution and a finished scheme. Law does not exist in the abstract world, but also in reality in society (Rahardjo, 2009: 116-117).

Good law, including military law, must be designed to be useful for changing society in the direction it aspires to, as well as ensuring that changes that occur can take place in a safe, orderly and just manner. Justice is something abstract, but at the same time it is highly expected and awaited by society. Humans cannot escape the work of searching. Humans shape social life, as the other side of a just life. Living together or in human society is not created to give heart to injustice, so it can be said that social life is living in a just society. Law is an institution that aims to deliver humans to a just, prosperous and happy life. Law is closely related to society. This is in accordance with the old adage *ubi societas, ubi ius* or where there is a community there is law. The relationship between law and society is reciprocal, the law functions to regulate society and it is society that creates the law itself. Satjipto Rahardjo explained as follows.

Problems or legal problems related to society, namely that legal life does not only concern technical legal matters, such as legal education, but involves broader individual and social behavior issues. Improving the rule of law is not unnecessary, but it is not the only one, it is more important to improve the human aspect (Rahardjo, 2007: 5).

Law, including military law, functions to regulate society and aims to make people happy and prosperous. This is in accordance with the basic assumption of the progressive legal concept developed by Satjipto Rahardjo, which states that law is for humans and not vice versa (Rahardjo, 2009: 5). Law does not exist for itself and is not final. Each stage in the legal journey is decisions made in order to achieve legal ideals, whether made by the legislature, judiciary or executive. Meanwhile, Bintan Riden Saragih, explained that the functions of law are as follows: (a) maintaining order in society; (b) guarantee legal certainty; (c) as a protector of the community; (d) resolving

disputes in society; (e) sharing power and authority within the state and government; and (f) upholding justice (Saragih, 2006: 13).

Divergent the rule of law, including the implementers of military law, who are included in the Criminal Justice System should always feel restless if the law has not been able to make the people happy, or commonly called progressive law enforcement. Progressivism departs from the view of humanity, humans are basically good, have the qualities of compassion and concern for others. This is an important capital to build a legal life in society. Thus, the law becomes a tool to describe the basis of humanity. law is not a king, but only a tool that functions to give grace to humans and humans.

Conclusion

In law enforcement within the Indonesian National Army, it is necessary to develop the approach used, one of which is using a progressive legal approach. Progressive law is an institution that has human morality and is related to human mental development, progressive law contains a very strong moral content. Progressivism does not want to make law a technology that has no conscience, but rather a moral institution, in this case human morality. Good physical development but bad mentality makes the direction of the law go astray. Human moral development includes renewal, refreshment or overhaul of human thinking, improvement, guidance or direction in the way human work, and structuring, stabilizing or presenting and discovering new initiatives and so on.

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