

HUMANITY IN THE ENFORCEMENT OF ANTI-CORRUPTION LAWS

Tomy Michael¹

Abstract

The justice of the law in the context of the law always subjected to refraction meaning. The justice of law can't be interpreted as specific but can be shown through deeds. The justice of the law which is considered better by most people not necessarily also have the same feeling with the justice of the law. There are various dimensions to distinguish it. In the context of the state, the leader is the main pedestal of enforcing the law on the laws and regulations in there. When the leader of a country is it where it as full support to the state institutions that overcome the problems of corruption, namely the Corruption Eradication Commission and the whole thing can run optimally. Advice taken, namely by forming laws and regulations based on humanity with other humans, namely the variation of the judgment. The judgment referred to is social work, exile to the island of the smallest, lethal injection and impoverishment through from the first of assets appropriately. Thus, humanity in enforcing anti-corruption laws can be run better by paying attention to the humanity of the injured party.

Keyword: justice, law, corruption

A. Introduction

A few years of this, the study of the science of law has experienced rapid development. The law that is not part of humanities make itself as a science which has it's own distinctive features. The science of law is the of law itself is therefore the science of the law of free will for the sake of honoring the law. Glorify the law in the context of this article, namely the enforcement of the law that ultimately created the justice of the law. In this case, the justice of the law is the thing especially. Justice law that seeks justice for all parties is the justice of the law which is essential.

The one looking for legal justice, namely to reconcile the will of the state. Referring to the thought of Jacques Maritain that the justice of the law derived from the law of nature will become apparent when the state doesn't have the power in international justice, the country has a dispute settlement state without going through war, aggression or the procession² of the other³ savage. Be legal problems when the law enforcement carried out by state without the

¹ Fakultas Hukum Universitas 17 Agustus 1945 Surabaya, Jalan Semolowaru 45, Surabaya 60118, Indonesia | tomy@untag-sby.ac.id.

² The big fundamental problem of all philosophy, especially from philosophy which is lately is the problem of the relationship between mind and condition. Since ancient times when humans were completely ignorant of their own body structure, under the conscious mind began to believe that their thoughts and feelings were not their bodily activities but the activities of a separate life that inhabited his body and left the body when he died. Since time humans have been encouraged to think about the relationship between life and the outside world, if at the time someone dies, that life leaves the body and lives on, there is no reason for them to die apart. So that came the idea of eternity and immortality. It is not religious desire for an entertainer but confusion arising from the general general ignorance of what must be done with that life once that life is recognized after the body dies in general towards the dull understanding of the eternity and immortality of the individual. So the problem of the relationship between mind and state of relations between soul and nature is the most important problem of all philosophy, further in *Frederick Engels, Ludwig Feuerbach Dan Akhir Filsafat Klasik Jerman*, Jakarta, Teplok Press, 2000, p. 24-26.

³ States, in the absence of an international judiciary power, have recourse to sanctions such as war or just reprisals against the aggression of another State, or against the barbarous procedures it employs." It is also manifest when someone, in the absence of a judge, justifiably asserts the right to self-defence when attacked by another man. Similarly, one could not protest against a missed restitution of debt if one did not already have a natural sense that all debts must be paid back, or that one has the right to

existence of a state. The country became very passive if not do law enforcement is repressive. But in the development of the time law enforcement becomes progressive, the element of humanity is preferable to the creation of the law itself.

Refer to Article 1 Number 1 and Number 2 of the Law of the Republic of Indonesia Number 28 Year 1999 on State Organizer Who is Clean and Free From Corruption, Collusion and Nepotism stated that the organizers of the country is state officials who run the functions of the executive, legislative, or judicial, and other officials whose functions and duties relating to the operation of the state in accordance with the provisions of the legislation applicable. While the organizers state that the net is the organizer of the state obey the general principles of state administration and free from corruption, collusion, and nepotism, and other misconduct. The essence of the organizers of the state has a relationship with law enforcement. Special in this article focus on the enforcement of anti-corruption laws because Indonesia has ratified the United Nations Convention Against Corruption through Law of the Republic of Indonesia Number 7 Year 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention against Corruption, 2003).⁴

B. Discussion

1. Humanity According to the law

Humanity According to the Law Humanity if we refer to the definition of international Human Rights 1948 is defined as all people are born free and equal in dignity and rights – the same rights. They are endowed with reason and conscience and should act towards one another in brotherhood. If humanity was declared independent since birth really satisfy humanity. Expressly, Augustine argues that human nature is social, in fact he confirms that human species sociality in such a natural like a human. Social nature of human beings originated

such restitution. The differentiation between the moral and juridical aspects of natural law does not go without practical implications. If the role of the State is to promote justice, then such differentiation limits the scope of natural law which can be enforced by the State: Doubtless ... the State has the right to punish me if, my conscience being blind, I follow my conscience and commit an act in itself criminal or unlawful. But in like circumstances the State has not the authority to make me reform the judgement of my conscience, any more than it has the power of imposing upon intellects its own judgement of good and evil, further in Paola Bernardini, *Natural Law From A Catholic-Muslim Perspective: A Comparative Study Of Jacques Maritain's And Abdullahi Ahmed An-Na'Im's Philosophy Of Law*, Paola Bernardini, https://www.researchgate.net/publication/280577552_Natural_Law_from_a_Catholic-Muslim_Perspective?enrichId=rgreq-1a32682115952e4f277530916104ee05-XXX&enrichSource=Y29-2ZXJQYWdlOzI4MDU3NzU1MjtBUzoyNTczMDczMDA4NTU4MDhAMTQzODM1ODI0OTk0OA%3D%3D&el=1_x_2&_esc=publicationCoverPdf, p. 144-145.

⁴ In the development of related legislation is known that Indonesia has yet to set up the settings about the illicit enrichment. Based on the results of the research Task force for the Eradication of / Satuan Tugas Pemberantasan (Satgas) Mafia Law in *Illicit Enrichment: The Criminalization of the Increase in Wealth That is Not Fair* (2011) explains some of the benefits for the countries that govern them, namely:

1. Restore the state losses that have been lost from the practices of corrupt public officials.
2. Prevent public officials for corruption or at least minimize their initiative to do corruption and benefit financially from it.
3. Punish public officials who committed corruption.
4. Minimize initiatives to conduct business or other activities that are full of conflicts of interest.
5. Minimize another crime because removing the financial ability of the offender to commit such crimes.
6. Setting of illicit enrichment will encourage people to be more obedient to pay tax because if the person has a wealth of legitimate but do not pay tax properly then the concerned potential suspected illicit enrichment.

from Adam who was created of god in goodnes. Therefore, in such a nature sociality⁵ of humans then humans living in groups requires rules and order.⁶

When knowing that the man in addition to be born free, and he is also a social creature. Man that is doing the alienation to the third parties often do not know their right and obligations. The third party in this case is the state, the human doing the alienation of the state that the goodness that appears. When the state is obliged to maintain human existence.

Human existence is the sustainability of life in the state, namely, among others, the protection of human rights, fair law enforcement, as well as the best in living. The alienation that became the basis for the led must be to create circumstances that are good. The state represented by the government must be role models for the community in it.

The country should have a legislation where the law is enforced. The contents of the legislation should remain rooted in a sense of humanity. Humanity should still pay attention to the development of society the modern state. Philosophy of Hegel theory of right argued that the philosophy of the spirit is a continuation of the philosophy of nature because the spirit is a process that goes beyond the process of the natural world. After "wandering" in a world full of contradictions, the spirit of absolute return to interiority, on his own consciousness as a spirit until it returns again on her own. After analyzed to nature, the spirit back on itself starting from the principles that bound and limited, namely to the subject individual. Here, instead of the first spirit appeared in the things that limited but rather how the limited looks in the spirit. The evolution of the spirit subjective walk through the spirits present on the individuality, the consciousness to understand all forms of manifestation universal and activity that favors more spiritual. With the freedom, the spirit out of subjectivity and into the world of concrete from manifestation onjektif that works the activity of the free, rational as a social institution and the juridical. Thus, the spirit of the objective is the stage of realization of freedom understood as the will of the rational.⁷ The thought will include the nature of the spirit can be seen in every stage of laws and regulations "By the Grace of God Almighty". When there is inclusion of the elements of the deity in the legislation then the humanity is the thing especially. Law enforcement can be seen to include criminal sanctions or administrative sanctions.

⁵ Paul Weithman, *"Augustine's Political Philosophy"* Cambridge Companions Online, United Kingdom, Cambridge University Press, 2006, p. 5.

⁶ The human not lose the desire for goodness, peace, man is always looking for, seek it; but the tendency to sin, the irregularity of the psychological upon the passions, make a man have difficulty to live in peace and kindness, more in the S. Dadang, *Bonum Commune Dalam Pemikiran Agustinus: Kebaikan Umum Menurut Agustinus (354-430 SM)*, Papers Bonum Commune/"The Discourse of Bonum Commune In Western Philosophy", Faculty of philosophy in Universitas Katolik Widya Mandala Surabaya, 2016, p. 3.

⁷ The authors incorporate the essence of the spirit according to Hegel because of the humanity in this article the limit of humanity that can be seen with the senses. One example when someone gives you a loaf of bread to a towing wagon then for that view it will appear a sense of humanity. Humanity that can be seen is not the humanity that the author wants but it is more directed on the deed. With the understanding of humanity then humanity's natural will be achieve. More in Aloysius Widyawan L, *Bonum Commune Dalam Idealisme Jerman: "Sittlichkeit Dan Bonum Commune ala Hegel"*, Makalah Bonum Commune "Diskursus Bonum Commune Dalam Filsafat Barat", Fakultas filsafat Universitas Katolik Widya Mandala Surabaya, 2016, p. 3.

2. Law Enforcement Humanize Human

Indonesia is a country of law as in Article 1 paragraph (3) in the constitution of the Republic Indonesia. The consequence not only of state administration that should have the basis and in accordance with the rule of law, but also means the actions of the citizens of the state should not violate the rules of the applicable law. Against violations of the law will be given the legal action that resulted in the imposition of sanctions. The law enforcement in state law will determine whether the state law is a symbol or factual. When the law enforcement is only concerned with one of the parties and negated the other party then there will be a split.⁸

⁸ Did one generation of men go off the state at once, and another succeed, as in the case with silk-worms and butterflies, the new race, if they had sense enough to choose their government, which surely is never the case with men, might voluntarily, and by general consent, establish their own form of civil polity, without any regard to the laws or precedents, which prevailed among their ancestors. But as human society is in perpetual flux, one man every hour going out of the world, another coming into it, it is necessary, in order to preserve stability in government, that the new brood should conform themselves to the established constitution, and nearly follow the path which their fathers, treading in the footsteps of theirs, had marked out to them. Further in Thomas Poole, *Reason Of State Law, Prerogative And Empire*, United Kingdom, Cambridge University Press, 2006, p. 114.

Different things expressed by Taufiqurrohman Syahuri that a country with background characteristics of the culture of eliciting the views of its own about the meaning of justice. For example for people with a background in the culture of a particular view that abortion is in accordance with human rights and therefore the act of abortion does not violate the law and also not in conflict with justice. While for the people with different culture, consider that abortion is the is an act against the law are also considered to be contrary to justice. So whether justice was linked with a conscience and therefore an effective legislation is legislation that its contents can be accepted by the public sense of justice, not vice versa. That is, the content of the rule of law was in accordance with the call of conscience of the people. To determine whether a law meets the elements of fairness, to note the contents of the rule of law, it is appropriate to the content of the rules it with the call of conscience of the society? If appropriate, then the obligation ordered by the act is the legal obligation that actually. On the contrary the contents of the rules it is contrary to the conscience of the then existing obligations in law that merely because there are penalties. For this last so – called legal force because of the nature of compliance with the legislation was because of a sense of forced or afraid because of the sanctions. The first is a law that requires because of the nature of the compliance community for the legislation was based on the call of conscience or the awareness of itself that the legislation was indeed mandatory. In this context, in Indonesia, many found the laws and regulations that are not in line with the value of justice in the sense of contrary to the conscience of the people. For example, the basic Agrarian Law which is detrimental to the existence of customary law, especially regarding the rights of the region giving rise to a sense of injustice in the society and the decision of the president which regulates the trade of cloves, which is obviously very detrimental to the farmers of cloves, more in Taufiqurrohman Syahuri, *Tafsir Konstitusi Berbagai Aspek Hukum*, Jakarta, Kencana Prenada Media Group, 2011, p. 104-105.

According to the authors of two such thinking, law enforcement is not only leaning over the wishes of the majority but also self-awareness own how to make it happen. One thing that is outside of reason to produce legislation that can satisfy many parties. The formation of legislation is the right of a state which by its formation can reduce the rights or add to the rights of a subject of law. Then the thought that if devoted to the enforcement of anti-corruption will not be appropriate. Corruption as a form of nation that is growing it is not easy to be eliminated however with the reduction of rights of the subject law when any legislation that formed then corruption can be reduced. The reduction of such rights should also be followed by the attitude of leaders when he exposed corruption then no needed to do advocacy. Refers to thinking Platon who say justice means inequality, then in the general understanding can be interpreted something wrong. We define justice is a good thing. But the thought of Platon showed that he wanted to make propaganda for his totalitarian namely to persuade the people that his country is the country fair. In the matter of the freedom of the individual, either may be remembered that the state fair that imagined Platon is a polis in Greece that is not too large. Abstract entities called human beings

C. Conclusion

Humanity in enforcing anti - corruption laws always related how the leaders of a country to implement them. The word "implement" is interpreted as full support to the state institutions that overcome the problems of corruption, namely the Corruption Eradication Commission, although the existence of the commission in the system of constitutional law has a special characteristic that distinguishes with other state agencies.

Advice taken, namely by forming laws and regulations based on humanity with other humans, namely the variation of the judgment. The judgment referred is social work, exile to the island of the smallest, lethal injection and impoverishment through the first of assets appropriately. Thus, humanity in enforcing anti-corruption laws can be run better by paying attention to the humanity of the injured party.

References

- A. Setyo Wibowo, *Paideia Filsafat Pendidikan-Politik Platon*, Yogyakarta, Kanisius.
- Aloysius Widyawan L, *Bonum Commune Dalam Idealisme Jerman: "Sittlichkeit Dan Bonum Commune ala Hegel"*, Makalah Bonum Commune "Diskursus Bonum Commune Dalam Filsafat Barat", Fakultas Filsafat Universitas Katolik Widya Mandala Surabaya, 2016.
- Frederick Engels, *Ludwig Feuerbach Dan Akhir Filsafat Klasik Jerman*, Jakarta, Teplok Press, 2000.
- Paola Bernardini, *Natural Law From A Catholic-Muslim Perspective: A Comparative Study Of Jacques Maritain's And Abdullahi Ahmed An-Na'Im's Philosophy Of Law*, Paola Bernardini, https://www.researchgate.net/publication/280577552_Natural_Law_from_a_Catholic-Muslim_Perspective?enrichId=rgreq-1a32682115952e4f277530916104ee05-XXX&enrichSource=Y292ZXJQYWdlOzI4MDU3NzU1MjBUzoyNTczMDczMDA4NTU4MDhAMTQzODM1ODI0OTk0OA%3D%3D&el=1_x_2&_esc=publicationCoverPdf.
- Paul Weithman, *"Augustine's Political Philosophy"* Cambridge Companions Online, United Kingdom, Cambridge University Press, 2006.
- S. Dadang, *Bonum Commune Dalam Pemikiran Agustinus: Kebaikan Umum Menurut Agustinus (354-430 SM)*, Makalah Bonum Commune "Diskursus Bonum Commune Dalam Filsafat Barat", Fakultas Filsafat Universitas Katolik Widya Mandala Surabaya, 2016.
- Taufiqurrohman Syahuri, *Tafsir Konstitusi Berbagai Aspek Hukum*, Jakarta, Kencana Prenada Media Group, 2011.
- Thomas Poole, *Reason Of State Law, Prerogative And Empire*, United Kingdom, Cambridge University Press, 2006.

regardless of race, gender, community or his country, more in Setyo Wibowo, *Paideia Filsafat Pendidikan-Politik Platon*, Yogyakarta, Kanisius, p. 271-275.