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THE ROLE OF LEGAL CULTURE IN THE ADMINISTRATION OF NATIONAL LAW IN A PHILOSOPHICAL POINT OF VIEW

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Abstract: The legal point of view is often divided into two major views, namely the juridical view and the sociological view, both points of view cannot be separated from the role of legal culture, legal culture can be said to be the pulse, and the joints of the law itself, the law that processes in such a way, unites with time, within a certain period of time, making the legal culture very inherent in society, both in behavior, habits, and legal views, in fact, legal culture is often a benchmark for whether a rule can process correctly or not, the purpose of this study is to find out how the role of legal theory in legal culture problems, and the second is how the implications of regulations from the point of view of legal culture. The research method used in this study is a normative juridical research method, which is a research method that makes secondary data as the main data, for then the data comes from legislation, books, and accredited journals both offline and online. Which of course leads to the main discussion about the role of legal culture itself. The application of law cannot be separated from the so-called legal culture, along with the legal structure and legal susbtantion, these three things are factors in how sociologically the community will see the law. Philosophically, legal theory is to be an analysis knife of all legal rules that will later be made or applied, legal theory greatly determines whether the legal rules implemented have clear targets or not, then consistency becomes a big thing in the implications of legal culture that is in direct contact with the rules that are also applied in a region.

Keywords: Legal culture, Sociological, Philosophical

I. INTRODUCTION

The state of Indonesia is a state of law. This reads Article 1 Paragraph 3 of the 1945 Constitution. What is meant by the rule of law is a state in which there are various aspects of regulations that are coercive and have strict sanctions if violated. Thus, the meaning of Indonesia as a state of law is that all aspects of life in the territory of the Unitary State of the Republic of Indonesia must be based on law and all statutory products and derivatives applicable in the territory of the Republic of Indonesia.

Before we discuss the law itself, of course, we must understand that law is dynamic and has history, legal history is a method and science that is a branch of historical science, which studies, analyzes, verifies, interprets, compiles postulates and tendencies, and draws certain conclusions about every fact, concept, rule, and rule relating to the law that has ever been in force, Both chronologically and systematically, here is causation and its contact with other areas of law. In other words, the use of theoretical theories such as the legal state, welfare state and others, cannot be separated from the role of legal history.[1]

The rule of law itself stands on the law that guarantees justice for all citizens. For Indonesia, the rule of law is based on the values of Pancasila which is the nation's view of life and the source of all sources of law. The derivative products of the law can be in the form of Presidential Regulations, Ministerial Regulations, Presidential Instructions, Regional Regulations, Governor Regulations, and various other regulations. Law in Indonesia must be based on the spirit of upholding the values of divinity, humanity, unity, citizenship and justice as contained in Pancasila. Speaking of normative law, of course, we must also look at law empirically, it is impossible for us to want an understanding of law that is considered ideal but only look at it from one point of view, Regarding the application of law, means talking about the implementation of the law itself where the law was created to be implemented. Law can no longer be called law, if it is never implemented. The implementation of the law always involves people and their behavior. Lawrence M. Friedman's legal system theory is widely known for three components: legal substance, legal structure and legal culture. In essence, the law as a system can work only if the three components move simultaneously to form a whole.

This integration is then an indicator of whether the law in a community has run perfectly. The substance of good law, the formulation of regulations initiated by competent legal academics will only become academic manuscripts if the legal structure, namely law enforcement officials and institutions, does not have the sincerity to apply regulations. As for when the rules have been well made based on justice and also the officers and law enforcement agencies have worked well and professionally but the culture of the community does not want to execute the rule of law, does not accept, give apathetic responses or even reject, the achievement of an integrated legal system will become a utopia. Sociologically, people's response to law is an important aspect of the enforceability of a law. Different people's preferences encourage states to form different legal substances and structures to achieve a legal system that can apply nationally.

The response of the legal community to a rule applied in its environment is the result of the substance, structure and culture of law that is interconnected, speaking of legal culture, then we need to know that the understanding of legal culture does not mean that the word culture and the word law are united and create a new understanding, legal culture in this case must be seen broadly, how the community responds to the law applied, How people see the symptoms of existing laws, and so on. Therefore, a question arises, is legal culture related to the effectiveness of a rule applied in society? Or legal culture is a separate entity from it. Therefore, based on the explanation above, two big questions arise, namely the first is What is the Role of Legal Theory in the problem of Legal Culture, and the second is What are the Implications of Regulations from the point of view of Legal Culture.

II. RESEARCH METHOD

In this study the approach method used is normative juridical, normative legal research is a process to find legal rules, legal principles, to answer legal problems, normative legal research is carried out to produce arguments, theories or new concepts as prescriptions (assessments) in the problems faced.[2]namely legal research that prioritizes research on norms or rules, literature studies and is supported by field studies on problems in the point of view of legal culture.

III. DISCUSSION

The Role of Legal Theory in Legal Culture

The view of what law is and which theory is the most correct in representing the understanding of law itself perfectly will never be achieved, however, many opinions of experts who express the understanding of law according to their respective versions, including the understanding of law according to Mochtar kusumaatmadja, who states that Law is the whole of the principles and rules that govern the life of society, including the institutions and processes for bringing the law into reality. Simply put, with this conception of law, it appears that Mochtar Kusumaatmadja views the legal order as a system composed of three components, namely:

a. Principles and rules of law.
b. Legal institutions.
c. Proes of legal embodiment.

This makes the definition of law according to Mochtar Kusumaatmadja is the whole of the rules and principles that govern human life in society including institutions and processes in realizing the law in reality. In the culture of behavioral law and community dynamics become very important, this is closely related to the understanding of law according to Mochtar Kusumaatmadja above, because after we know the principles and rules of law that will become ideals, or things that are expected to apply well in a society, we also know that in order to run well, The rule of law requires so-called institutions and processes, the word institution in this legal sense does not refer to institutions as nouns, it does not mean that institutions in this case are the Judiciary, Prosecutor's Office, or other legal institutions. The word institution in the legal sense is institution as an adjective, meaning whether when the rules are applied and have run in society, the rules in the process have been transformed into rules that "institutionalize" in the hearts of every society, in other words, if these are theoretically fulfilled, then it can be said that the legal rules contained in the community run effectively.

Then another opinion about the legal point of view came from Satjipto Rahardjo who stated a phenomenal idea addressed to the law enforcement apparatus, especially to the Judge so as not to be shackled by legal positivism, from both legal understandings, we can see that the understanding of law cannot be easily concluded, even we conclude according to our opinions and experience, Moreover, to qualify as a legal theory, it takes more than just the opinions we express, back to law as a rule, the existence of law is often considered to be able to achieve legal certainty and legal justice, or a combination of the two, but in fact can we ensure that every existing law can aim to achieve justice and legal certainty? Of course not, because often we find there are legal regulations that cannot be implemented, not developed properly and not obeyed by the community, reflecting on this Lawrence M Friedman argues that in legal system theory there are three components: legal substance, legal structure and legal culture. In essence, the law as a system can work only if the three components move simultaneously to form a whole.

When discussing the relationship between legal theory and legal culture that already exists, actually fundamentally this cannot be separated from the role of what is called legal

politics, the question of the causality relationship between law and politics can indirectly provide answers to how the position of legal culture in the application of law itself. Departing from the causality relationship, Mahfud MD gave the opinion that there were three things or three answers obtained. First, Law is the determinant of politics, in the sense that the activities of political activity are governed by and must be subject to the rules of law. Second, politics is the determinant of law, because law is the result or crystallization of political will – political will that interact and (even) compete with each other. Third, politics and law as a subsystem of society are in a position where the degree of determination is balanced with each other, because although law is the product of political decisions but once the law exists, then all political activities must be subject to the rules of law. Sri Soemantri once constanted the relationship between law and politics in Indonesia like the journey of a train locomotive that went off the tracks, if the law is likened to a rail and politics is likened to a locomotive, then it is often seen that the locomotive is off the tracks that should be passed.

Implications of Regulations in the Point of View of Legal Culture

Understanding Culture is a way of life that develops, and is shared by a group of people and passed down from generation to generation, grammatically the word culture consists of two words, namely budhi and daya, budhi is interpreted as good sense, subtle and polite, then power is interpreted as strong or strength, thus culture is interpreted as a force of good reason, delicate, beautiful and well-mannered.

Legal culture is closely related to the pattern of life in society, because both humans are in their position as part of society, and the law itself is equally dynamic, meaning that there is no definite pattern to determine whether a rule of law is effective or not if the rule of law is enforced in society. Legal Culture is the behavior of society towards the law and the factors contained in it that can realize the effectiveness of a rule of law. Mochtar Kusumaatmadja through the theory of Development Law said that the concept of law is not only the whole of the principles and rules that govern human life in society, but also includes institutions and processes that realize the enactment of these rules in reality.

Still talking about legal culture, in a legal perspective we understand that there is what is called das sollen and das sein, da ssollen or often referred to as ius constitutum explains that the rule of law is diligat in general, while das sein or ius contituendum is an event of how the law works in society. Then a question arises, how is legal culture the basis for the application of a rule, for example a law. Because in reality, there are so many rules that cannot work well, because they are allegedly not in line with legal culture, we already know Friedman's opinion on this matter, legal culture, in addition to system and structure, becomes an important thing and cannot be ignored. In this discussion, the author will try to write a Regulation, and analyze whether or not the rule conflicts with the legal culture. As in this Covid Pandemic, in Governor Regulation 79 of 2020, every resident who does activities outside the home, interacts with people whose health condition is unknown, or is in a vehicle is required to wear a mask properly, namely covering the nose, mulu, and chin. The question is what about the driver who is in his private car? For example, someone who was caught in a raid for lowering a mask while drinking in a car, then he got out of his car, approached the officer, and indirectly increased the risk of contracting the Covid 19 virus from others after previously he had a lower risk of being in his private car, whether such rules are contrary to legal culture, or further legal principles?

The second example is the rules that exist in the world of broadcasting, some are referred to as OTT or Over The Top, this term has only emerged along with the development of information technology in Indonesia, Over-The-Top Services (abbreviated as OTT) are services with content in the form of data, information or multimedia that runs through the

internet network. It can also be said that OTT services are "hitchhiking" because of their nature that operate on the internet network owned by a telecommunications operator. OTT services attracted controversy for telecommunications companies in Indonesia until in 2014 Some circles such as the Indonesian government intend to form regulations regarding the limits of OTT players. The Indonesian government also intends to set taxes for OTT players. The reason is, operators lose money because SMS or telephone services are increasingly rarely used, customers communicate more often via data networks. Another opinion said, OTT operators and organizers should synergize to improve services in the realm of digital content. In addition, several associations such as ATSI (Indonesian Telecommunications Association) encourage operators to develop their own OTT services. With the development of OTT broadcast operators, and has entered Indonesia and has become the lifestyle of our people, broadcasting laws as the spearhead of Indonesian broadcasting regulations look less sharp in analyzing this phenomenon, as seen in Article 1 point 2 of the Broadcasting Law, "Broadcasting is the activity of transmitting broadcasts through transmission facilities and / or means of transmission on land, at sea or in space using radio frequency spectrum through air, cable, and/or other media to be received simultaneously and simultaneously by the public with broadcast receiving devices".

The provisions of Article 1 point 2 of the Broadcasting Law have caused constitutional losses, because they cause unequal treatment between conventional broadcasters who use the radio frequency spectrum and broadcasters who use the internet such as Over The Top (OTT) services in carrying out broadcasting activities. The absence of legal certainty of broadcasters using the internet such as OTT services into the definition of broadcasting as stipulated in Article 1 point 2 of the Broadcasting Law, causes that until now broadcasters using the internet such as OTT services are not bound by the Broadcasting Law. Due to the non-binding of broadcasters who use the internet to the Broadcasting Law, even though the Law a quo is the rule of the game for broadcasting in Indonesia, according to the Petitioners, this has implications for various kinds of treatment differences. And of course, the question will arise how the law provides sanctions if there are violations committed by broadcasters with the OTT system.

Third, is the issue of legal culture in the point of view of relationships between individuals, in this case for example gratification, and nepotism. We have understood that these two practices are prohibited according to existing laws in Indonesia, technically According to Law No. 20 of 2001, explanation of article 12b paragraph (1), gratuity is a gift in a broad sense, which includes giving money, rebate goods (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment, and other facilities. The gratuity is either received domestically or abroad, and is carried out using electronic means or without electronic means. So what does it have to do with legal culture? The difficulty regarding the application of this rule is one of them is thought to be related to the culture of customary law that grows and develops in society, since childhood we have been taught that when someone helps us, saying thank you is a must, it is also possible that the grateful speech is followed by the delivery of an item, then another thing is nepotism where nepotism itself is any unlawful act of the State Administrator that benefits the interests of his family and or cronies above the interests of the community, nation, and state. While there is a habit that grows in the family that first help the closest family and then we help the family in the line of further descendants.

Events such as those mentioned above make it true that as Friedman said, when the legal substantiation, structure and culture cannot create a systematic relationship, then the purpose of law will be difficult to achieve. This is more or less the same as the view of Philipus M Hadjon who questioned how the law could be applied, and how legal culture bias became the basis for the application of the Law. Even Satjipto Rahardjo argues that legal culture is the

basis for whether or not an existing law is implemented. Therefore, one solution that can be offered is that according to the ideas in legal theory, especially in development law theory, when a regulation is to be applied, it should not only look at the rules, the material aspect, but the legal principles should also be used as the philosophical basis of a rule. So what if legal principles are not included in rulemaking? Indeed, the rules made will still exist, and may be implemented by the powerful party, but problems will arise at the stage of process or application, meaning whether the rules will be able to survive in the community, whether the rules will be obeyed by the community, whether the rules can be a solution to the problems that the community is facing, these things become a benchmark for whether a rule is made by looking at philosophical content or not. In other words, it is fatal if the legislators, set aside the role of legal theory and legal principles in making a regulation and only focus on rules, indeed rules are something valuable, clear and not abstract, because we can all know the types of violations listed in an article in the Law. However, with the existence of legal theories and legal principles that certainly pay attention to the legal culture that already exists in society, it is hoped that the resulting legal products can achieve justice and legal certainty.

IV. CONCLUSION

Law not only has dimensions about rules and material issues, but also focuses on philosophical values through legal theories and legal principles, legal theories and principles have an important place in the formation and application of law, by knowing the principles and theories initiated, then more or less we will know how to apply these rules later. The application of law cannot be separated from the so-called legal culture, along with the legal structure and legal susbtantion, these three things are factors in how sociologically the community will see the law. The existence of legal regulations that conflict with legal culture is a separate problem in national law enforcement in Indonesia. The role of legal theory and legal principles is very necessary to prevent other rules, which are made not to pay attention to the culture in society itself.

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