

Double Standards of Law Enforcement in the Covid-19 Pandemic Era in Indonesia: A Relationship Trichotomy Study

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ABSTRACT

Since World Health Organization (WHO) declared a pandemic all over the world, including Indonesia, the whole living system seems to be experiencing "reconstruction". Not a single system has been able to be maintained, so that every government reformulates the system, including the criminal law system. The process of enforcing criminal law is always overshadowed by the slogan "Salus Populi Suprema Lex Esto". In the end, the word "crowd" as a word that has a primordial meaning, in this pandemic era it has become a "favorite" word which is often used as a normative proposition. However, the phenomenon of 'swarming' itself received a response in the context of law enforcement, which was varied. The government, in this case the National Police of the Republic of Indonesia, always rationalizes both active and passive (silent), producing knowledge to determine which ones are being acted upon and which are not. Therefore, this study aims to uncover the ideological aspects of the double standard phenomenon in the criminal law enforcement process. Restrictions problems in this study relates to "How the Indonesian National Police in carrying out police functions in a pandemic era based on the concept of Trichotomy Relationships?" This research uses the socio legal method by using an approach from Law Science and from Social and Political Sciences. The results of this study indicate that there is a pattern of law enforcement work by rationalizing a decision that relies on the authority. Authority holders carry out the production of knowledge in order to provide juridical legitimacy through their power and authority.

Keywords: *Pandemic, Relationship Trichotomy, Law Enforcement.*

1. INTRODUCTION

The Indonesian National Police (Polri), based in the Indonesia law of Article 2 of Law Number 2 of 2002 concerning the Indonesian National Police (UU No. 2/2002), has a police function, namely as a function of state government in the field of maintaining security and public order, enforcement law, protection, shelter, and service to the community. This means that every member of the National Police has a police function that is guaranteed by law. So, no wonder then based on Article 13 of Law no. 2/2002, Polri has three main tasks, namely (1) maintain public security and order; (2) enforce the law; and (3) provide protection, protection, and service to the community.

The implementation of the three main tasks of the National Police is in the framework of thinking that the Police carry out government functions as part of the implementation of some functions of executive power. Therefore, as part of the function of executive power, the Police in carrying out law enforcement duties should also be guided by a main principle in the administration of the state, namely the principle of the rule of law.

The consequence of being accommodated by the principle of the rule of law in the constitution and legal system in Indonesia, causes every Public Official or State Organizer in carrying out government functions to be based on law and not just laws [1]. That is, there are other aspects beyond the written provisions, and there are other aspects than merely pursuing order and legal certainty. This is in line with the development and paradigm shift in giving meaning to the principle of the rule of law itself.

In connection with the implementation of the government function, of course, it becomes relevant to Padmo Wahyono's view on the aspect of forming a policy of state life which is not only related to how to form a rule of law, but also issues about how to apply the rule of law and who is charged with the obligation to implement it [2]. Therefore, understanding the meaning of the principle of the rule of law will have an impact on the law enforcement process.

As stated by Soerjono Soekanto[3], that a law enforcement is a process of interpreting the values contained in legal norms through an attitude of action that is based on discretion. However, when referring to the views of J.A. Pontier, then the nature of the decision on the basis of interpretation in the law enforcement process—as a monopoly act of public authority, is coercive and can be enforced based on power and violence [4]. Therefore, every legal decision from law enforcement officers will always be subjective.

As a result, there is a double standard in determining decisions in enforcing the rule of law. Max Weber once talked about the aspect of inequality in society, as a fate that humans must accept in the world (the fates of human being are not equal) [5]. Therefore, in the latter situation, the implementation will turn around causing pressure on the law-implementing body itself. Therefore, although the law has clearly shown its commitment to the principle of equality before the law for all human beings, in reality, the law favors those who have power, those with high social status, and those who are educated. Thus, the implementation of the law in society that is aimed at people who have little or no political power is usually safer to carry out than its implementation to people who have greater political power. Therefore, in the latter situation, the implementation will turn around causing pressure on the law-implementing body itself[6].

This pattern of law enforcement, according to Nonet and Selznick, is a feature of the repressive legal order, namely the existence of a “double law” regime that institutionalizes class justice that legitimizes certain social patterns, and the emergence of institutionalized social classes in legal institutions that give birth to certain social behaviors. identical to a particular institution [7], [8].

The pattern of law enforcement based on the rule of law paradigm, today, is tested by the fact that the current era is the era of the Corona Virus -19 (Covid-19)

Pandemic. Where, since the beginning of 2020, the Government has begun to implement the Health Protocol (Prokes) related to the determination of an international pandemic by WHO, which was then followed by the Government of Indonesia where on March 15, 2020, the President of the Republic of Indonesia conveyed an appeal in a press release at the Bogor Palace so that people work in home, to minimize the spread of the corona virus[9]. This was followed by the issuance of the Decree of the Chief of the Indonesian National Police Number Mak/2/III/2020, which was only fourteen days apart, which was then followed by the issuance of the Chief of Police's Telegram Letter Number: ST/1098/IV/HUK.7.1./2020 concerning Large-Scale Social Restrictions dated April 4, 2020, Telegram Letter Number: ST/1099/IV/HUK.7.1./2020 concerning Availability of Basic Materials and Distribution Process dated April 4, 2020, and Telegram Letter from the Chief of Police Number: ST/1100/IV/HUK.7.1./2020 concerning Situation Developments and Opinions in Cyberspace and Cybercrime Law Enforcement dated April 4, 2020 [10].

Likewise, when the President of the Republic of Indonesia set a policy of Large-Scale Social Restrictions (PSBB) which refers to Law Number 6 of 2018 concerning Health Quarantine (UU No. 6/2018), he has specifically asked the Police to take several law enforcement steps that measured in accordance with the laws [11]. The order from the President of the Republic of Indonesia, at the practical level, raises a dilemma, whether the Police will move to enforce the law as a function of “State Instruments”—as emphasized in Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, or as the executor of “government functions”—as specified in Article 2 of Law no. 2/2002? This certainly becomes interesting to be discussed and analyzed in depth

Therefore, we try to propose research limitations by proposing the problem formulation “How is the Indonesian National Police (Polri) in carrying out police functions in the pandemic era based on the concept of the Relationship Trichotomy?”

2. METHODS

The research method used in this legal research is sociological or empirical to see social problems that have an impact on law in society. This research is termed socio legal research, which is a combination of legal research

and social research. The use of this approach is intended to understand the relationship and interrelationships between legal aspects and the reality in society. In this context, law is not only seen as an independent or isoteric normative entity, but is also seen as a real part of the social system related to other social variables [12].

According to Sulistyowati Irianto, law can be studied both from the perspective of legal science or social science, or a combination of the two. Sociolegal studies are studies of law by using the approach of legal science and social sciences. The study of law in developing countries requires both a legal and a social science approach. Approach and analysis of legal science is needed to know the content of legislation and case law. However, this approach does not help provide an understanding of how the law works in everyday reality, and how the law relates to the social context. Therefore, an interdisciplinary approach is needed, namely concepts and theories from various disciplines are combined and combined to study legal phenomena, which are not isolated from the social, political, economic, cultural contexts in which the law is located [13].

The research approach method used in this study uses a qualitative approach. According to Creswell, the qualitative approach model aims to explore and understand the meaning that a number of individuals and groups of people ascribe to social or humanitarian problems. The perspective of qualitative research focuses on individual meaning, and translates the complexity of a problem [14]. Therefore, the approach model in relation to socio-legal studies is the use of Critical Discourse Analysis (CDA) and the concept of Relational Trichotomy

3. RESULT AND DISCUSSION

Referring to the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/382/2020 concerning Protocols for Public Health in Public Places and Facilities in the Context of Prevention and Control of Corona Virus Disease 2019 (COVID-19), which emphasizes that the principle of preventing the transmission of COVID-19 on individuals is done by avoiding the entry of the virus through the three entrances by several measures, such as:

- a. Use personal protective equipment in the form of a mask that covers the nose and mouth to the chin, if you have to leave the house or interact with other people

whose health status is unknown (which may transmit COVID-19);

- b. Clean hands regularly by washing hands with soap and running water or using an alcohol-based hand sanitizer;
- c. Maintain a distance of at least 1 meter from other people to avoid getting droplets from people who are talking, coughing, or sneezing, as well as avoiding crowds, crowds, and crowds;
- d. Increase endurance by implementing Clean and Healthy Lifestyle (PHBS) such as consuming balanced nutrition, physical activity for at least 30 minutes a day and adequate rest (at least 7 hours), and avoiding disease risk factors.

However, the provisions of the Health Protocol have previously been distilled in the Decree of the Chief of Police Number: Mak/2/III/2020, which has functioned as a doxa in the law enforcement process. Where, in the Declaration, it is stated as follows:

Whereas in order to provide protection to the public, the National Police always refers to the principle of people's safety as the highest law (*Salus Populi Suprema Lex Esto*), hereby the Head of the State Police of the Republic of Indonesia issues:

- a. Not holding social activities that cause large numbers of people to gather, both in public places and in their own environment;
- b. Stay calm and don't panic and increase vigilance in each other's environment by always following official information and appeals issued by the government
- c. If it is in an urgent situation and cannot be avoided, activities that involve many people are carried out while maintaining a distance and must follow government procedures related to preventing the spread of COVID-19
- d. Not making purchases and/or stockpiling basic needs and other community needs excessively;
- e. Not making purchases and/or stockpiling basic needs and other community needs excessively; and
- f. If there is information that is not clear, the source can contact the local police.

At the implementation level as a form of embodiment of law enforcement, the National Police has set a double standard based on authoritative power to interpret legal norms and concrete facts as truth-games that justify and legitimize decisions as knowledge that is objectified to the public.

Thus, in order to maintain the authority of the institution and oversee the government's policies, the National Police Chief explained that residents who do not heed the appeals of the apparatus not to crowd can be subject to criminal sanctions with multiple layers of articles starting from Articles 212, 216, and 218 of the Criminal Code to Article 14 of Law Number 4 of 1984 concerning Control of Outbreaks of Infectious Diseases and Article 93 of Law Number 6 of 2018 concerning Health Quarantine [10].

In relation to the use of these provisions—particularly Articles 212, 216 and 218 of the Criminal Code, according to the Indonesian Legal Aid Foundation (YLBHI), the rules used by the National Police to criminalize people who recklessly gather in the midst of the corona virus, are rubber articles. The head of YLBHI Asfinawati emphasized that these articles are rubber articles which are commonly used for criminalization [15]. For example, in the case of Habib Rizieq Syihab (HRS) through the Health Protocol (Prokes) violation case in Petamburan through an invitation and appeal to the masses to attend several meetings, as stated by the Head of the Public Relations Division of the National Police Headquarters Inspector General of Police Argo Yuwono explained that the detention was carried out on the recommendation of the investigator who handled the case. alleged violations of Covid-19 in activities in Tebet, South Jakarta and Petamburan, Central Jakarta [16].

Based on this explanation, the National Police Investigator charged Article 160 of the Criminal Code concerning incitement to commit a crime. Thus, the Police objected to calling the case a crowd case. Therefore, if it is only based on a crowd case, it means that it is a violation of health protocols and violates the Quarantine Law, so it is not appropriate to be detained. However, the National Police Investigator insisted on saying that HRS, in the Petamburan area, had instigated and invited people to commit criminal acts in the Petamburan area. Thus, the National Police objected to be referred to as a case of crowd scattering, but it was sufficient for the case of scattering alone [16].

The juridical fact confirms that the Public Prosecutor in this case has sued HRS under Article 93 of Law no. 6/2018 in conjunction with Article 55 paragraph (1) of the Criminal Code in the Third Indictment, and has been found guilty of committing a criminal offense with a sentence of 8 months [17], hereinafter referred to as “TEXT I”.

Different decisions on identical phenomena, giving rise to an argument that produces legitimate knowledge based on power, can be seen in the discourse of Ricardo Gelael (RG) who held a party that resulted in a 'crowd', which was completely unheard of. Although, there had been a discussion regarding the appearance of Rafli Ahmad (RA) in the “party” crowd without a mask [18], hereinafter referred to as “TEXT II”. However, again, knowledge production as objective truth-games is raised, namely RA is only an 'uninvited guest' and not an organizer.

Uniquely, these truth-games are 'fluid' depending on the ideological aspects (interests) that are being played. Authoritative decisions based on power as knowledge of the production of thoughts and interests, can be seen in the phenomenon of the transfer and removal of positions from the South Cikarang Police Chief. The discourse that developed in the media was that of a Cikarang Police Chief who carried out government functions—namely, law enforcement, on the Health Protocol policy that was violated by the Lippo Cikarang Waterboom business actor [19], hereinafter referred to as “TEKS III”.

Pandemic as a context gives rise to various signs as texts that are constructed with different interests. In addition to the three texts above, a new text appeared, namely the Kembangan Police Chief Kompol Fahrul Sudiana (FS) holding a wedding reception in the midst of the Corona outbreak. As a consequence, the Kembangan Police Chief was transferred, withdrawn for examination to undergo a Propam Polda Metro Jaya examination and in the end, was judged to have taken disciplinary action and had been transferred [20], hereinafter referred to as “TEXT IV”.

As a comparison with other social phenomena, hereinafter referred to as “TEXT V”, are some members of the Nganjuk Regency Regional People's Representative Assembly who are allowed to pass through the blocking post at the Ngawi Toll Exit, even though there is no official document stating that they are free from Covid-19. The members of the Nganjuk DPR were sufficient to argue that yesterday they had carried out a rapid test and did not know if the documents had to be brought [21]. Meanwhile, another identical social phenomenon, hereinafter referred to as “TEXT VI”, is a member of the House of Representatives from the PAN faction who is suspected of violating the Health Protocol (Prokes), namely Guspari Gaus (GG) from F-PAN who recently arrived from Kyrgyzstan and immediately

attended a working meeting. Commission II of the House of Representatives. Therefore, according to the rules as stipulated in the Circular Letter of the Covid Task Force Number 8 of 2021 concerning health protocols during the Covid 19 Pandemic which has been in effect since February 9, 2021, every international traveler is required to carry out a 5 x 24 hour quarantine [22].

In order to make it easier to examine the various texts, we summarize in the form of a table of equations and comparisons as follows:

Indicator	Text I	Text II	Text III	Text IV	Text V	Text VI
Subject	Personal	Personal	Executive	Executive	Legislative	Legislative
Social Capital	Theologian	Entrepreneurs & Artists	Police	Police	Regional People's Representative Assembly	House of Representatives
Interest	Personal & Politics	Personal	Personal	Entrepreneurs & Institution	Institution	Institution
Penalty	Punishment	Ice Cold	Mutation	Mutation	Ice Cold	Ice Cold

Based on the classification above, it can be seen that a conclusion can be drawn, in TEXT I it shows that there is a law enforcement process which—apparently, is carried out in a formalistic-legalistic manner. However, in analysis through semiotics, the discourse under study may not only be contextual-based when the discourse appears. What we mean is that a content analysis cannot only be directed to discourses that appear synchronously, however, in relation to TEXT I, diachronic thinking is actually the starting point before arriving at an argument. This means that HRS's conviction was not only for causing a crowd in Petamburan, but long before returning from Saudi Arabia it had become background-knowledge (*hindergrundwissen*). Phenomena related to the political aspect became an ideological aspect (or interest) to produce knowledge of the phenomenon after his return.

In order not to appear arbitrary, we can compare it with TEXT II which has similar subjects, namely individuals. However, there is a difference between TEXT I and TEXT II, namely in their social capital. In TEXT I, the social capital is Ulama, while in TEXT II, the social capital is 'Business Actor (RG) & Artist (RA)'. So, his background knowledge (*hindergrundwissen*) is that RA is an icon for millennials who was specially invited by the President to be willing to take part in the Covid-19 vaccination, while RG is an old business actor. The two social capitals are the silence of law enforcement as truth-games.

In contrast to TEXT III, although they received sanctions, they were not punished. What is unique is TEXT IV, although it has similarities in social capital with decision makers, this phenomenon intersects with different ideological aspects, namely the interests of business actors. This means that in TEXT IV there is a mixed understanding between the interests of the institution in this case the Police, with the interests of business actors through a knowledge production process based on a contrario interpretation mechanism, namely that the crowding at Waterboom Lippo Cikarang is the negligence of the Cikarang Police Chief. Meanwhile, the Waterboom Lippo Cikarang business actors themselves were completely untouched, at least not traced through the media.

The act of not making decisions is also seen in TEXT V and TEXT VI, where the powerholders intersect with each other. Thus, executive power holders who are charged with carrying out government functions namely law enforcement, produce knowledge not to use their power and authority to take action against those legislative power holders. That is, there is an understanding that gives rise to an understanding not to take action. Thus, the similarity of social capital has an influence on policy makers in the realm of law enforcement, not to take action.

Based on the facts and data mentioned above, it can be seen how the Police, who were asked directly by the President to oversee the Health Protocol policy in the era of the Covid-19 pandemic, turned out to be inconsistent in carrying out government functions, namely law enforcement. The National Police arbitrarily determines which facts and data will be processed in the construction of their reasoning to argue whether or not to take action. Ideological aspects (or interests) and aspects of social

capital are two considerations in thereasoning process as a form of power-based knowledge production to protect interests.

4. CONCLUSION

Law enforcement activity is an activity marked by the formation of policies or decisions through a legal interpretation as a knowledge production process that is based on power and authority-based on laws and regulations, to protect interests that have become the background of knowledge (*hindergrundwissen*). Thus, based on the concept of the relational trichotomy, the holder of authority (power) will always objectify to the public that the decision is correct and absolute.

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