

THE NATURE OF LAW AND JUSTICE IN SOCIETY

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ABSTRACT; *At this time globalization has penetrated the dynamics of human life and brought changes that essentially point to the problem of unbalanced regulation of human life in law and a sense of human justice. In everyday life we often hear people demanding justice, because they feel they have received unfair treatment. This can occur between citizens and the government, or perhaps also between individuals and their groups or because there are differences in the fulfillment of personal rights and so on. Justice is closely related to attitudes and relationships with fellow human beings because justice demands that every human being be treated as they are done. The problem is How is the nature of law and justice related to the philosophy of law and How is the form of justice pursued by judges? The method used in writing this paper is normative juridical, which is an approach based on law as the main material, the research specification used is descriptive analytical, which is research that aims to provide an overview of justice in Indonesia. While the data sources are secondary and primary data through primary field studies used as supporting data or supporting secondary data. From the research, the results were obtained: The nature of law and justice is very relative, because from which side we look at it there is a negative that law and justice are something that is not heavy after there are also those who say that justice is not necessarily found with field results and the form of justice in this case can be done by judges and rulers by trying to comply with laws and regulations and a sense of public justice, but judges are ordinary human beings who can make mistakes. Mistakes can occur due to inadvertence and can also be made can arise from people who are deliberate, this is what will plunge humans. True justice is the justice of Allah SWT.*

Keywords: Law; Justice; Philosophy of Law.

INTRODUCTION

At this time globalization has penetrated into the dynamism of human life and brought changes that essentially point to the problem of unbalanced regulation of human life in law and a sense of human justice. Law is one of the ways of trying to achieve the goals of political order cannot be separated from the question of the objectives of the law itself.

In the rule of law, it is determined what are the rights and obligations of members of society in their social life, namely determining the way of human behavior in social life and the obligation to obey it. If the order in this law is only left to the free will of humans completely, then the purpose of the law will be difficult to achieve, therefore it needs to be accompanied by sanctions to influence free will which means forcing members of society to obey the law.

In everyday life, we often hear people demanding justice, and we often hear people feeling dissatisfied, because they feel they have been treated unfairly. This can occur between citizens and the government, or perhaps also between individuals and their groups or because there are differences in the fulfillment of personal rights and so on. So that the existence of this presumption of injustice which cannot lead to the absence of balance in society or certain groups, which in turn can lead to disputes or disputes.

Various ways can be taken to define balance, among others, by deliberation, if deliberation cannot be reached, settlement can be through a third party as an intermediary, if efforts outside the court are the last place that justice seekers go to, among other places to demand justice. Although the court is the last place that justice seekers go to, it is possible that justice seekers will still feel dissatisfied, because it is not certain that the honesty of the court will give satisfaction to both parties. Maybe the first party feels that the decision has been considered fair, because it is favorable to him and vice versa they feel that it is not fair to the other party because it is not favorable to him so that he does not feel that there is no justice or the problem that exists or is faced.

With the emphasis on interests, it will result in differences in understanding and understanding of justice itself, so that what is considered fair by one party is different from the other party, including the understanding of justice from the superior ruler is different from the feeling of fairness by subordinates, especially for those who do not benefit, as well as the understanding of justice by the legislators, may be different from the sense of justice of the community.

The feeling of fairness is a person's belief about value in the behavior of everyday life, because each individual has their own sense of justice which is not always the same from one to another. Justice is closely related to attitudes and relationships with fellow human beings because justice demands that every human being be treated as they are done. Justice requires each individual to recognize the existence of others as beings who are impermanent and of equal value to themselves.¹

Based on the description above, the problem can be raised How is the nature of law and justice in society and How is the form of justice pursued by judges?

RESEARCH METHODS

The method used in writing this paper is normative juridical, which is an approach based on the main legal material by examining theories, concepts, legal principles, and applicable literature and legislation. To approach the subject matter in this research, the research specification used is descriptive analytical, which is research that aims to provide an overview of justice in Indonesia. While the data sources used in this research are secondary data through literature studies obtained from books, documents, literature, scientific essays, opinions of legal experts and applicable laws and regulations, especially those related to this research, and primary data through primary field studies used as supporting data or supporting secondary data obtained directly to the object of research.

Data that has been obtained both from literature studies and complete field studies is then sorted out, processed and arranged systematically, then presented in the form of descriptions.

DISCUSSION

The Nature of Law and Justice in Society

We realize that the law brings various restrictions and sacrifices, but it is still considered much better when compared to a situation without law, therefore society is willing to accept the law because society is also aware that sometimes individual interests are stronger than that assessment, the normative order is strengthened by a system of sanctions. If it is necessary, it forces unwilling members of society. Since the order is only useful if all are bound by it, it is clear that not just any imposed normative order can be called law. Community acceptance and (sociological) legitimacy are included in the nature of law.²

Uncovering the basic meaning of the terms *kakikat*, *sifat* and *asas* literally is relatively easy to distinguish one from the other. However, when the word law is attached to these three terms, it seems that it is not easy to just mention the difference. This is evident in the disagreement among legal scholars, for example, whether the element of coercion in law is included in the nature of law

¹ Notoharmijojo, *Demi Keadilan dan Kemanusiaan beberapa Bab dari Filsafat Hukum*, Gunung Muria, Jakarta.

² Franz Magnis Suseno, *Etika Politik*, PT.Gramedia, Jakarta, 1987, hal.75.

or in the nature of law, although in the end it was determined that the element of coercion is a characteristic of law.³

According to Darji Darmo Kiharjo, and Shidarta, the nature of justice is the most discussed law throughout the course of legal philosophy.⁴ While RM. Sudikno Mrtokusumo, states that the notion of justice includes two things, namely those concerning the "essence" and those concerning the "content" or norms to act concretely in certain circumstances.⁵

What is meant by the nature of justice is the assessment of a treatment or action by examining it with a norm that according to subjective views exceeds other norms. In this case there are two parties involved, namely the party who treats and the party who receives the treatment, for example parents and their children, employers and laborers, judges and justisiables, governments and their citizens or creditors and debtors. However, in general, justice is an assessment that is only seen from the party receiving the treatment. For example, a worker whose employment has been terminated considers his employer to be unfair, a justiciable person who has lost a case considers a judge to be unfair, and so on.

To elaborate on the content of justice is difficult to obtain or provide a limit. Aristotle in his "Rhetorica" expressed his opinion on justice, which until now has been the study of justice itself.

Aristotle in his teaching distinguishes two kinds of justice, namely:

1. Justitia distributive is demanding that everyone gets what is rightfully theirs or their allotment.
2. Justitia commutative, which is giving everyone the same amount.

Distributive justice gives everyone proportional (balanced) parts according to their skills or services in a particular society or group. The rights or rations that become part of each person are not the same amount depending on their respective skills, education, abilities or salaries so that they are proportional. Therefore, what is desired is not that everyone gets the same amount of shares, but what is needed is a balance.

Distributive justice concerns the arrangement or arrangement of people in society and the state, as well as giving ranks or positions that need to be adjusted to the quality of their respective services. While commulative justice is giving everyone the same parts without showing the quality or services.

In this cumulative justice, it is said to be fair if everyone is needed equally, regardless of position, education service, ability and others. This is contained in Law Number 48 of 2009 concerning Judicial Power which states that "The court tries according to the law without discriminating against people." Judges estimate the relationship of individuals who have the same professional position without distinguishing between people.

D. Notohamidjojo, in the main questions of legal philosophy complements the content of justice that has been put forward by Aristotle, among others, namely:

1. Justitia Judicative or judicial justice is to give each person a punishment in accordance with the crime or offense committed. This situation is mainly deployed in the field of criminal law. The perpetrator or the one who commits the act will be sanctioned according to the act and the consequences of his actions. Therefore, even though the actions are the same if the consequences are different, they will get different sanctions.
2. Justitia Creativa or creative justice is justice that gives each person in the state the freedom to create according to their creativity in the field of community culture. Each individual is guaranteed the freedom to devote their art according to their creativity so that the fear that exists in each of them will be spread through their work.
3. Justitia Protectiva or protective justice is justice that provides each person with the protection they need and are entitled to. This justice emphasizes more on the obligation of a state towards

³ Lili Rasjidi, *Filsafat Hukum*, Remadja Karya, Bandung, 1987, hal. 197.

⁴ Darji Darmodiharjo, dan Shidarta, *Pokok-pokok Filsafat Hukum*, Gramedia, Pustaka Utama, Jakarta, 1999, hal. 34.

⁵ Sudilono Mertokusumo, RM., *Mengenai Hukum (surat pengantar)* Liberty, Yogyakarta, 1986, hal. 54.

the protection of one's rights, both in the form of property rights, rights to one's copyrighted works and so forth.

4. *Justitia Legalitatis* or legal or public justice is the demand for compliance with the law. Obedience to the law is considered as obedience to the interests of society. Legal justice is considered public justice, because by obeying the law people are considered to have helped organize the welfare of society.

The Form Of Justice Sought By Judges

Judges in resolving disputes will give full attention to the discovery of circumstances in society that serve the interests of society. This is in line with the ideals of law that will create justice in society and its interests are protected.

Law contains basic values that need to be realized. These basic values include justice, utility and legal certainty. However, the three of them have different achievements, even between justice and legal certainty are often contradictory to each other, but all of them are needed legal certainty which is one of the conditions needed if it is desired that the law can carry out its duties as well as possible, while justice is a guide to the truth of the content of the law.

The law in resolving cases prioritizes justice where legal certainty will be sacrificed, and vice versa. Because this cannot be fully implemented at once, and there is always an unavoidable clash between the demands of justice and the demands of legal certainty, justice is urged.

LJ Van Apeeldoorn also argued that law can only aspire to justice, because real justice cannot always be achieved by law. This is because the law sacrifices justice just for its purpose so that the law is a compromise. Similarly, humans are not gifted by God to know what is fair and unfair in an absolute sense.⁶

The judge's task is to decide the case he is examining, so it is only natural that the judge also incorporates his sense of justice in the decision. Judges also try to translate in their decisions the sense of justice that prevails in society. Here is the importance of the duty and role of judges to understand and follow the values that live in society.

If the judge's sense of justice conflicts with what is generally applicable, then what is generally applicable takes precedence. Judges, in deciding cases, will consciously look for norms that they consider fair for the community. The same thing is also found in the presentation of laws that will always look for norms that live in society, because what will be stipulated in the law is looking for norms of justice that live in society but in reality. The law that is enacted is an agreement resulting from the deliberation of the law-making body, so it is not impossible that the agreement was strongly influenced by the politics adopted by the government at the time it was made.

In general, the law only contains an outline, so judges in deciding cases are given the freedom to find the law, to be applied to concrete events. So the hope is that the judge can provide the fairest possible solution to the events submitted to him. The judge's task is heavy because he must examine carefully and decide exactly to whom the right should be given between the two disputed cases.

However, in the examination of the case the parties must prove whether or not the events submitted are true or not, then the parties who succeed in proving must be won, as well as those who do not succeed in proving must be defeated. In the first proof is not known as "the weak is protected". The purpose of finding the truth of the events of the trial is to be able to give consideration to the judge and ultimately to be able to give a correct and fair decision.

From some of the above, it can be stated that in order to realize justice in court, at least the following things must be realized:

1. There is a balance in providing the burden of proof. In civil proceedings the distribution of the burden of proof must be carried out fairly and impartially, because if the distribution of

⁶ Apeldorn LJ. Van, *Pengantar Ilmu Hukum*, Pradinya Paramita, Jakarta, 1991, hal. 43.

the burden of proof is one-sided it will plunge the party who receives too heavy. If the parties submit conflicting arguments, the judge must examine and determine which arguments are true and relevant and which are not true and irrelevant.

2. Both parties are treated equally in court both to be heard and to hear the arguments of the other party, submitting evidence is able to see the evidence of the other party. It is generally accepted that treating both parties equally is justice.

Acceptability of the decision by all parties. Judges should try to make every decision acceptable to the community or at least try so that the environment of the person in dispute can accept their decision.

CONCLUSION

The conclusions drawn from the description above are:

- a. The nature of law and justice in society is very relative, because depending on which side we look at it, there are negatives that law and justice are something that is not heavy after there are also those who say that justice is not necessarily found with field results..
- b. Justice in this case can be done by judges and rulers by trying to comply with laws and regulations and the public's sense of justice, but judges are human beings who can make mistakes. Mistakes can occur due to inadvertence and can also be made can arise from people who are deliberate, this is what will plunge humans. Justice is one of the attributes of God that no human being can match, in other words, it is human nature that humans will not be able to create perfect justice like the justice of God.

Based on the discussion and conclusions above, the author's suggestions are: The need for justice to be carried out as well as possible, by applying existing laws, so that all members of the community can feel in seeking justice.

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