



THE EXISTENCE OF LEGAL SOCIOLOGY AS A LEGAL RULE IN COMMUNITY LIFE

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ABSTRACT

The existence of law in society is very urgent because the law regulates human behavior. Law can not be separated from society, and vice versa, because in addition to the law that functions passively, the law also functions actively in controlling every individual action and always tries to bring society into a planned change. The law that applies in society comes from the community itself and is deliberately imposed on it so that problems/conflicts can be minimized. The applied law should always pay attention to juridical principles, philosophical principles, utilities/sociological rules so that they do not conflict with the values that live in society. Laws made in society have the aim of creating peace, tranquility, and order in society as well as providing legal certainty. The purpose of law can be felt comprehensively in society if the law can function in society. Thus law and society have a very significant correlation. A society without the law will lead to chaos and arbitrary actions, and vice versa, without society, the law is meaningless. Implementation of regulation is a manifestation of the desire for the rule of law so that the function of social control and social control can be incarnated in society. Therefore, both law and society must adapt to each other's developments, so that there is harmony between the two

Keywords: Sociology of Law, Rules of Law, Community Life

INTRODUCTION.

Law and society are two different entities. both have their respective roles and functions in life. however, the two cannot be separated from each other, because they both need each other. the existence of law also requires the existence of society. on the other hand, a lawless society is just a collection of wild animals. that's why law and society cannot be separated. this means that the existence of law really needs the existence of the community in carrying out its functions. while society needs law in order to create a good and orderly life.

In society, the law functions as a control over the dynamics of developing community life. Especially in the context of providing a sense of justice and preventing individual behaviors that



are not in accordance with social norms and legal norms that have become mutually agreed. Thus, the stability of society will be achieved when the existence of law can be played well in the midst of society. This is because the behavior of individuals or social groups is closely related to various social or legal norms, both written and unwritten.

So far, the law as social control appears to be static. Because it as social control only maintains the pattern of relationships and rules that exist in the present. Of course, this is counterproductive to the fact that changes in society greatly affect the legal dynamics that develop in society. This is because the existence of law is closely related to changes and changes and the development of society.

In this context, the existence of law is very dependent on the social dynamics that are developing. This is in accordance with the view of the sociological jurisprudence that a good law is a law that is in accordance with the law that lives in society. Furthermore, this school is of the view that in relation to positive law, it will only be effective if it is in fact in harmony with the laws that live in society and the center of development of law lies not in legislative bodies, judicial decisions or legal science, but in fact. lies in society itself.

The term community in English is called society, which means association, and human association (Echols, 2005). While the word society itself is rooted in Latin, namely *societas*, which means friendly relations with others. *Societas* is derived from the word *socius* which means friends and comrades, so the meaning of society is closely related to the word social. Thus, the word society implicitly implies that each member has the same concern and interest in achieving common goals.

Whereas in Arabic the word "community" itself is rooted in the word in 'musharak' which means unity and fellowship in doing something. Society is a group of humans in which they establish interactive relationships between human beings in carrying out their functions as humans. "Generally, the term community is used to refer to a group of people who live together in an organized community"

Society is a forum for all social relations consisting of many groups, and each group consists of better groups or sub-groups. While society can mean a unanimity of all developments in living together between humans and humans. That is, society is a group of people who already have a life order, norms, customs that are adhered to together in their environment. This order of life or norms that they have becomes the basis of social life in their environment, so that they can form a human group that has distinctive life characteristics.



RESEARCH METHODS

The research method used in this study is a transcendental research method, with an analytical-philosophical approach. This study focuses on a set of ideal values, which should be a reference/benchmark in a process of formation, formulation, and implementation of the rule of law.

RESULT

4.1. The Existence Of Sociology Of Law In The Development Of Society

The law that develops in society is not a static law but a dynamic law. In fact, the legal system is not merely a set of static rules but a reflection that is constantly changing from developments, especially the relationship between the diversity of social characteristics that live in society, both traditional and modern, both rapid and slow changes. In line with the idea that law is reflective of the diversity of social characteristics, there is no law that does not experience change and that change is always a product of conflict.

Every society is subject to the process of change and change is everywhere, dissensus and conflict are everywhere, every element of society contributes to the disintegration and change of society, every change in society is based on the coercion of some members against other members. The demands of social change have an impact on the existence of a legal system that has been in a constant state. Changes in law naturally, naturally, and through natural selection undergo changes by themselves, not a matter of law, like it or not, like it or not, but return to the issue of change itself.

If the law does not change, it will experience many obstacles, both dealing directly with the sense of community justice and law enforcement issues. The demands that occur in the legal person who must carry out restoration of their existence in society will have different consequences for the legal changes that will be carried out. As long as legal changes are responsive and follow the rhythm of the law that lives in society, the law will always be in harmony with people's lives.

After all, the law is actually a living organism (*es ist und wird mit dem volke*) as Von Savigny said that the law will continue to live and develop along with the development of society, on the basis of its own moral authority. In this case, the law must continue to function or be meaningful for the benefit, order and public order. Another approach to the meaning of law is carried out by examining the functions that must be fulfilled by law. E. Adamson Hobel and Karl Llewellyn stated that the law has important functions for the sake of the integrity of society, these functions are as follows:

1. Establishing relationships between members of the community, by determining which behaviors are permissible and which are prohibited.



2. Make an allocation of authority and determine carefully the parties who can legally carry out coercion while at the same time choosing appropriate and effective sanctions.
3. Disposition of disputed matters
4. Adapting relationship patterns to changing living conditions.

Meanwhile, the characteristics of advanced law, among others, as stated by Marc Galanter are:

1. There are uniform rules, both in substance and in implementation
2. The law is transactional, which means that rights and obligations arise from the agreement without being influenced by age, class, religion, gender, race, etc.
3. It is universal, which means that the law can be accepted by the public
4. A strict judicial hierarchy
5. It is bureaucratic, meaning that the procedure is carried out in accordance with what has been determined by law
6. The law must be rational
7. Professional, law enforcement must be professional people
8. Because it leads to specialization, there must be a bridge between one specialization and another specialization
9. Flexible, which is easy to change to suit the development of society
10. Law is implemented by the State or State institutions
11. The principle of Trias Politica applies

This change in law actually functions to bridge human desires so that anarchic, destructive, chaotic behavior does not arise, which is very tiresome for our society, especially the grass root class. What we want from a change is a restoration to a better state and not the other way around. It is also natural that the changes we want are not in immediate results, such as turning the palm of the hand. Changes that occur in the law are social problems, sociological problems, which cannot be sterilized from political power, personal desires, economic factors, and so on.

The engineering of Indonesian law has only been formally started since the enactment of the 1945 Constitution. The engineering as stated in the Constitution includes both legal engineering and social engineering. The meeting of engineering in one basic legal document needs to be appreciated as a wisdom in itself, because it provides sufficient facilities for us to make a comprehensive, complete and integrated legal plan. This assessment is based on the messages and warnings of the makers of the Constitution so that in developing Indonesian law we pay attention to the dynamics of the life of the people and the State of Indonesia.

If we want to build a new Indonesian law through the path indicated by the Constitution, we are required to pay close attention to the atmosphere, changes, and social dynamics that take



place in society. In this way we can ask various preliminary questions to get an idea of the whole state of society. At this stage we are asked to carry out the role of social analysis to be able to capture the state of society and its development trends.

Law as social engineering or a means of social engineering is a prominent phenomenon in the 20th century. Unlike in the traditional atmosphere, where the law is more of an embodiment of social rules that have been embedded in society, the law has now become a tool full of political decisions. Thus law turns into a means of implementing political decisions and thus loses its roots in traditional life. Today the law is no longer looking back, but forward by making many changes to the current situation towards the aspired future. Thus the law no longer maintains the status quo, but carries out many social changes.

4.2. Effectiveness Of Law Enforcement In Community Life

The word effectiveness comes from English, namely effective. The meaning of the word is: "having the intended or expected effect; serving the purpose". Thus, legal effectiveness can be interpreted as the ability of the law to create or create conditions or situations as desired or expected by law. In reality. The law does not only function as social control, but can also carry out the function of social engineering. Thus, the effectiveness of the law can be seen both from the point of view of the social function of control and from the point of view of its function as a tool for making changes. The factors that can affect the effectiveness of the law can be detailed as follows:

1. The legal factor itself;
2. Law enforcement factors, namely the parties that form and apply the law;
3. Factors of facilities or facilities that support law enforcement;
4. Community factors, namely the environment in which the law applies or is applied;
5. Cultural factors, namely as a result of work, creativity and taste based on human work in social life.

The five factors are interrelated, so that in analyzing the effectiveness of the law, it is necessary to pay attention to the relationship between the factors mentioned above. Especially in discussing the effectiveness of the law as a tool to make a change, the various conditions put forward by William Evan need attention. These conditions are:

1. Is the new source of law really authoritative and authoritative?
2. Has the law been properly explained and given justifications, both from a legal point of view and from a socio-historical point of view?
3. Are the obedience models recognizable and publishable?



4. Whether appropriate consideration of the time required for the transition period has been taken.
5. Do law enforcers show their racial attachment to the new rules?
6. Can sanctions, both positive and negative, be implemented to support the law
7. Has effective protection been provided for people who may suffer from violations of the law

Although the law is not just a law, in this discussion it is deliberately only to present the law as the center of the discussion. Meanwhile, what is interpreted as a law in this paper is a written regulation that is generally valid and made by the legitimate central and regional authorities. It thus includes:

1. Central regulations that apply to all citizens or a certain group only or generally apply in part or all of the country's territory.
2. Local regulations that only apply in one place or region

Because the law itself also affects the effectiveness of the law, in making laws (laws) it is necessary to pay attention to some of the principles of existing legislation. This needs to be considered so that the laws made can provide the desired or expected results or consequences, so that they are effective. These principles are the law cannot be applied retroactively. The meaning of this principle is: the law may only be used for events referred to in the law, and which occur after the law is declared effective. This principle is contained among others in Article 3 of Algemene Bepalingen van Wetgeving (AB) which reads (its translation):

1. The law is only binding for the future and has no retroactive force. Article 1 paragraph I of the Criminal Code reads (its translation): No event can be convicted except on the basis of the strength of a pre-existing criminal statutory rule.
2. Laws made by higher authorities have a higher position as well. In accordance with the constitutional system as described in the explanation of the 1945 Constitution, the 1945 Constitution of the Republic of Indonesia is the highest form of legislation, which forms the basis and source of all other laws and regulations. The forms of laws and regulations of the Republic of Indonesia according to the 1945 Constitution are as follows: the 1945 Constitution; Decree of the People's Consultative Assembly; Laws/Government Regulations in Lieu of Laws; Government regulations; Presidential decree; Other implementing regulations, such as Ministerial Regulations, Ministerial Instructions, and so on
3. Laws of a special nature override general laws, if the makers are the same (lex specialis derogat lex generalis). The purpose of this principle is that it is mandatory for a law to mention a special event to apply a law that mentions that event, although for a special event it can also be treated



by a law that mentions a broader or more general event which may also include the special event.

4. The law that was enacted later annulled the law that was applied earlier (*lex posteriore derogat lex priori*). The purpose of this principle is that the previous law applies where a certain matter is regulated, does not apply if there is a new law (which applies later) which also regulates that particular matter, but the meaning or purpose is different or opposite with the old law.
5. The law is inviolable. In contrast to the Provisional Constitution of 1950 which explicitly contains this principle in the 1945 Constitution there is not a single article that contains this principle.

The factors that influence the effectiveness of the law may differ from one law to another. However, there are factors of general character that can affect the effectiveness of the law in terms of its law (substance component), which in this discussion is limited to statutory law. These factors are the conditions that need to be considered in making a law, which include:

- a. The law must be designed properly, so that the rules which are the guidelines or guidelines for Law and Development to act on it must be (written) clear and understandable.
- b. As far as possible, the law is prohibitive and not mandatory, because in general, prohibiting laws are easier to implement than mandatory laws.
- c. If the law contains sanctions, the sanctions imposed in the law should be in accordance with the nature of the law being violated.
- d. The sanctions imposed on violators should not be too severe (excessive). The existence of excessive sanctions can result in a sense of reluctance for law enforcers to apply sanctions consequently.
- e. There is the possibility to observe and investigate the actions or attitudes that have been pegged and guided by the rules in the law.
- f. Laws that contain moral prohibitions tend to be more effective than laws that are not in harmony with morals.
- g. The laws that have been made need to be "publicized" through targeted counseling.

If the things described above are not taken into account, (ie those related to the law as a substance component of the legal system) the effectiveness of the law can be disrupted. Of course, the conditions concerning the substance component alone are not sufficient to guarantee the effectiveness of the law.

Various factors that are included in the large structural component also have an influence on the effectiveness of the law. The mentality and ability of law enforcers (as part of the



structural component) of course has a big influence. Likewise, the facilities needed in order to carry out their functions as law enforcers also need attention. For example, whether there are various supporting facilities that are in accordance with technological developments and the development of society. These tools remain a support tool, which ultimately depends a lot on the people who operate them. However sophisticated a weapon system is, the people who operate it are a very important factor. Then, other factors that also affect the effectiveness of the law are the factors of the community in which the law applies. Within this community factor, there is what is called legal culture, namely attitudes and values related to law and the legal system as well as attitudes and values that influence attitudes to acts in law (legal events). By Friedman, this legal culture is considered a factor that determines how the legal system gets its place within the cultural framework of society

4.3. Conception Of Dialogical Relations Between Law And Society

It must be admitted that in social and community life, each individual is bound by various social norms that develop in the midst of society. The social norms referred to here are laws, both written and unwritten. Social and legal institutions substantially both have the aim of achieving stability and order so that the ideals of a prosperous, peaceful and peaceful life can be achieved.

Law and society are actually two entities that influence and strengthen each other in achieving the ideals of human life. Law will exist if there is a society. On the other hand, the interests of the community can be realized if the law is upheld. Law may be seen as values contained in society, the more coherent the composition of these values will be and the easier it will be for the law to regulate it. "Because of the cohesion in the values contained in the community, it will facilitate an agreement regarding the norms that apply in society.

The description of this cohesiveness can be taken from the situation of rural communities with the agreement that the values are more or less high".

According to Roscoe Pound, as in Otje Salman and Anthon F. Susanto (2008), that social interests are the most important aspect in creating a responsive legal model. That is, according to this view, good law must offer something more than procedural justice. In this context, essentially the existence of law depends on the community. The legal process of making law must not ignore the sociological aspects that develop, so that the law can go hand in hand with the interests of the community.



There is a close relationship between law and the socio-cultural aspects and values of society. For him, a good law is a law that reflects the values that live in society. This shows how urgent the socio-cultural position of society is in the process of law formation. Legal construction should accommodate social values, so that in the process of law enforcement there is no contradiction with the community, so that the law is difficult to develop and live in the midst of society.

In Indonesia, for example, there has been a change in values in society, namely, from traditional values to modern values. However, the question is which values are to be abandoned and which new values will replace them. Therefore, in the process of changing this value, of course, there will be a logical consequence, namely unrest in society.

Paradigm of the sociology of law, society is a resource that gives life (to nature) and moves the law. The community lives the law with values, ideas, concepts, besides that the community also lives the law by donating the community to run the law. In pre-modern society, when life was still on its scale and local, homogeneous and exclusive format – because it is more suitable to be termed 'community' (community) than 'society' or 'political state'—the so-called 'laws' are generally unwritten and exist as general principles in the minds of citizens. Community cared for from generation to generation as a tradition that is believed to have come from the ancestors. This is what is called the tradition or morals of the life of a community, which in the study of the sociology of law is often also called 'people's law', and in legal science it is called 'customary law' or 'customary law'.

The development of a more recent life, when the life of the nation state replaces local life which is small and exclusive, the so-called law begins to show its written form. This is what is called statutory law, which is written in more precise formulations, is formed or made through certain procedures, and is structured or institutionalized as a means of control that is clearly formal in nature, which will therefore be supported by the competent state authority. have the authority to use sanctions. Social changes and legal changes or vice versa do not always take place together. This means that in certain circumstances the development of law may be left behind by the development of other elements in society or maybe vice versa. If this happens, then a Social Lag appears, which is a situation where there is an imbalance in the development of social institutions which results in inequalities.

CONCLUSION.

Today's legal changes must continue to be carried out in line with the developments and changes that occur in society. The law must be able to adapt to the existing changes if it does



not want to be left far behind. Efforts to reform the law must continue to make Pancasila as the paradigm, because Pancasila is domiciled as the basis, ideology, legal ideals, and fundamental state norms that must be used as direction orientation, a source of values, and therefore also the framework of thinking in every legal reform.

The law itself also affects the effectiveness of the law, so in making laws (laws) it is necessary to pay attention to some of the principles of existing legislation. This needs to be considered so that the laws that are made can provide the desired or expected results or consequences, so that they are effective. The effectiveness of the law is strongly influenced by the structural components, substance components and existing legal components. These three components need attention if we are to conduct a study on the effectiveness of law in society.

Law and society are two entities that cannot be separated. Their existence complements and reinforces each other. In fact, in the process of formulating the law, the sociological aspects of society must not be ignored. Because the relationship between law and society is a complementary relationship. Law was born in order to provide regulation of life and interaction behavior of each member of the community so as not to get out of religious norms and social norms that already exist. Because, as social beings (zoon politicon), humans in interacting with each other often cannot avoid conflicts of interest between them.

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