

# Legal Functions in the Community as Tools to Change Behavior (Legal Function Assessment from The Sociology of Law Perspective)

Sarjiyati

Faculty of Law, Universitas Merdeka Madiun

[sarjiyati.sh.mh@gmail.com](mailto:sarjiyati.sh.mh@gmail.com)

## ABSTRACT

The sociology of law is a science that theoretically analyzes and empirically highlights the effect of social phenomena on the law, and vice versa. The law by positivists is seen as texts and eliminates human role factors, gets a great correction by placing the human role in a less central position. Legal sociology finds that the role of human behavior is much more varied. The law as behavior arises instantly through the interaction between the members of society itself. Social and legal change or otherwise do not always go together. Because in certain circumstances the development of law may be left behind by the development of other elements of society and its culture. Law has a function as a means of social control, as a means of social engineering and integration. The important function of the rule of law is as guiding behavior. So any rule of law will have an impact on human behavior. The impact is what is called a response to a legal provision. The response is different from every human, there are positive and negative responses. So the impact of the provisions of the law, not just obedience but there is a form of disobedience.

**Keywords:** *Legal Function, Community, Behavior, Legal Sociology.*

## 1. INTRODUCTION

The terminology of legal sociology was first time introduced by Anzilotti in 1882. The sociology of law examines the mutual influence of law with other social phenomena.<sup>1</sup> The sociology of law is a science that theoretically analyzes and empirically highlights the effect of social phenomena on the law, and vice versa.<sup>2</sup> Etymologically, sociology comes from the Greek, said *socius* which means comrade or society and the word *logos* which means science or thought. So sociology is the science of how to live with friends or community.<sup>3</sup> For Selo Soemardjan and Soelaeman Soemardi, Sociology is the study of social structure and social processes and social changes.<sup>4</sup>

The sociology of the law opens our eyes to the human participation in punishment. The law by positivists to be seen as texts and eliminates human role factors, receives great correction by

placing the role of human beings in a less central position. Legal sociology finds that the role of human behavior is much more varied. According to Roger Cotterrel, the state only provides facilities through legal action and for the rest is left to the people. The law as behavior arises instantly through the interaction between the members of society itself.<sup>5</sup>

According to nature, human beings everywhere and in every age always live together, live in groups. In the history of human development there is no one alive or apart from any other human group, except in a forced state and that is only for a while. Humans as individuals (individuals) have a life of a solitary soul, but human beings as social beings can not be separated from society.<sup>6</sup> The desire to live together has become man's nature, it is a physical necessity to live his life. Human unity arising from the same nature is commonly referred to as society. So the society is formed when there are two or more people live together, so that in the social life that arises various relationships or links that result that the

<sup>1</sup> Rianto Adi, *Sosiologi Hukum Kajian Hukum Secara Sosiologi*, Yayasan Pustaka Obor Indonesia, Jakarta, 2012, hlm.21.

<sup>2</sup> Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, Raja Grafindo Persaa, Jakarta, 2001, hlm. 21

<sup>3</sup> Cholil Mansyur, *Sosiologi Masyarakat Kota Dan Desa*, Usaha Nasional, Surabaya, 2001, hlm. 9.

<sup>4</sup> Soerjono Soekanto, *Sosiologi Suatu Pengantar*, Rajawali Pers, Jakarta, 1987, hlm, 16.

<sup>5</sup> Satjipto Rahardjo, *Penegakan Hukum Progresif*, Kompas, Jakarta, 2010, hlm. 13-16

<sup>6</sup> Sarjiyati, *Eksistensi Fungsi Hukum Sebagai Tool Social Engineering*, Makalah, Universitas Sebelas Maret, Solo, 2015, hlm. 1-2.

one and the other know each other and influence each other.<sup>7</sup>

In almost every area of life legal regulations are found. Through this penalization of human behavior the law explores almost all areas of human life. If we look at it from the perspective of the development of society and state, then we can say that the inclusion of the law into the spheres of public life is increasing along with the increasing role played by the state in society. The influence of industrialization and modern technology on social life requires that the law adapt to changes brought about by its influence.<sup>8</sup> Human life in the society is covered by the norms, namely the rules of life that affect human behavior in society. At the beginning of the experience, the rules of life that apply in the familiar family environment, then also prevailing in society or country. The rules that exist in a country are made by the ruler of the state, the contents bind each person and its implementation can be defended with all compulsion by the tools of the state. In modern society the law is not only used to reinforce the patterns of behavior and behavior contained in society, but also to direct them to the desired goals, to eliminate the habit that is deemed no longer appropriate, to create new patterns of behavior and so on.<sup>9</sup> The increasingly widespread legal interference in the spheres of public life cause the important legal effectiveness issues to become more important to be considered. The law should be an institution that works effectively in society. For a society that is building a law is always associated with efforts to improve the standard of community life towards a better, then the role of law becomes increasingly important in realizing that goal. The legal function is expected to mobilize the people to behave in accordance with the provisions of the law.<sup>10</sup>

From the description above, in this paper discusses about the relationship between social changes and the law and the function of law in society as a tool for changing behavior.

## 2. DISCUSSION

### 1.The Relationship Between Social Changes With Law

From birth to death man lives hanging out with other human beings, Aris Toteles calls "zoon politicon" (creature who mingles).<sup>11</sup> Humans are social creatures that needs each other, this is what causes people to live in society. Human life in society, state and nation can not be separated from the existence of a rule or law as the signs that set the wheel of life in order to run in an orderly manner, as the theorem known in the theory of jurisprudence that "No Communities Without Law".<sup>12</sup>

Changes that occur in a society can happen because of society itself (internal causes) and outside the community (external causes). Internal causes are partly due to population growth or lack of population, new discoveries, conflicts, because of the revolution. External causes may include causes of the physical natural environment, the influence of other peoples cultures, warfare and others. A social change is easier to occur when a society often makes contact with other communities.<sup>13</sup>

Social and legal change or otherwise do not always go together. It means, in certain circumstances, the development of law may be left behind by the development of other elements of society and its culture, or maybe the opposite occurrences. If so, then there is a *social lag*, that is a situation where there is an imbalance of development in the society's institution.<sup>14</sup>

Associated with social and legal change, Emile Durkheim states that law is a reflection of social solidarity in society. According to him, a legal code is formulated with a sanctioned method, which weighs heavily on the nature of the offenses, the public's assumptions and beliefs about the good of the actions and the role of the sanctions in society. According to the type of sanctions are repressive and restitutive. The method of repressive law (criminal law) is the law of sanction which gives suffering to those who violate it. The law of restitutive sanctions whose purpose is to revert to the state of the original situation before the occurrence of shock as a result of the violation of the rule of law. The relationship between social solidarity with the repressive laws of law lies in the behavior that results in evil. Furthermore Durkheim explains that every written law has a dual purpose of

<sup>7</sup>*Ibid.*

<sup>8</sup> Satjipto Rahardjo, *Hukum Dan Masyarakat*, Angkasa, Bandung, 1980. hlm.15.

<sup>9</sup>Sarjiyati, *Eksistensi Fungsi Hukum Sebagai Is Tool Social Engineering*, Log.Cit.

<sup>10</sup>Esmi Warassih, *Pranata Hukum Sebagai Telaah Sosiologis*, Suryandaru Utama, Semarang, 2005, hlm.91-92.

<sup>11</sup> Utrecht, *Pengantar Dalam Hukum Indonesia*, Ihtiar Baru, Jakarta,1983, hlm. 2.

<sup>12</sup> Muchsin dan Fadilah Putra, *Hukum Dan Kebijakan Publik*, Averroes Press, Surabaya, 2002, hlm. 16.

<sup>13</sup>Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, Op.Cit, hlm. 99.

<sup>14</sup>*Ibid.*hlm. 101.

establishing certain obligations and to formulate sanctions.<sup>15</sup>

According to Max Weber, there are four ideal types of law that is:<sup>16</sup>

- a. The irrational and material laws of lawmakers and judges base their decisions solely on emotional values without reference to a legal precedent;
- b. The irrational and formal laws of lawmakers and judges are guided by unlawful rules, based on unconscionable rules;
- c. Rational and material laws namely the decisions of the legislators and the judges refer to a scripture, the wisdom of the ruler or ideology;
- d. Rational and formal laws are laws established solely on the basis of the abstract concept of the science of law.

Formal law to compile the systematic laws of law, while material law is empirical. Both sorts of laws can be rationalized to formal law based on logic while material law on its usefulness. Legal changes are in accordance with the changes that occur in the social system of society that supports the legal system in question.

Arnold M. Rose presents three theories about social changes associated with the law of technological discoveries, conflicts between cultures, and social movements. The first theory that the findings in the field of technology is the main factor causing the occurrence of social changes, because the invention has a strong developing power. The second theory of intercultural conflict states that the process of renewal or change occurs when two cultures are related. The third theory of social movement which states that the dissatisfaction of certain areas of life creates a state of unrest which causes the movements to make changes.<sup>17</sup>

The existence of the law can be seen from three points of view, i.e.:<sup>18</sup>

- a. In the past, the law was seen as a product or a result of culture.
- b. At the present time, law is seen as a keeper of culture.
- c. In the future, the law is seen as a tool to enrich the culture.

The three points of view show that the rule of law that is formed from the values and norms that live and grow in the midst of society, has a dual function, namely on the one hand to maintain the values that already exist and develop in society

<sup>15</sup>Soerjono Soekanto, *Beberapa Permasalahan Dalam Kerangka Pembangunan Di Indonesia*, UI Pres, Jakarta 1983, hlm.145-146.

<sup>16</sup>Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum, Op. Cit.* hlm. 49-50

<sup>17</sup>*Ibid.* hlm.149-150

<sup>18</sup>Zainuddin Ali, *Sosiologi Hukum*, Sinar Grafika, Jakarta, 2008, hlm. 43

and in others parties to form a new culture and develop human rights.

The legal rules as a tool to change society have an important role, especially in the desired changes, even indirectly. Therefore, if the government wants to establish bodies that function to change society, then the law is required to form the body earlier and to determine and limit its power.<sup>19</sup>

Eugen Ehrlich argues that the sociology of law seeks to prove that the emphasis of legal development is not on legislation, nor on judicial decisions nor on law, but in the life of society.<sup>20</sup> Society is formed through continuous social relations between individuals and individuals, individuals with groups and between groups and groups. The longlasting interaction that results in a feeling of togetherness, the pattern of mutual relationships, mutually recognized values and social institutions that can ultimately become an instrument for the creation of a more orderly and better life.<sup>21</sup>

## 2. Legal Function In Society As A Tool To Change Behavior

Human life does not begin by building a life under a sophisticated legal system, building up a society or community. To present a good quality community, it is necessary to work together and trust that is a symbol of "healthy society", "good life" and "good behavior and character".<sup>22</sup>

The existence of law is essentially to regulate the relationship of law in society, whether between one person, one with another between the person and the state and arranging the relationship between the state institutions. In a state of law such as the life of a society should not be determined by the will of one or more powerful persons, but there must be a law of law on the nature and obligations of everyone under the rule of law applicable. Positive law is divided into two, namely written positive law and unwritten positive law.<sup>23</sup>

<sup>19</sup>Selo Soemardjan, *Sifat-Sifat Panutan di dalam Pandangan Masyarakat Indonesia. Masalah-masalah Ekonomi dan Faktor-faktor IPOLSOS*, LEKNAS, MIPI, Jakarta, 1965, hlm. 26

<sup>20</sup>Abintoro Prakoso, *Sosiologi Hukum*, LasBang PRESSindo, Yogyakarta, 2017, hlm. 25.

<sup>21</sup>Soetomo, *Kesejahteraan Dan Upaya Mewujudkannya Dalam Perspektif Masyarakat Lokal*. Pustaka Pelajar, Yogyakarta, 2014, hlm.1.

<sup>22</sup>Satjipto Rahardjo, *Hukum Dan Perilaku*, Kompas, Jakarta, 2009, hlm. 6-7.

<sup>23</sup>Sarjiyati, *Teknik Pembentukan Dan Urgensi Penyusunan Peraturan Desa*, Materi Bimbingan

The law aims to organize the people to act in an orderly manner in the interaction of life, to keep the people from acting anarchy by not playing their own judges and guaranteeing justice for everyone of their rights so as to create an orderly, happy and peaceful society.<sup>24</sup> The purpose of law according to ethical theory is solely to realize justice. According to Aristotles, the law has a sacred duty, which is to give to everyone he is entitled to receive. Van Apeldoorn declares the purpose of law is to organize the social life in peace. Peace among men is preserved by law by protecting certain human interests of honor, freedom, the soul of property and so forth against the disadvantage. The law maintains peace by establishing a balance between its rights.<sup>25</sup> Every human being has different character, nature, will and interest. And in the relationship between fellow human beings requires cooperation to fulfill the necessities of life, which sometimes happens where conflicts are causing problems and it is usually the strong ones that suppress the weak. Therefore it is necessary to create a rule that regulates their common interestsb. in society. With these rules are expected to create a sense of peace and secure and orderly in society, so that will be achieved common goals.c. Drivers and promoters of development and change Because in the rule it gives guidance which to do which is prohibited.d. The influence of society on values that support the development effort.

Law and society are like two sides of the coin, "yam societasi ius" (where there is societye. Guaranteed factors of balance and dynamic there is law), both are inseparable. Unfamiliar laws that do not fit the social context and there isf. The factor of integration between the various sub-systems of the nation's culture. no effective communication about the demands and their renewal for the citizens will not be effective. Law enforcement in society will result in social change in society itself, while the legal function for the life of society according to Soedjono Dirdjosisworo there are 4 (four) :<sup>26</sup>

- a. The function of law as an instrument of order and regularity of society. This is possible because of the nature and character of the law whichIn provides guidance and guidance on how to behave in society so that each member of the community is clear what to do and what not to do.
- b. The function of Law as a means to realize social justice is born and inner. This is possible because of the binding nature of the law, whether physical or psychological.
- c. The function of law as a means of driving the development. This law is a tool for the authority

Dan Teknis Penyusunan Peraturan Desa, di Kabupaten Magetan , 7 Desember 2016. hlm.1.

<sup>24</sup>Muchsin dan Fadilah Putra, *Hukum Dan Kebijakan Putra, Op.Cit.* hlm.23.

<sup>25</sup>*Ibid*,hlm.21.

<sup>26</sup>Soedjono Dirdjosisworo, *Pengantar Ilmu Hukum*, Rajawali, Jakarta, 1984, hlm153-155.

to bring the society into a more advanced direction. Binding and enforcing power of the law can be used or utilized to drive development. Law is a tool for making people better.

Critical function of law. Currently the law is developing a view that the law has a critical function, namely the legal power not only to supervise the apparatus of the supervisor, the paratur of government and law enforcement apparatus.

In relation to development, Sunaryati Hartono mentions, there are 4 (four) legal functions namely:<sup>27</sup>

- a.Law as a keeper of order
- b.Law as a means of development
- c.Law as an enforcer of justice
- d.Law as a means of community education

National Legal Development Board, in the national law seminar IV formulates the existence of 6 (six) functions and the role of law in development namely:<sup>28</sup>

- a. Regulator, discipline and supervisor of community life.

Enforcers of justice and protection of the people especially those who have socio-economicposition is weak.

towards the aspired society.

d.The influence of society on values that support the development effort.

Guaranteed factors of balance and dynamic compatibility in fast-changing society.

The factor of integration between the various sub-systems of the nation's culture.

The sociological view of law is related to the function of law, it can be said that law has a function as a means of social control, social engineering facilities and means of integration. The three functions of the law can be explained as follows:<sup>29</sup>

- a. Law as a Means of Social Control

In addition to the law as a code of conduct, law is also considered to function as one means of social control (social control) which includes all the forces that create and maintain social bonds. In this case law is a means of coercion that protects the public from threats and acts that endanger themselves and their property. Laws as a means of control are useful for maintaining the existing order, the law also serves as a guideline in social control.

- b.Law as a means of Social Engineering

<sup>27</sup> Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia*, Bina Cipta, Bandung , 1982, hlm. 8

<sup>28</sup>Muchsin dan Fadilah Putra,*Hukum Dan Kebijakan Publik, Op. Cit.* hlm 20-21.

<sup>29</sup> Rianto Adi, *Sosiologi Hukum Kajian Hukum Secara Sosiologis, Op. Cit.* hlm. 14-17

In this case, the law is seen as a tool or means to realize the political goals of the state, social engineering by law. In social engineering, the main issue is how we move the behavior of members of society or achieve the desired state through law.

#### c. Law as an Integration Facility

The law can integrate members of society with different backgrounds. The pluralistic Indonesian society, which includes a number of peoples composed of various ethnic groups that have long and before independence, each of which has different social institutions, is integrated among others because the Indonesian people accept the 1945 Constitution as a regulation for life nation and state.

Laws are made to regulate society for it the law that is made must be actually applied, the law must live in society (living law). Therefore, the law that has been made must be able to work in society. The law works by impersonating one's deeds or relationships among people in society. For such purpose of erection, the law describes its work in its various functions. Law as a process can not be seen as a regulation determination only, but as a process of realizing the social objectives within the law.<sup>30</sup>

Associated with the work of law in society, according to Lawrence M. Fredman there are 3 (three) components, namely:<sup>31</sup>

a. Components Structure is the institutional created by the legal system with a variety of functions in order to support the workings of the system. It is possible to see how the legal system provides services to the cultivation of legal materials on a regular basis.

b. Substantive Components are the output of the legal system, in the form of rules, decisions used by both regulating and regulated parties.

c. The cultural component consists of values and attitudes that affect the workings of the law. This culture serves as a bridge between the rules and the legal behavior of the whole society.

Legal culture component is distinguished to internal legal culture is legal culture of lawyers and judges, and external legal culture is the culture of society at large.<sup>32</sup> Paul and Dias

proposed to streamline the legal system to be fulfilled 5 (five) terms namely:<sup>33</sup>

The ease with which the rules of law are captured and understood.

The extent to which there are people in the community who know the contents of the rules of the law concerned.

c. Efficient and effective mobility of legal rules.

The existence of a dispute resolution mechanism that is not easily accessible and accessible to every citizen, must also be effective enough in resolving disputes.

The existence of a uniform assumption and recognition among the citizens that the rules and institutions of the law, actually having effective ability.

The discussion that until now has not been completed is about the function of law in society.

On the one hand, it believes that the law is merely a normative reflection of behavioral patterns that have manifested itself as a social reality. This view sees law as the collective expression of a society and therefore produces the concept of law as part of an edible culture. While on the other hand they believe that the law is a free variable which when operated as a force that aims political will be able to change the structural order in society. This view sees law as an instrument, hence its conceptual portrayal results in the perception that law is part of technology, quoting the words from Rouscoe Poend, the law as "tool of social engineering".<sup>34</sup>

An important function of the rule of law is as guiding behavior. So every rule of law will have an impact on humans, either have a positive impact or have a negative impact. Examples of positive legal impacts on human behavior, for example the rule of law that forbids not to smoke in public places, then the impact of the rule is that smokers no longer smoke in public but the special room provided by the government, or other parties who make the rules, as is usually in several hotels or other public places that have been provided by the manager. An example of a negative legal effect on human behavior is the rule of narcotics whereby in the legislation it sells or distributes narcotics, the effect of the rule is the behavior of narcotics sellers who secretly conceal selling narcotics and even use any secret way to avoid being caught and not subject to sanctions.<sup>35</sup>

The legal impact on human behavior is what determines the effective or ineffective rule

<sup>30</sup> Sarjiyati, *Kebijakan Bupati Madiun Dalam Pengisian Jabatan Kepala Desa Pada Masa Transisi Berlakunya Undang-Undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah*, Tesis, Universitas Sebelas Maret, Surakarta, 2006, hlm.55.

<sup>31</sup> *Ibid*, hlm. 56.

<sup>32</sup> Esmi Warrasih, *Pranata Hukum Sebuah Telaah Sosiologis*, *Op. Cit.* hlm.30-31.

<sup>33</sup> *Ibid*. hlm. 105-106.

<sup>34</sup> roudhotulilmi.blogspot.co.id/2011/10/makalah-sosiologi-hukum.html. Diakses tanggal 9 April 2018 pukul 22.10. WIB.

<sup>35</sup> Sarjiyati, *Eksistensi Fungsi Hukum Sebagai Is Tool Sicial Engineering*, *Op.Cit.* hlm.16



of law. If a rule of law complies so much then the rule of law is running very effectively. Human behavior that is the impact of a rule of law is influenced by several factors, namely legal communication and legal knowledge. We can behave lawfully if we know correctly the rule of law that exists. Therefore the rule of law must be communicated clearly and well to human beings or a society so that society can gain knowledge about the contents of the rule of law.<sup>36</sup>

### 3. CLOSING

#### 1. Conclusion

- a. Social change and legal change or otherwise do not always go together. Because in certain circumstances the development of law may be left behind by the development of other elements of society and its culture, or perhaps the opposite is happening. In such a case there is an imbalance of development within the institution of society. There are three theories about the social changes associated with the law. The first theory that the findings in the field of technology is the main factor causing the occurrence of social changes, the second theory concerning intercultural conflict, the third theory of social movements. The sociology of law seeks to prove that the emphasis of legal development is not on legislation, nor on judicial decisions nor on law, but in the life of society
- b. Law has a function as a means of social control (social control), as a means of social engineering and as a means of integration. The legal function as a means of social control is the law as a code of conduct that encompasses all the forces that create and maintain social bonds. The function of law as a means of social engineering, namely law is seen as a tool for realizing the political goals of the state, social engineering by law. In social engineering (social engineering) which became the subject of how to move the behavior of members of the community. The function of law as a means of integration, namely the law can integrate members of society of different background. The important function of the rule of law is as guiding behavior (behavioral penuntun). So any rule of law will have an impact on human behavior. The impact is what is called a response to a legal provision. Response is different every human being positive and negative. So the impact of the provisions of the law, not just obedience but there is a form of disobedience.

#### 2. Suggestions

Law enforcement officers should actually take into account the rules enforced in society, so that

the objectives of the law can be realized and can change the behavior of society towards better in accordance with the purpose of the establishment of the rule of law.

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