

**THE REALIZATION OF SOCIAL JUSTICE FOR UNDERPRIVILEGED
PEOPLE IN LEGAL PHILOSOPHY**

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ABSTRACT

Pancasila is the ideology of Indonesia. One of the precepts of Pancasila is the principle of Social Justice for All Indonesians implies that all Indonesian people have the same position before the law. But nowadays, there have been many cases of injustice against the underprivileged people. Therefore, this research journal is the realization of social justice for the underprivileged people in the philosophy of law, especially based on the theory named Critical Legal Studies.

Keywords: Injustice, underprivileged people, Critical Legal Studies

ABSTRAK

Pancasila adalah ideologi Bangsa Indonesia. Salah satu sila yang ada pada Pancasila merupakan prinsip Keadilan Sosial bagi seluruh warga negara Indonesia yang menyiratkan bahwa semua warga negara Indonesia memiliki posisi yang sama di hadapan hukum. Tetapi sekarang, ada banyak kasus ketidakadilan terhadap orang-orang yang kurang mampu. Oleh karena itu, jurnal penelitian ini merupakan perwujudan keadilan sosial bagi masyarakat kurang mampu dalam filsafat hukum, terutama berdasarkan pada teori yang bernama *Critical Legal Studies*.

Kata kunci: Ketidakadilan, orang kurang mampu, Studi Hukum Critical

PRELIMINARY

Philosophy in its development emerged various branches with the term special philosophy, including:

1. Legal philosophy;
2. Language Philosophy;
3. Social philosophy;
4. Philosophy of science;
5. Political philosophy;
6. Cultural philosophy and
7. Environmental philosophy

Pancasila consists of five precepts, a philosophical system is essentially an organic entity. Such reality is called an objective reality, that is the fact that it exists in Pancasila itself, regardless of something else or apart from people's knowledge. So that the philosophical system is distinctive and different from other philosophies. Philosophically Pancasila includes ontological basic unity, epistemological basis, and axiological basis.

Pancasila is the basis of state ideology. Pancasila contains a view of life, soul, personality, and life goals of the Indonesian people. Pancasila is the basis of state ideology that cannot be changed into any form. Pancasila is essentially a unifying system of state values, especially for the diverse Indonesian nation.

Pancasila is the basis of a state philosophy. Pancasila is a guideline for the state and legal life of the Republic of Indonesia in its concreteness and not just in its abstract.¹ Pancasila has a basic vision that is based on human nature. It is this basic vision that gives a vision and direction for all Indonesian community life and statehood.

In each of the precepts in Pancasila contain their own values. Especially in the 5th

principle of Pancasila which reads "Social justice for all Indonesian people". The sense of social justice for all Indonesians shows that the Indonesian people realize that they have the same rights and obligations.

Justice itself contains the meaning of virtue relating to human relations.² The consequences of social justice must be realized elements of equality, equality and freedom. That for all Indonesian people there must be equality and equality before the law. Today, talking about the justice of many cases of injustice in law, especially for disadvantaged people. People are less able to be identical with the poor. According to Law Number 13 of 2011 concerning Poor Handling, Article 1 Number 1, the poor are people who have absolutely no source of search and / or have a source of livelihood but do not have the ability to fulfill basic needs that are appropriate for their lives and / or his family. Low standards of living lead to the inability of individuals to meet the needs of both material and non-material.

Poor people experience discrimination before the law. One of the cases that happened was the case that happened to the 55-year-old grandmother of Mindah from Banyumas, just because stealing 3 cocoa fruits that cost no more than Rp 10,000 was sentenced to 1.5 years in 2009. In fact, for transportation costs to court, grandmother it must borrow Rp. 30,000 because the distance of his house is quite far from the court.

In addition to the above cases, another case was the theft of flip-flops alleged to Aal (15 years) of Vocational High School students in Palu. He was accused of stealing flip flops belonging to First Brigadier Ahmad Rusli Harahap, a member of the Mobile Brigade,

¹ Notonagoro, Pancasila Secara Ilmiah Populer, (Jakarta: CV Pantjuran Tujuh, 1980), hlm.174.

² Muhamad Erwin, *Filsafat Hukum Refleksi Kritis Terhadap Hukum*, (Jakarta: PT Raja Grafindo Persada, 2011), hal.223.

Southeast Sulawesi Regional Police. Aal faces a maximum sentence of 5 years in prison. Aal's legal process seemed awkward, besides the different sandal brands, besides that there were no witnesses who saw Aal and took Rusli's sandals directly. The panel of judges ruled Aal was guilty of stealing someone else's property.

Cases like this are very worrying because this means that the values contained in Pancasila regarding social justice for all Indonesians do not materialize in reaching all social layers. For the elaboration described by the author, this issue needs to be discussed so that the public will be more aware of these events or something similar happens to the general public.

PROBLEM

Based on the title "Embodiment of Social Justice for Poor People in Legal Philosophy" the problem that the writer wants to discuss is how to realize social justice for the underprivileged according to Critical Legal Studies?

DISCUSSION

A. Social Justice for the poor

The principle of social justice for all Indonesians is the fifth principle of Pancasila. According to Notohamidjojo, social justice demands that humans live properly in society. Each must be given an opportunity. Development and implementation do not only solely rely on and realize justice, but also obedience. The term of humanity obedience may also be called as fair or proportional obedience.³

Inside the principle of social justice for all Indonesia covers the social justice value, namely :⁴

- a. Fair treatment in all fields of life, especially in the political, economic and socio-cultural fields.
- b. The realization of social justice covers all the people of Indonesia
- c. Balance between rights and obligations
- d. Respect the rights of others
- e. The ideals of a just and prosperous society that is material and spiritual evenly distributed to all Indonesians
- f. Love for progress and development.

The fifth precept in Pancasila one of them implies that every Indonesian community is aware of the same rights and obligations to create social justice in the lives of Indonesian people. For this purpose, actions are developed that reflect the attitude and atmosphere of kinship and mutual cooperation and the need for a fair attitude towards others, maintaining the continuity between rights and obligations and respecting the rights of others.

The sense of social justice for all Indonesians contains the values that every legal rule, both law and court decision reflects the spirit of justice. The intended justice is the spirit of social justice, not justice which is centered on the spirit of the individual. This justice must be felt by most Indonesian people, not by a certain group.

But in practice, this principle is not implemented in accordance with the expectations and conditions of the Indonesian people because

³ Darji Darmodiharjo dan Shidarta, *Pokok-Pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, (Jakarta: Gramedia Pustaka Utama, 2008), hlm.156-157.

⁴ Teguh Prasetyo dan Abdul Halim Barkatullah, *Filsafat, Teori, & Ilmu Hukum Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*, (Jakarta: PT RajaGrafindo Persada, 2012), hlm.375.

there are still many cases of injustice against the poor. This poverty is a proof of imperfect justice while in the context it has been determined that the poor and neglected children are cared for by the state.

B. Critical Legal Studies

Critical Legal Studies is a movement that emerged in the 70s in the United States.⁵ For the critical legal stream that the law used by modern law as a form of democracy and the market is a lie and never existed. The law for modern law has been built in with *das sollen* democracy as well as responsive law, but the basis for the formation of formal law is the political arena through the procedure of attraction of the interests of those who are incorporated in that authority.

The flow of critical legal studies tries to answer by basing their thoughts on several general characteristics as follows:⁶

1. The flow of critical legal studies criticizes law that is full and dominant with certain ideologies.
2. This critical stream of legal studies criticizes the applicable law which in fact siding with politics and law as such is not neutral at all.
3. The flow of critical legal studies has a great commitment to individual freedom with certain limitations. Because of this, this flow has a lot to do with human emancipation.
4. The flow of critical legal studies lacks trust in abstract forms of truth and truly objective knowledge. Because of this the flow of critical legal studies strongly rejects teaching in the legal positivistic flow.
5. The critical flow of legal studies rejects the act between theory and practice also rejects

the difference between fact and value, which is a characteristic of liberalism.

In principle, critical legal studies reject the notion of traditional legal experts, namely: the law is objective, meaning that reality is a legal foothold, the law is certain, meaning that the law provides a definite and understandable answer, the law is neutral, meaning that it does not favor certain parties, and the law is autonomous, meaning that it is not influenced by politics or other sciences.

Furthermore, critical legal flow tells some basic concepts as follows:⁷

1. Critical legal flow rejects liberalism.
2. Critical legal flow presents the contradictions between individuals and other individuals as well as with the community.
3. Critical legal flow of delegitimization in the community so far, reinforced by the principles of hegemony and reification, actually strengthens the oppression of the strong / powerful against the weak.
4. Critical legal flow rejects the life model of liberal society which is actually more of an engineering or falsehood that is strengthened by the legal sector. This flow is trying to overhaul the legal reasoning system that is full of falsehood.
5. Critical legal opinion argues that legal doctrine is something that is uncertain and full of contradictions, so it can be interpreted arbitrarily by the interpreter.
6. Because of the uncertain nature of legal doctrine, this school uses a more historical, socio-economic, and psychological model of legal analysis and interpretation.

⁵ Muhammad Syukri Albani Nasution, *Hukum Dalam Pendekatan Filsafat*, (Jakarta: Kencana, 2016), hal.186.

⁶ Lili Rasjidi, *Dasar-dasar Filsafat Hukum*, (Bandung: PT. Citra Aditya Bakti, 1996), hal. 132-133.

⁷ Fx. Adji Samekto, *Studi Hukum Kritis: Kritik Terhadap Hukum Modern*, (Bandung: PT. Citra Aditya Bakti, 2005), hal. 69.

7. Critical legal thinking holds that juridical analysis obscures the real reality, which gives birth to a ruling as if it is just and legitimate.
8. There is no neutral interpretation of a legal doctrine, but the interpretation is always subjective and political.

The flow of critical legal studies holds that the law is certain. Therefore, the law is contradictory internally and the same provisions can always be interpreted or applied differently and even contradict each other.

C. The realization of social justice for underprivileged people in legal philosophy

The sense of social justice for all Indonesians contains the values that every legal rule, both law and court decision reflects the spirit of justice. Social justice in the 5th principle implies that everyone has equality before the law. Rich or poor people have the same rights and obligations, and also have the same position in court. This justice must be felt by most Indonesian people, not by a certain group.

But in reality the realization of social justice for all Indonesian people is still not realized. The realization of social justice, especially for poor people, is still very minimal. Many cases of injustice happened to them.

One example of this case is the case of the poor in Bojonegoro, the couple of Supriyono and Sulastri. They are tried in court without having a strong legal basis and are threatened with a sentence of seven (7) years in prison.⁸ Supriyono and Sulastri languished in detention for allegedly stealing a bunch of bananas, worth Rp. 15,000.00. Both reported Maskun as the owner of the banana, and Bambang and Muis to the police. As a result of the report, both were processed

⁸ Nanang Fahrudin, Curi Setandan Pisang, Diancam 7 Tahun Bui, <https://news.okezone.com/read/2010/01/12/340/293496/curi-setandan-pisang-diancam-7-tahun-bui>, 29 Agustus 2018.

legally through the court.⁹ Although there is no evidence Supriyono-Sulastri has stolen a bunch of bananas, the police and prosecutors continue to process the case. This case has also been reconciled at the Rukun Tetangga (RT) and village level witnessed by the police. But the couple still remain in the table.

Besides that, the case regarding Grandmother Minah (55) who stole 3 cocoa fruits, for her actions she was given 1 month 15 days in prison with a 3-month trial. The panel of judges led by Muslih Bambang Luqmono SH sentenced him to 1 month and 15 days with a trial period of 3 months. Minah is considered legally and convincingly proven to violate Article 362 of the Criminal Code regarding theft.¹⁰

However, if these cases are compared with corruption cases, for example the case regarding corruption cases, the Chairperson of Bengkalis DPRD, Heru Wahyudi. The Panel of Judges of the Pekanbaru District Court, Riau sentenced him mildly to the Chairman of the Bengkalis DPRD, Heru Wahyudi. Despite being found guilty of corruption in social assistance funds, he was only sentenced to 18 months in prison.¹¹ This verdict is very contrary to the prosecutor's demands. The prosecutor charged Heru with an eight-year six-month prison sentence and a fine of Rp. 500 million for six months in prison.¹²

If viewed from the results of the decision according to the author this is very unfair for the poor. Seen through the philosophy of law, especially the Critical Legal Studies Flow. In

⁹ *Ibid.*

¹⁰ Anonim, "Mencuri 3 Buah Kakao, Nenek Minah Dihukum 1 Tahun 15 Hari", <https://news.detik.com/berita/1244955/mencuri-3-buah-kakao-nenek-minah-dihukum-1-bulan-15-hari>, 29 Agustus 2018.

¹¹ M Syukur, "Kasus Korupsi Rp 31 M, Ketua DPRD Bengkalis Divonis 1,5 Tahun Bui", <https://www.liputan6.com/regional/read/2974957/kasus-korupsi-rp-31-m-ketua-dprd-bengkalis-divonis-15-tahun-bui>, 29 Agustus 2018.

¹² *Ibid.*

principle, critical legal studies reject the notion of traditional legal experts, namely: the law is objective, meaning that reality is a legal foothold, the law is certain, meaning that the law provides a definite and understandable answer, the law is neutral, meaning that it does not favor certain parties, and the law is autonomous, meaning that it is not influenced by politics or other sciences. The flow of critical legal studies holds that the law is certain. Therefore, the law is contradictory internally and the same provisions can always be interpreted or applied differently and even contradict each other.

This flow of Critical Legal Studies is very appropriate according to the author with what happened in the law in fact today. That the law is no longer neutral, but the law is certain because the prevailing law which in fact is in favor of politics and law as such is not at all neutral. Seen through the decision of the judge who decided on corruption cases and theft committed by the small community. Judges' decisions are not proportional to the differences in their actions. Corruption is an act that is quite detrimental to the community and the state and corruption cases should not be punished with a mild sentence while the punishment for small people whose actions are not given a strict punishment. So according to the author the realization of social justice for the poor can be seen from the philosophy of law specifically seen from the flow of Critical Legal Studies. That the author feels it is very true that the law is no longer neutral so that the legal objectives of justice are not realized especially justice for the poor.

CONCLUSION AND SUGGESTION

Conclusion

Pancasila is the basis for the Indonesian nation which contains the views of the Indonesian people. One of the principles of Pancasila is the 5th principle, "Social Justice for All Indonesians". The consequences of social justice must be realized elements of equity,

equality and freedom. That for all Indonesian people there must be equalization and equality before the law.

This principle is not implemented according to the expectations and conditions of the Indonesian people because there are still many cases of injustice against the poor. But in fact in the verdict of corruption cases, corruptors were sentenced with light sentences which according to the author this is in fact a proof that social justice for underprivileged people is still lacking.

In the philosophy of law, it is known by the flow of Critical Legal Studies. The stream of Critical Legal Studies holds that the law is certain. Therefore, the law is contradictory internally and the same provisions can always be interpreted or applied differently and even contradict each other.

The realization of social justice for the underprivileged is seen as being in line with the Critical Legal Studies stream, which is very appropriate because according to the flow the law is no longer neutral. The law is in fact impartial and not purely about the law. This can be seen from the verdict against corruptors and theft by the small community.

Suggestion

Based on what the author has described in this journal, the objectives that are to be achieved are to criticize the realization of social justice for the underprivileged in the philosophy of law. In the future the author hopes that social justice can be firmly enforced without discrimination before the law. Thus, the author recommends to readers which are the community and the government, especially law enforcement officials, to be more assertive and fair in applying social justice, in terms of proper handling and imposition of law as applicable as possible, in accordance to the resulting losses broadly and

comprehensively. So that the punishment obtained is in accordance with the results of the losses. The law enforcers are advised not to be biased in viewing the legal problems that occur and should realize the actions that are very detrimental, either widely or with a narrow one, so that in the future they can be as fair as possible by not taking sides to the capable community or the authorities.

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