

Community Legal Compliance Seen From The School of Legal Philosophy

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Abstract

Indonesia as a state of law, of course, its people must be subject to applicable legal provisions. However, community legal compliance becomes a major problem when the legal products made are not in accordance with the legal culture of the community. So there needs to be an assessment through the point of view of legal philosophy. The research method used in writing this journal is juridical-normative legal research that only emphasizes the study of documents, the legal sources used are laws and regulations, contracts/agreements/contracts, legal theories and opinions of scholars. The purpose of writing this scientific article is to find out what are the inhibiting factors and supporting factors of community legal compliance seen from the school of legal philosophy. The research results of this article are that between the relationship between legal compliance and legal philosophy can be exemplified by 3 theories, namely the theory of divine sovereignty, the theory of community agreements, and the theory of state sovereignty. All three show a variety of different symptoms if applied. However, the best thing to apply is actually the theory of god's sovereignty and community covenant which prioritizes justice and legal certainty.

Keywords: *Legal Compliance, Legal Certainty, Legal Philosophy*

I. INTRODUCTION

Law is a word that until now has been very difficult to define with certainty about the concrete description of what law is. A difficult description of the definition of law does not mean that the law has no meaning. The complexity in defining law is in many and so abstract that it is meant by law itself. Even experts define the law differently and there is still debate in it. If we look at the understanding of law according to Utrecht, he defines law as a collection of guidelines in carrying out life that focuses on setting social order that must be obeyed by the entire community and has consequences in the form of actions from the government and / or society if they violate it.¹

Immanuel Kant defined law as the overall condition for the free will of others in accordance with the rules of liberty itself.² In contrast to John Austin who states that laws are regulations made with the aim of providing guidance and / or guidance to

¹ Juanda, E. (2017). Law and Power. *Galuh Justisi Scientific Journal*, 5(2), 177-191.

² Ibid.

intelligent beings by intelligent beings who rule over them.³ So it can be concluded that what is meant by law is a set of rules or regulations used for human interests that have consequences for administrative and corporal punishment for violators aimed at creating justice.

This means that the set of regulations requires humans to comply with existing rules in order to guarantee other human rights. Meanwhile, in order to comply with an applicable legal regulation, the public is required to have high legal awareness. According to Soerjono Soekanto, legal awareness is an awareness or values that exist in humans about the existence of applicable laws (*ius constitutum*) and *aspired laws* (*ius constituendum*).⁴ Indeed, the emphasis on legal awareness is that people are aware of the function of the enactment of a law.

The legal awareness of the community will later manifest the nature of compliance with the law. Legal awareness is one of the important aspects that must be owned by all people, especially in Indonesia. In accordance with the provisions of article 1 paragraph (3) of the Constitution of the Republic of Indonesia in 1945 (hereinafter referred to as the 1945 Constitution) which expressly states that Indonesia is a state of law.⁵ So the consequence is that all actions taken must be based on the positive law in force. It is certain that if there is a lack of public awareness about the law, the presentase of legal compliance will also be low.

According to Jimly Ashidiqie, the consequences of Indonesia as a state of law are:⁶

1. Rule of Law
2. Equality in law
3. Asas Legalitas
4. Division of power
5. Independent mixed organizations
6. Free and impartial judiciary
7. State Administrative Court
8. Constitutional Court
9. Human Rights Protection
10. Democratic Ifa

³ Ibid.

⁴ Rosana, E. (2014). Legal compliance as a form of public legal awareness. *Tapis Journal: Journal of Binoculars of Islamic Political Aspirations*, 10(1), 61-84.

⁵ Hidayat, E. (2016). Protection of human rights in the Indonesian rule of law. *PRINCIPLE*, 8(2).

⁶ Asshiddiqie, J. (2011, November). The idea of the Indonesian legal state. In *Paper Delivered in the National Law Development Planning Dialogue Forum Organized by the National Law Development Agency of the Ministry of Law and*.

11. Works as a means of creating a national purpose
12. Transparency and social control
13. The almighty divinity

The problem that often occurs when people's legal awareness is low, causing high disobedience to community laws is an alibi that is often heard is ignorance of applicable laws. However, this argument cannot be used as a justifiable alibi, this is because it relates to the principle of legal fiction itself which has been made a provision in article 81 of Law No. 12 of 2011 concerning Laws and Regulations (hereinafter referred to as Law No. 12 of 2011). The principle of legal fiction itself states that all people are considered to have known the law since the promulgation of a law of law. That legal fiction also implies that a person cannot escape legal responsibility for violations of the law committed even though the individual does not know the law (*ignorantia legis excusat neminem*).

There needs to be an in-depth study between the framers of the law and the habits of the community in interacting, especially in law. Because between the relationship between legal awareness and legal compliance, it is interesting to study more deeply about the factors that influence the correlation between the two. The formation of laws that are not balanced between the laws and regulations established with the habits and characteristics of the community is one of the causes of the community not obeying the applicable law. There must be an active participation of both between the people who practice their laws and the lawmakers who design their laws in order to create a better system of legal compliance.

To answer these problems, it is appropriate for the philosophical sciences of law to be present as a light. Theories in the philosophy of law can be a touchstone for obtaining clear and definite answers to fundamental and profound questions. Concrete phenomena related to the compliance of society and the causes behind it can be seen using the method of legal philosophy approach.

II. LITERATURE REVIEW

The author will try to associate this research with several previous scientific works, so that it will be related to the scientific work above. The scientific work that the author refers to is as follows:

1. Soerjono Soekanto's journal with the title: legal awareness and legal compliance in 2014. This journal discusses how the function of the law itself, which is basically considered as a tool for community renewal, must include various aspects in realizing it. The importance of legal development by improving and perfecting

national legal development with concrete steps such as codification and unification of laws in strategic fields that must also pay attention to the legal system that develops in society.

2. Journal of Rosana Elly Lecturer of Islamic Political Thought Study Program, Faculty of Ushuluddin IAIN Raden Intan Lampung, with the title: Legal compliance as a form of public legal awareness. This journal discusses how important the enforcement of the rule of law is as a human effort in responding to regulations in order to create order that develops in people's lives. In its role, there needs to be synergy between laws and regulations, law enforcement officials, and also the legal culture that lives in the community. That a law needs to pay attention to community habits so that in the legal culture of the community there are norms that have been regulated through a form of applicable laws and regulations.

So, from the literature review can be found points of similarity and difference with the research that the researcher examined. The point of similarity is that both discuss compliance and legal awareness. The difference is in the main discussion of legal awareness and compliance as assessed from the school of legal philosophy of its effects.

III. METHODOLOGY

The research method used in writing this journal is juridical-normative legal research which only emphasizes the study of documents, the legal sources used are laws and regulations, court decisions or decrees, contracts / agreements / contracts, legal theories and opinions of scholars.⁷

IV. RESULT AND DISCUSSION

Correlation of Legal Compliance and Legal Awareness.

Legal awareness is the perception of an individual or an individual's perspective regarding applicable or aspired laws. An individual's perception of the law is, of course, an important criterion in terms of realizing legal compliance. Individual perception is the basis of the nature of legal awareness in society. This means that a law that applies can run and be applied properly because of the perception of good individuals in society. There are 4 indicators of society that we can see how a community system has its own legal awareness.⁸

⁷ Ali Zainudin, "Legal Research Methods", 2009

⁸ Usman, A. H. (2014). Legal awareness of the community and government as a factor in the establishment of the rule of law in Indonesia. *Journal of Juridical Insights*, 30(1), 26-53.

1. Legal knowledge;
2. Legal understanding
3. Legal attitude; and
4. Patterns of legal behavior

These four factors actually have an inseparable correlation with each other. A person who has knowledge of the law is a basic capital that has the potential to have law-conscious behavior. At this stage a person only knows the basics of law and can answer basic questions in law. However, knowledge of the law alone is not enough to improve people's legal awareness behavior. Perhaps one only knows there are laws or just knows the name, but not how the system, mechanism, and implementation in real life. So someone who only has legal knowledge has a great potential to be unaware of the law. This is because legal knowledge is only a process of providing information.

So there needs to be development from just having legal knowledge, but also having the most basic minimum legal understanding ability. Understanding the law is different from just understanding the law, there is a deeper meaning of the law if one understands the law. Unlike only understanding the law, this stage usually only exists at the level of legal knowledge at the beginning which only understands that there is a law that regulates all the behavior of society. Understanding the law also means understanding the technicalities, mechanisms and implementation of the law itself. People who understand the law tend to have a change in mindset and behavior when facing legal events in public life.

There are changes in behavior and mindset that occur as a result of a person's understanding of the law, it will indirectly affect the attitude of the law itself. A person's legal attitude is a pattern of thought and action that shows one's opinion about the legal phenomena that occur around him. Changes in a person's legal attitude become one of the important factors as the basis for a legal awareness in public life. A good legal attitude of society in dealing with legal phenomena that occur around it is when the community prioritizes the ability to critically analyze everything. With the development of a person's legal attitude, it will also have an impact on the pattern of legal behavior. A pattern of good legal behavior will cause democracy to run well and smoothly as well. The indicator will also have an impact on legal products produced by the government. The resulting legal product will be of high quality, because it is certainly right on target and can be accepted by the entire community.

If the wider community, especially in Indonesia, can practice the four indicators of legal awareness well, then surely our level of legal awareness will increase. Because this is very influential with the level of legal compliance of the community which begins first with legal awareness. Legal compliance is the next stage that must be faced

by the Indonesian state. That someone who already has a high awareness of the law has a smaller percentage of disobeying the law.

However, that does not mean that someone who already has an awareness of the law will immediately obey the law. That legal awareness and legal compliance are two different things but have a strong correlation between them. Everyone knows that laws are there to be obeyed, but the problem is that they don't want to obey them. Therefore, awareness of the law does not guarantee that a person can obey the law.

Soejono Soekanto stated that the basics of community compliance related to the establishment of policies by the government were due to the doctrine from childhood that they must comply with the methods of the norms that apply in society.⁹ This habit is what makes a person subject and obedient to the laws or policies of the country. The process of getting used to and teaching continuously related to the enforcement of norms will change a person's mindset from rebelling because he feels his freedom has been reprimanded through rules, to being able to know, understand, and implement these rules well. Basically, there needs to be a regulation related to human behavior with each other called law. However, non-compliance with the law that occurs in the community is not only a problem of the community itself, but also law enforcers and their legal culture.

Lawrence and Friedman have stated about 3 components in the legal system, namely legal structure, *substance* (legal substancy), and *legal culture* (legal culture).¹⁰ The theory has a strong relevance to the phenomenon of legal compliance in Indonesia, where not only the community has the responsibility to have legal compliance. However, between the legal structure, legal *substancy*, and *legal culture*, it must also be considered whether it meets the standards as a good legal system or not. If we talk about legal structure, then we will discuss related to the role of law enforcement agencies in order to support legal compliance in Indonesia. The important role held by law enforcement agencies to maximize legal compliance for all people in Indonesia is one of the main keys to creating legal compliance itself. By acting in accordance with a commitment with integrity that will be an example of the community itself.

In addition to law enforcement agencies that must set an example and work in accordance with their deeply held commitments and integrity, it needs to be supported by good regulations. Good regulation will then reflect healthy governance. As a consequence of Indonesia as a state of law, the existing legal regulations must be

⁹ Humulhaer, S. (2019). Legal compliance with no-smoking areas according to Lawrence M. Friedman's theory. *Rule of Law*, 15(02), 10-17.

¹⁰ Ibid.

adequate and in accordance with the conditions of society and made only for the benefit of the community and realize the ideals of the state.

Legal Philosophy's View on Community Legal Compliance

According to H.L.A. Hart, what is meant by philosophy of law is a work of shared thinking between moral philosophy, politics, and also language which basically discusses feelings of guilt, intention, and responsibility which are central issues in law, especially when emphasizing the concept in thought and deed.¹¹ This means that legal philosophy is a form of building magnificent arguments that describe deep thinking about the origin of a concept or legal phenomena can occur. In dissecting a phenomenon through the method of legal philosophy, new questions will arise about everything. This is because the philosophy of law will not stop at the discussion of finding solutions or truth but seeking truth in truth. Therefore, we can identify what reasons influence a person to have the nature of legal compliance itself as follows:

1. The theory of god's sovereignty states that all laws that apply are God's commands or come from God. This results in special consequences for humans to inevitably obey the law itself. If we look historically, the custom that was often carried out by previous kings so that their people obeyed the laws they set, then they identified themselves as a god or god. This is done to convince and also force specifically to the people. Such was the case in medieval times where laws were made based on the king's orders and his will without considering the welfare of the people. for example, during the reign of the French king Louis to XIV who ruled France for 72 years with his motto "The State is Me" which means that all rules in a country are the result of his orders. This resulted in the submission of the French people at that time because they had a motivation that the king was the incarnation of a god who must be obeyed.
2. The theory of community agreement is a theory that states a situation where society is in a state of urgency and needs a way out of that situation. The state of urgency in question is the occurrence of a prolonged war, an economic crisis that causes massive poverty, or anything that has a broad impact on people's welfare. That in such conditions the community will tend to counsel and determine the figure or individual who is trusted together to be able to protect them and / or lead them in such situations and conditions without giving any condition other than that the leader can restore their situation as before. However, the sovereignty remains in the hands of the people. An example that occurred was during the reign of Ir.

¹¹ Harefa, B. (2016). Legal truth: a perspective of legal philosophy. *Journal of Legal Communication (JKH)*, 2(1).

Soekarno in Indonesia when Indonesia first became independent. The people trusted Ir. Soekarno to become the first President in Indonesia in order to guide and together towards true independence. However, this does not mean that Ir. Soekarno is sovereign himself, sovereignty is still in the hands of the people. The function of the President is only as a representative of the people to achieve the goals of the country for the welfare of the people.

3. The theory of state sovereignty states that society must and must obey a law that applies because of the existence of state sovereignty. It is explained that the laws made are the will of the state itself. So that the community must obey it in order to achieve the goals and ideals of the country. Examples applied by state sovereignty are countries that still have socialist-communist systems. Where in the case of North Korea, the law created is a very rigid law and has no freedom for its citizens. However, there are also rigid regulations that state that the people are obliged to obey the law because there is a state will there. The consequences presented are also no joke for every citizen who violates the provisions of the law set by the state.

V. CONCLUSION

That there is a strong correlation between the level of public legal awareness and public compliance with the law as a result. Community legal compliance starts from public awareness of the function and purpose of the law itself. Therefore, there needs to be concrete steps jointly between the government and the people. A government that will facilitate the interests of the people to have an awareness of the law. Meanwhile, the public must be sensitive and obliged to find out about the law in order to increase legal awareness in the community which will have an impact on legal compliance among the community itself.

That between the relationship of legal compliance and legal philosophy can be exemplified by 3 theories. The first theory is about the sovereignty of God which states that laws are created from God Himself to govern his society. The second theory is a theory of community agreement where people unite and agree to elect a leader who feels able to bring them towards change while still paying attention to the sovereignty of the people so that the government formed is a representation or representative of the people themselves. While the second theory is a theory of state sovereignty that is very rigid to be applied among the community. This theory does not focus on the welfare of the people in making their laws. However, it only emphasizes the existence of absolute state power in making a law and must be obeyed by all levels of society.

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