

LAW AS SOCIAL MORAL

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Abstract

Law as a social moral concept is essentially an expression of social solidarity that develops in society. Law is a reflection of solidarity. No society anywhere can stand and exist continuously without solidarity. The existence of social morals in the community which is believed to live and develop as a limit for one's 'upload ungguh'. A person who commits immoral acts or deviant actions that are not justified by social morals will cause reactions in society. The reaction given is in the form of sanctions. The goal to be achieved in this discussion is to explain and analyze the existence of social morality in society which is integrated with law. The method used is normative juridical. Law is not only a regulation that only contains certainty but also contains social morals which are reflected in people's behavior.

Keywords: Law, morals, society, social, solidarity.

1. Introduction

Problems involving law are related to various aspects of society, including the social morals in it. The law in this case is often inadequate in solving problems that exist in society if it does not pay attention to the morals that develop and live in society. According to Vinogradof, the law grows from the practice carried out by members of the community in establishing relationships with one another. (Hanitijo Soemitro, 1984: 45).

The law is always loaded with certain values (Rahardjo, 2009: 137). Certain values of which are moral. Talks about law cannot be separated from morals. Moral is a social value which abstractly contains juridical value. Moral values are not institutionalized like laws. Moral values have a strong collectivity in society which is still firmly held as a binding force in social interaction. As a problem, how is the relationship between law and social morals.

2. Materials and Methods

This research is examined using socio-legal studies that emphasize making a description of social and legal realities, as well as trying to understand and explain the logic of the logical connection between the two. (Satjipto Rahardjo, 1980: 17). In this study using a non-doctrinal approach. According to Leon Mayhew in a non-doctrinal approach, law is not conceptualized as an autonomous normative phenomenon, but a social institution that is actually related to other social variables. (Sutandyo Wignyosoebroto, 1974: 96). (The research specification is qualitative. Qualitative research is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior (Bogdan and Taylor in Lexy J. Moleong, 2010: 4). This study examines the problem related to law as social morals. In qualitative research data collection is not guided by theory, but guided by facts found during field research. Qualitative methods are used to obtain in-depth data, a data that contains meaning. Meaning is actual data, data that is certain and is a value behind what appears

(Sugiyono in Afifuddin and Beni Ahmad Saebani, 2009: 58-59). In this qualitative research, it does not rely on the amount of data to be analyzed, but the depth of the data to be analyzed against a fact. Facts to be analyzed are law as social morals Data analysis techniques in This research is using qualitative data analysis. According to Bogdan and Biklen as quoted by J. Moleong, what is meant by qualitative analysis data is an effort made by working with data, organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, finding what what is important and what is learned, and decide what can be shared with others. (J. Moleong 2010: 248).

3. Results and Discussion

Legal Understanding

Before further discussion, an explanation of law and morals will be given. There is no unity of opinion between these two notions. As an understanding, legal and moral understanding will be given as follows.

E.M. Meyers:

"Law is all rules that contain considerations of morality, are aimed at human behavior in society, and which become guidelines for state authorities in carrying out their duties".

Leon Duguit:

"Law is a rule of conduct for members of society, a rule whose use at a certain time is heeded by a society as a guarantee of the common interest and if violated causes a common reaction against the person who commits the violation".

Immanuel Kant:

"Law is the totality of conditions under which the free will of one person can conform to the free will of another, according to the rule of law concerning freedom."

Satjipto Rahardjo

"Law is a norm that invites people to achieve certain ideals and conditions, but without ignoring the world of reality".

Moral Definition

What is meant by moral here is nothing but morality. The word morality comes from the Arabic *akhlaq*, the plural form of the word *khuluq*. *Khuluq* means character, character, temperament and character that originates or is rooted in *al-Khaliq* (God Almighty). *Al-Ghazali* (1993) defines morality (*khuluq*) as something that is inherent in the soul, from which arise actions that are easy to do without thinking and researching. If the things of the soul give birth to good and commendable deeds according to reason and *shari'a*, then these things are called good *khuluq*, on the other hand if what comes out of them are bad deeds, then the things of the soul that are the source are called *khuluq*. the bad one. Thus, every individual act and social interaction cannot be separated from the supervision of *al-Khaliq* (Allah swt).

In the Big Indonesian Dictionary (KBBI) it is stated that morals are:

1. (certain teachings) generally accepted good and bad regarding actions, attitudes, obligations, and so on; morals; character; morals.

2. a mental condition that keeps people brave, passionate, passionate, disciplined, etc.; the content of the heart or the state of feeling as expressed in actions.

3. moral teachings that can be drawn from a story;

According to Bertens, morality comes from the Latin *mos*, plural *mores* which also means custom. Etymologically, the word ethics is the same as the word moral, both mean customs. The difference is only in the language of origin, ethics comes from Greek, while morals come from Latin.

In Wikipedia explained, Moral is a human term referring to humans or other people in actions that have positive values. Humans who do not have morals are called immoral, meaning that they are immoral and have no positive value in the eyes of other humans, so morality is an absolute thing that humans must possess. Morals are explicitly related to

Individual socialization process without human morals cannot carry out the socialization process. Morals in this day and age have an implicit value because many people have moral or immoral attitudes from a narrow point of view. Moral is a basic trait that is taught in schools and humans must have morals if they want to be respected by others. Moral is the absolute value in social life as a whole. The assessment of morals is measured from the culture of the local community. Moral is a person's actions / behavior / words in interacting with humans. if what a person does is in accordance with the values prevailing in the community and is acceptable and pleasing to the community environment, then that person is considered to have good morals, and vice versa. Moral is a product of culture and religion.

There are similarities between ethics and morals. However, there is also a difference, namely ethics is more theoretical, while morals are more practical. According to the views of philosophers, ethics views the behavior of human actions universally (generally), while morals are local. Moral states the measure, ethics explains the measure.

There are some differences between ethics and morals. First, when discussing ethics, to determine the value of good or bad human behavior, use the benchmark of reason or ratio, while in moral discussion the benchmark used is the norms that grow and develop and take place in society.

The term moral always admits to the good and bad of human actions as humans. The core of the discussion about morals is that it concerns the field of human life, judged by the good or bad of their blindness as a human being. Moral norms are used as a benchmark to determine the right and wrong of human attitudes and actions, good or bad as humans.

Emile Durkheim held the view that "Law is Social Moral". This view was heavily influenced by Auguste Comte. Emile Durkheim himself stated

that Comte was his teacher in sociology (Goddjin in Wibisono, 1996: 74). Thus Emile Durkheim is also a sociologist.

Auguste Comte and Emile Durkheim have the same background view, namely the existence of social chaos that occurred in their country so that they are faced with the same challenge, namely how a safe and orderly society can be re-established. If Auguste Comte was faced with the very broad social implications of the French Revolution, then Emile Durkheim was faced with the consequences arising from the war in 1870 between his country and Prussia, at a time when the French Third republic needed a return to social consolidation. Pierre Bimbaum for completing the "social question" (Goddjin in Wibisono, 1996: 74).

The extent of Augustus Comte's influence on Emil Durkheim can be shown, among others, regarding Emil Durkheim's views which are based on the *Course de Philosophie Positive* such as Durkheim's division of functional analysis and historical analysis, which is none other than Auguste Comte's division of statics and social dynamics; his view of religion as a social phenomenon as well as social phenomena which are seen as natural phenomena (Wibisono, 1996: 75).

There are many links between Auguste Comte and Durkheim's view of "society", both in terms of theoretical and practical aspects. As the tradition pioneered by Auguste Comte, Durkheim also saw society as a separate reality. Society is not simply the summation of individuals, although society cannot be separated from the individuals who are the elements of it. Society is not something transcendent, nor something metaphysical, but "nature" and a place where culture develops. Through these bonds and contacts between individuals, ideas, ideals, customs, symbols, norms are born. morals, language and so on. It distinguishes the existence of a cultural understanding of society, namely in relation to things such as ideas, ideals, and so on which are elements of what is called culture, and structural ones, namely in relation to social elements called groups.

groups, associations, and so on (Durkheim in Wibisono, 1996: 75).

If Augustus Comte distinguishes between three societies as he outlines in the law of three stages of development, Durkheim distinguishes between two forms of society, namely primitive society and modern society.

(Durkheim in Wibisono, 1996: 75). In primitive societies social and moral solidarity was emphasized on equality in the sense that between individuals there were no differences in values, feelings or functions. There is no conflict, because a common decision or will has a decisive role. Sanctions for violations committed by individuals are given or determined by society in a repressive manner. On the other hand, in modern society, according to Durkheim, there is social differentiation, differences exist between individuals and what is called organic solidarity. Social solidarity is based on complementary differences that arise because modern society demands a division of labor (Wibisono, 1996: 76).

Durkheim did try to find a basis for cohesion in modern society which is characterized by differentiation in roles and specialization in increasingly rising occupations. He tries to present a view of the "new individualism" which is far from utilitarianism and anarchism. On the one hand he argues that the basis for a society must be in the common values and rules that are independent of one's interests, while on the other hand he argues that these values and rules must always be related to the legitimacy of rights, mandatory and the development of these individuals. The survival of modern society for Durkheim, depends on the recognition and application of individual values that have been painstakingly championed in the era of the Revolution and the Enlightenment (*Aufklärung*) (Goddjin in Wibisono: 1996. 75).

Durkheim argued that the transition from primitive society to modern society took place evolutionarily as a continuous process, and not a revolution. In this process, social conflicts are inevitable and what Durkheim calls "anomie". Anomie is an atmosphere both experienced by individuals and groups

due to the loosening of social ties or a sense of solidarity, a term taken from; a Greek word meaning disorder or a life without norms. (Wibisono, 1996:76).

Emile Durkheim's theory puts "law as social moral". He placed the law as a social moral, not because he wanted to be Socrates or Aristotle. Durkheim, stay a positivist. So he built a theory under the theme of "division of labour". The division of labor is an empirical fact. It is the fact that the division of labor is the social structure of the building.

According to Durkheim, the system of division of labor determines social solidarity. Solidarity itself is an abstract unit. It is the 'spirit' that binds people to a common 'frame of belief' in building an integrated life. (Evan in Tanya, 2006: 115). This is the moral dimension that Durkheim was referring to, but stopping here means that the work of sociology will stagnate. The belief framework remains an abstract unit. The framework of belief does not change social solidarity into something empirical. Durkheim then looks for the empirical unit in the abstract mosaic of social solidarity. That's where he found law as an empirical unit of social solidarity (Evan in Tanya, 2006: 115).

Emile Durkheim's concept, law as a social moral concept is essentially an expression of social solidarity that develops in society. Law is a reflection of solidarity. No society anywhere can stand and exist continuously without solidarity. As the main pillar of integration, social solidarity moves and changes in tune with social developments in society. The development from the traditional stage to the modern stage is always followed by a shift in solidarity from the mechanical to the organic. This development is in line with and often with the increasingly differentiated division of labor within the society. In Emile Durkheim's concept, this division of labor differentiation is a central theme that will explain the occurrence of various kinds of changes in terms of structure and restructuring, the type of solidarity, and also the function of law (Aubert in Tanya, 2006: 116).

The theory of the law of "division of labour" that had been developed by Marx and Maine was transmitted to Emile Durkheim. For Emile Durkheim, the system of division of labor in a society determines the type of social solidarity that builds up in that society. In a society that does not yet recognize a diverse division of labor, mechanical solidarity is built. In a society that has recognized work differentiation (functions, tasks, and expertise), tends to give birth to organic solidarity. The two types of solidarity, according to Emilke Durkheim, determine the face of law. In mechanical solidarity, a law has the character of taking action. On the other hand, organic solidarity produces laws with a restoring character (Aubert in Tanya, 2006: 116).

In the thought of Emile Durkheim, it is illustrated that in a society where the division of labor is still not diverse, all members of society have the same social needs. The same need fosters a bond of collectivity. In this collective emotional bond, the same social awareness is built and united in the same concern. This is the foundation of the philosophy of life in the collectivity. The philosophical foundations in turn determine the values, goals, ways of acting, and the color of law in that society. With the foundation of this philosophy, social awareness and social integrity are built. With social awareness and social integrity, the same and strong social emotional bonds are formed.

Emile Durkheim further said that what is called organic solidarity actually functions as a facility to pave the way for the development of coherence and cohesion between various parts or sectors of life that are starting to grow heterogeneously in society. So here, the law, in its moral nature as an expression of social solidarity, cannot possibly be supported by the forces of punitive sanctions (whose main purpose is to wreak vengeance).

Emile Durkheim's view of "law as moral" the author agrees. The existence of social morals in society is believed to live and develop as a limit for one's 'upload ungguh'. A person who commits immoral acts or deviant actions that are not justified by social morals will

provoke a reaction in society. The reaction given is in the form of sanctions. Sanctions for violations committed by individuals are given by the community in a repressive manner. The sanctions given by the reaction can be in the form of ridicule, exclusion or society will stay away, giving "stigma" or social stamps, and so on. Society is a source of value. The values in society, for example: justice, expediency, honesty, decency, decency and moral values. These values that live in society can be taken into consideration by community institutions and judicial institutions who want to realize social justice. So it is not only the value of certainty that is taken into consideration in realizing justice. Thus it can be understood Durkheim's view that law is moral. Moral is one of a series of other values that exist in society as social morals. Social morals are values in society that must be maintained in order to lead to the formation of an orderly society and the integrity of social relations. This is done to be able to describe and realize a justice that the community wants.

Social morals in traditional societies are maintained to maintain social integrity. Social morality is a form of social order and order. If social morals are not taken into consideration in realizing social order and order, of course there will be an unregulated or disorderly social situation ("chaotic society").

People who want order and order then the people determine for themselves how the law they accept, understand and implement. When the legal values that develop in society are not considered, a reaction of social solidarity will arise to be able to uphold the values that exist in the community, including social moral values.

Law is not only a regulation that only contains certainty but also contains social morals which are reflected in people's behavior. If the law has been linked to social morals, it means that the law follows a social process. In the social process between law and society, they receive and give each other in order to describe the law to obtain a justice that is expected by the community.

Law is included in the social sub-system whose function is to integrate the processes that take place in society so that a certain orderly state is achieved (Evan in Rahardjo, 2002: 120).

Discussions about law cannot be carried out in isolation from the larger social environment, therefore, to understand more carefully what the law does and can do, one needs to talk in a larger social context. major theories such as Structural-functional Theory and Talcott Parsons Cybernetics to help explain the workings of law in society (Parsons in Rahardjo, 2002: 119).

The map of the synergistic structure of processes in society, as can be found in Parsons' cybernetics, wants to show how the processes that take place in cultural, social, political and economic sub-systems enter into each other, both in positive and negative terms. In Parsons's thesis, the sub-systems do not have the same strength, so that in the meeting between them there is a kind of clash of forces. By Parsons this power is referred to as energy, with the order of the highest energy content being in the economic sub-system and continuing to descend from the political, social and the weakest to the cultural sub-system. Law is included in the social sub-system whose function is to integrate the processes that take place in society so that a certain

orderly state is achieved (Evan, 1990: 47). Parson's theory is useful to help us see the place of law in society and thus the place of law in the midst of society and thus to discuss various situations that can occur, such as conflict and cooperation between sub-systems, especially between law and the field of law. -other fields in society (Rahardjo, 2002: 120).

Thus, according to the author's opinion, the law does not stand alone by only prioritizing legal certainty and separating it from other values that live in society. The law of living in the midst of society does not only live in a juridical structure. The legal process in realizing the values behind the law, of course, also pays attention to the social processes that are always evolving.

The law should be spelled out by taking into account the values that live in society, one of these values is social moral values. With these moral values, it can be used as material for consideration in realizing justice which is indeed expected by the justice-seeking community. The law was made as a means to achieve justice, security and tranquility. As a means, the law is more running on the process, to achieve maximum results, the process must run optimally.

According to Hart (1965) that to create justice, the law must include three elements of value, namely obligations, morals and rules. Law cannot be separated from the moral dimension (Murphy & Coeman, 1984). Thus, there has not been a sense of justice because morals have not been enforced by law enforcement officers in enforcing the law. The existing legal order must be accompanied by morals that come from conscience. If this moral element can be applied, the true sense of justice will be realized in people's lives. Conscience will never lie. Without morals, the law does not bind logically because morals prioritize the understanding and awareness of the subject in obeying the law. As stated by K Bertens that *quid leges sine moribus* which means what is the use of laws if they are not accompanied by morality.

4. Acknowledgement

Conclusion:

- a. Law as a social moral concept is essentially an expression of social solidarity that develops in society. Law is a reflection of solidarity. No society anywhere can stand and exist continuously without solidarity. As the main pillar of integration, social solidarity moves and changes in tune with social developments in society
- b. The existence of social morals in the community which is believed to live and develop as a limit for one's 'upload ungguh'. A person who commits an immoral act or deviant act that does not justified by social morals will cause a reaction in society. The reaction given is in the form of sanctions. The sanctions given by the reaction can be in the form of ridicule, exclusion or society will stay away, giving "stigma" or social stamps, and so on. Society is a source of value. The values in society, for example: justice, expediency, honesty, decency, decency, decency and moral values. Social morals are values in society that must be maintained in order to lead to the formation of an orderly society and the integrity of social relations. This is done to be able to describe and realize a justice that the community wants.
- c. Law is not only a regulation that only contains certainty but also contains social morals which are reflected in people's behavior. If the law has been linked to social morals, it means that the

law follows a social process. In the social process between law and society, they receive and give each other in order to describe the law to obtain a justice that is expected by the community.

SUGGESTIONS

- a. In enforcing the law, it is necessary to pay attention to the moral values that develop in society (social morals).
- b. The values that live in society (moral values) should be used as considerations by community institutions and judicial institutions that will realize social justice.

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