

THE FACTS STILL THERE IS LEGAL DISCRIMINATION IN INDONESIA

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ABSTRACT

Justice is a desire that must be fulfilled in enforcing the law. Justice has an individualistic nature and does not generalize. If law enforcers hold fast to the value of justice but the value of usefulness and legal certainty is not considered, then the law will not run smoothly. Then if you focus on the value of expediency but neglecting legal certainty and justice, the law will not work. If you want to enforce the law, the values of justice, benefits and legal certainty must be balanced and in harmony. The law can be enforced if it has credible, competent and independent law enforcement officers. As good as a law is, if it is not supported by good law enforcement officers, justice will not be created. The powers of law enforcement agencies are regulated by law. So in carrying out their duties and responsibilities, they are not affected by government authority or outside influences. The crucial problem in law enforcement is not only against uncooperative legal products but also because the law enforcement officers still carry out glaring discrimination, namely the difference in the handling of cases between the poor and the rich/ranking. Therefore, the saying "law is sharp downwards, but blunt up". The conclusion of this study is that the main pillars in law enforcement are law enforcement officers who carry out their duties with good integrity and dedication without discriminating against anyone, meaning that they are not discriminatory.

A. INTRODUCTION

Currently there is a lot of injustice in the law, in our own country, for example, a lot of high-ranking law enforcement officers will punish others with selfishness, and do not see the condition of the person who accepts the law.¹

Discrimination has indeed occurred a lot since ancient times such as discrimination against women and children, discrimination against race and ethnicity, but legal discrimination was very rare in ancient times. The more modern the era until now, discrimination against the law has begun to develop, this is driven by the increasing progress of globalization. For this

1 Ana Suheri, Wujud Keadilan dalam Masyarakat di Tinjau dari Perspektif Hukum Nasional, *Jurnal Morality*, Vol. 4, No. 1, 2018, page. 60-68

reason, we must learn more about what makes legal discrimination a lot happening today so that the law in Indonesia will lead to a better future.²

Law enforcement³ and justice in Indonesia is still unclear, this can be seen from the legal system, structure, and culture that are still in disarray. The law in Indonesia is less in favor of the interests of the community, there is selective slashing and is controlled by people who have power⁴.

There are many problems with law enforcement in Indonesia, starting from the people who only seek success, not justice. Residents who live in big cities who are usually involved in legal problems always try to avoid punishment, everything is done so that they just want to win. This means that it is indicated that justice for them is only a victory⁵.

People who only want to get a win make this a problem for law enforcers who lack credibility and are prone to bribes, people who seek success only rely on their power and material so they don't get punished.⁶

The next problem is the existence of money that characterizes law enforcement. These law enforcement officers are vulnerable to corrupt practices and accepting bribes. With the amount of money that will be charged, it can change depending on the amount of money offered in order to get the lowest and lightest possible sentence.

People who have money will be treated well during the legal process. Discriminatory law enforcement is law enforcement that favors people who have power and material things, not people who do not have power and material things⁷, even the law will side with those who have power, rank, or relationship with law officials or law enforcement officers. This happens because of the mentality of law enforcement that only looks at the community from their social position, not from what the person does in the legal process. The purpose of this paper is to find out legal discrimination and the factors that cause it.⁸

B. RESULTS AND DISCUSSION

1. Discrimination

Discrimination is an unfair attitude towards certain individuals, where this service is made based on the characteristics represented by

2 Ismail Shaleh Rusli, *Prasangka Menimbulkan Penurunan Tingkat Kepercayaan Masyarakat Terhadap Penegak Hukum, Indonesia yang Berkeadilan Sosial tanpa Diskriminasi*, 2016, page. 239-245

3 Husein M. Maruapey, *Penegakan Hukum dan Perlindungan Negara (Analisis Kritis terhadap Kasus Penistaan Agama Oleh Patahana Gubernur DKI Jakarta)*, *Jurnal Ilmu Politik dan Komunikasi*, Vol. 7, No. 1, 2017, page. 21-30

4 Hayat, *Keadilan sebagai Prinsip Negara Hukum: Tinjauan Teoretis dalam Konsep Demokrasi*, *Padjajaran Jurnal Ilmu Hukum*, Vol. 2, No. 2, 2015, page. 388-408

5 Asep H. Suparman, *Penegakan Hukum terhadap Penyelenggaraan Pelayanan Publik*, *Jurnal Wawasan Yuridika*, Vol. 29, No. 2, 2013, page. 849-853

6 Radar Nusantara, 2012, *Diskriminasi Hukum Bagi Karyawan BRI Majalengka* (Online). (<http://www.radarnusantara.com/2012/02/diskriminasi-hukum-bagi-karyawan-bri.html>, accessed on 28 August 2022).

7 Bahder Johan Nasution, *Kajian Filosofis tentang Konsep Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern*, *Yustisia*, Vol. 3, No. 2, 2014, page. 119-130

8 Op.cit.

that individual. Discrimination is a common occurrence in human society, this is due to the human tendency to discriminate against others. There are different types of discrimination, including:⁹

- a. Direct discrimination occurs when a person is treated badly because of personal characteristics or traits that are protected by law.
- b. Indirect discrimination occurs when treating everyone equally but harming someone because of their personal characteristics.

2. Legal Discrimination in Indonesia

Law enforcement in Indonesia has long been a serious problem for people in Indonesia¹⁰. How not, because the issue of justice has long been neglected, even law faculties are only taught how to view and interpret statutory regulations. Issues of justice or those that touch the community's sense of justice are ignored in the legal education system in Indonesia.

Legal discrimination is one form of various forms of legal discrimination. Legal discrimination, of course, involves legal processes in Indonesia, for example legal differences between the rich and the poor, which of course harms those who do not receive justice.¹¹

a. Causes of legal discrimination in Indonesia

The following are some of the factors that cause people to discriminate against the law:

- 1) The desire to obtain more material so that bribes occur in the legal process
- 2) Desire to maintain position or position in law

b. How to tackle legal discrimination in Indonesia

The following are the procedures for monitoring efforts to eliminate discrimination:

- 1) Supervision by Komnas HAM to the reported party can be carried out based on the report and/or on the initiative of Komnas HAM.
- 2) The implementation of supervision must be accompanied by an assignment letter signed by the Head of Komnas HAM.
- 3) Supervision is carried out by notifying the reported party.
- 4) In certain cases, the implementation of the supervision referred to may be carried out without notification.
- 5) In the implementation of supervision, Komnas HAM can coordinate with related institutions or agencies.

c. Examples of legal discrimination cases in Indonesia

- 1) Discrimination against Muslims in Ambon

9 Damanhuri Fattah, Teori Keadilan Menurut John Rawls, Jurnal TAPIs, Vol. 9, No. 2, 2013, page. 31-45

10 Hasaziduhu Moho, Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan, *Jurnal Warta*, Edition. 59, 2019

11 Fachri, Muhammad., 2011, *Kaum Muslimin Ambon Alami Diskriminasi Hukum*, (Online) (<http://arrahmah.com/read/2011/10/23/15949-kaum-muslimin-ambon-alami-diskriminasi-hukum-2.html> , accessed on 28 August 2022).

Ambonese Muslims have always been discriminated against by law enforcement officers or the police in Ambon, from the past until now. The most recent incident that can serve as an example is the case of the attack on Kampung Waringin Ambon by the Christians. From the incident, it can be compared how the Ambon Polres police were so quick to arrest and give punishment if the perpetrator was a Muslim, and to be so slow to reveal let alone give punishment if the perpetrators were Christians.

2) Slipper theft case

The sandals theft suspect, AAL, has been found guilty by the court. The punishment given is to return AAL to his parents. The case started with the loss of sandals at the rented house of Brimob member of the Central Sulawesi Police Brigadier General Anwar Rusdi Harahap, and Palu Police Chief Brigadier Samson on Jalan Petra number 1, Palu. According to witnesses, there were three perpetrators.

The three people had the initials AAL (15) a Palu SMK student, SD (14) a Palu SMP student, and MSH a Palu SMA student. The two policemen called the three teenagers. They were interrogated about the theft of sandals. According to Saud, the three confessed their deeds¹².

During the interrogation, the two police officers pushed the three children. After that Brigadier Rusdi and First Brigadier Samson asked the three children to call their respective parents. Parents answered the call and listened to the explanations of the two members. The problem is considered solved.

However, the next day, AAL's parents returned to visit two police officers. They said they did not accept the child being pushed and had reported it to the National Police Profession and Security. AAL's parents also asked for the theft charges against their son to be proven legally¹³.

3) Abuse of Authority in the Bank

BRI Majalengka employees who have been sentenced to three to four years in prison must say it is unfair and they do not deserve to be punished. Five of the employees of BRI Majalengka who are considered to have taken part in the process of transferring the books of the Jamkesmas Fund, four of whom have been sentenced, namely former BRI Pinca Majalengka Andi, Amo Maria in the trial volume one was sentenced last year 2011, while volume two Citra Puspitasari and Aep Saepudin have also been sentenced. sentenced in January 2012.

12 Komnas HAM, 2011, *Tata Cara Pengawasan terhadap Upaya Penghapusan Diskriminasi Ras dan Etnis* (Online), <http://www.komnasham.go.id/tata-cara-pengaduan/708-tata-cara-pengawasan-terhadap-upaya-penghapusan-diskriminasi-ras-dan-etnis>, accessed on 28 August 2022

13 Kristiani Pos, 2009, *Hukum di Indonesia Masih Diskriminatif* (Online), <http://www.christianpost.co.id/masyarakat/20090327/4686/hukum-di-indonesia-masih-diskriminatif>, accessed on 28 August 2022

The decision of the Majalengka Court with case No.195/Pid B/2011/PN MJL by the Chief Judge Ahmad Budiawan, SH, Ardianti Prihastuti, SH the member judge and Rahma Sari Nilam Panggabean, SH, MH the member judge has decided Citra Puspita Sari and Aep Saepudin with sentence of 3 years in prison, a fine of 5 billion subsid 1 month with article 50 of Law no. 10 of 1998 concerning amendments to Law no. 7 of 1992 Banking Law¹⁴.

C. CONCLUSION

From the description above, several conclusions can be drawn, namely Discrimination is an unfair attitude towards certain individuals, where this service is made based on the characteristics represented by the individual. Law enforcement in Indonesia has long been a serious problem for people in Indonesia. Issues of justice or those that touch the community's sense of justice are ignored in the legal education system in Indonesia. The factors that cause people to discriminate against the law are the desire to obtain more material so that bribes occur in the legal process and the desire to maintain a position or position in the law. To overcome the problem of legal discrimination in Indonesia, the participation of Komnas HAM is needed to protect the reported parties in the event of irregularities in their sentences.

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14 Metro TV News. 2012. *Kasus Pencurian Sandal, Ini Penjelasan Polri* (Online), <http://metrotvnews.com/read/news/2012/01/03/77345/Kasus-Pencurian-Sandal-Ini-Penjelasan-Polri> , accessed on 28 August 2022

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