



Responsive, Integrity, Morality and Fairness Law Enforcement as Social Change Instrument

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Abstract: *This article reviews the essence of law enforcement as social change instrument. Law in the context of Indonesia that embrace democratic system is upholding the justice values in it that fairness principles for all Indonesian people. As positive law in a legal state, law enforcement is required to be professional, proportional, good, fair, and wisely so in accordance with the rules of expediency, kindness and equality in the law itself. The outcomes of the research indicate that law and community cannot be separated, for law the community is a resource that gives life (to nature) and move the law. The communities live the law with the values, ideas, concepts. And also contribute the community to implement the law.*

Keywords: *Law Enforcement; Social Change*

INTRODUCTION

Society always changes constantly. A process of change can be evolutionary as well as revolutionary, may regard fundamental matters to the lives of the people concerned or only minor changes, as well as law that grow and develop in society.

According to Soekanto¹ the changes is needed deliberately, by the nature of human conduct in new conduct patterns as desired and so on.

Law is a means of society, the human has always held interactions

¹ Soerjono Soekanto, (1991). *Fungsi Hukum dan Perubahan Sosial*. 3th Edition. Bandung: Citra Aditya Bakti, p. 18

with each other, then the change is necessary. It can be used to make social change, i.e remove the obsolete habits that seen no longer appropriate, directing people to the desired destination, create to organize the life of society, but an interesting thing to study philosophically is the law always lags behind objects were arranged. Therefore, for the purpose of law can be achieved there should be changes in order to achieve a better and fair order.

In the constellation of the modern state, the law can be used as a tool of social engineering.² Roscoe Pound emphasized the significance of the law as a tool of social engineering, particularly through the mechanism of case handling by the judicial authorities that would generate jurisprudence. The social context of this theory is the people and the judiciary in the United States. In the context of Indonesia, the legal function, by Kusumaatmadja³ interpreted as a tool of driving the society renewal. As a tool to encourage the renewal of society, its emphasis is

located to the formation of legislation by the legislature, which is intended to initiate the construction of a new society to be realized in the future through the enactment of legislation.

Democratic state setting out the concept of legal justice in creating a legal state that gives a sense of justice to every citizen with the regulations regularly in its enforcement, so it produce a good and quality law in order to achieve the objectives of justice and prosperity for the people of Indonesia fully as holders of power and state sovereignty.⁴

Law enforcement as defined simply by Satjipto Rahardjo⁵ is a process to realize the desires of law becomes a reality. The desires of law are intended here as a legislature thoughts defined in the regulations of the law. The formulation of legislature thoughts that set forth in the rule of law, it also determine how the law enforcement operate. A similar opinion was expressed by Jimly Asshiddiqie,⁶

² Roscoe Pound, (1978). *Filsafat Hukum*. Jakarta: Bhadrata, p, 7; lihat juga Lili Rasjidi, (1992). *Dasar-dasar Filsafat Hukum*. Bandung: Alumni, p. 43

³ Mochtar Kusumaatmadja. (1978). *Fungsi Hukum Dalam Masyarakat Yang Sedang Membangun*. Jakarta: BPHN-Binacipta, p. 11

⁴ Yustinus Suhardi Ruman. *Keadilan Hukum dan Penerapannya dalam Pengadilan*. Jurnal *Humaniora*, Volume 3, Number 2, Oktober 2012, p. 348

⁵ Satjipto Rahardjo. (1983). *Masalah Penegakan Hukum*. Bandung: Sinar Baru, p. 24

⁶ Source: http://www.jimly.com/makalah/namafile/56/Penegakan_Hukum.pdf. Downloaded on 15 February 2016

that law enforcement is the process of doing an effort for the establishment or the functioning of legal norms significantly as a code of conduct in traffic or legal relations in the society and state.

Thus, in turn, law enforcement process that culminated in its implementation by law enforcement officials themselves. From this condition, in an extreme tone it can be said that the success or failure of the law enforcement agencies in carrying out their duties have actually been started since the rule of law must run was made. Currently, Indonesian nation is experiencing multiple crises, one of which is a crisis in the law enforcement. Its indication when the law enforcement solely prioritizing the aspect of legal certainty (*rechtssicherheit*) by ignoring justice aspect (*gerechtigheit*) and legal expediency (*zweckmassigkeit*) for the people.⁷

In addition to the crisis in law enforcement is also occur a trend towards a disregard for the law, disrespect and distrust of people to the

law. For example, a number of perceptions of public distrust in the law are (1) the existence of legal instruments, both legislative and executive products that are considered not reflect social justice; (2) the judiciary is not independent and impartial; (3) law enforcement are still inconsistent and discriminatory; (4) the legal protection to people who have not reached the point of satisfactory.⁸

Kompas daily in a survey conducted on 29-30 August 2007 concluded that the level of public confidence in the law enforcement in Indonesia, particularly judges in both the Department of Justice and the Supreme Court concluded that the performance of judges in deciding corruption cases is not satisfactory.⁹ Reported unsatisfactory performance of judges in both PN and PT by 79%, only 17.5% of respondents stated satisfied and 3.5% did not know. The performance of supreme judges were reported, only 21% of respondents said satisfied, 72.8% are not satisfied and 6.2% did not know. So, how important the responsive, integrity and morality

⁷ Tumpa, H. (2015). Penerapan Konsep Rechtsvinding dan Rechtsschepping oleh Hakim dalam Memutus Suatu Perkara. *Hasanuddin Law Review*, 1 (2), 126-138. doi: <http://dx.doi.org/10.20956/halrev.v1n2.90>

⁸ Sultan Hamengku Buwono X. (2007) *Merajut Kembali Keindonesiaan Kita*. Jakarta: PT. Gramedia Pustaka Utama, p. 275

⁹ Kompas, 3 September 2007

law enforcement? How integrity law enforcement as an instrument of social change can be realized and gives benefits to the people and can change peoples' perception of law enforcement?

DISCUSSIONS

The Correlation of Law and Social Change

In 'Sociological Jurisprudence', Roscoe Pound (1870-1964) stated that the life of law lies in its implementation.¹⁰ For Pound the law is "*an ordering of conduct so as to make the good of existence and the means of satisfying claims go around as far as possible with the least friction and waste*".¹¹ Thus, the implementation of law is the technique of social problem solving.

Social Engineering as expressed by Pound aimed to build a social structure, so in maximum can achieves decisions of needs with minimum

impact and waste.¹² Here, Pound sees and understands the law as a regulator and the conciliator of desire conflicts. Law is a tool to control the desire as the prerequisites of social compliance.¹³ For this purpose, the law must be functioned as certain functions to achieve its goal. The main function of law is to protect the interests that exist in the society. According to Roscoe Pound: there are three interests that must be protected by law, namely: public interest; individual interest; and interest of personality.

In Indonesia, the modern view of the role of law as a tool of development described by Kusumaatmadja by saying that the law has two functions, namely as a tool of public order (ensuring order and security) and a tool of social change. In connection with these roles, the law can be used as a tool for social change, namely the "law as a tool of social engineering".¹⁴ The important sense of law role in this case

¹⁰ Satjipto Rahardjo. (1982). *Ilmu Hukum*. Bandung: Alumni, p. 266

¹¹ Lord Lloyd of Hampstead and MDA Freeman. (1985). *Sociological Jurisprudence and the Sociology of Law*. Lloyd Introduction to Jurisprudence 5th ed. London: Stevens and Son. P. 566. See also Hikmahanto Juwana. *Teori Hukum, Program Magister Ilmu Hukum, Program Pascasarjana*, Fakultas Hukum. Universitas Indonesia, Tanpa Tahun. p. 207

¹² Satjipto Rahardjo, (1982). *Loc. Cit.*

¹³ Lord Lloyd of Hampstead and MDA Freeman, *Op. Cit.*

¹⁴ Mochtar Kusumaatmadja. (1970). *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*. Bandung: Binacipta, p. II

when the change was going to be done with a regular and orderly.¹⁵

Legal relationship with *adresat* or problem as its arrangement target is not includes causality. But by using a conceptual-sociological perspective, the relationship that can be described as continued process. In this sense, it is mentioned that *adresat* of law is role occupant. As occupant role, it is expected by law meet certain expectations as stated in the regulations. Thus, he is demanded fulfill the role expectation. Therefore, the influences that work upon themselves the role occupant, they can lead to a gap between the expected roles with the role played by the *role performance*.¹⁶

The relationship of causality between law and social changes can be described by saying the law as the cause is an important and sufficient condition for the emergence of a result (*the necessary and sufficient condition*).¹⁷ There is criticism of it, which

essentially argues that the use of law as a tool of social engineering make inhuman impression. Therefore, as the human experiences decline in dignity and treated as goods only.¹⁸ In addition, the application of “*mechanistic*” and a conceptual of *law as a tool of social engineering*, as a “*tool*” would lead to results not much different than the application of “*legism*” that in the legal history of Indonesia (Dutch Indies) have fiercely resisted”.

Social scientists, especially sociologists, tend not to see the meaningful role of law in order to move a social change.¹⁹ The important role of change driver is still held by other factors such as population growth, ideology changes and the use of technology. The existing factors is work independently and therefore social changes happen randomly and segmentary.²⁰

¹⁵ Mochtar Kusumaatmadja (1970) *Hukum, Masyarakat dan Pembangunan Hukum Nasional*. Bandung: Binacipta, p. 13

¹⁶ Satjipto Rahardjo. (1979) *Hukum dan Perubahan Sosial*. Bandung: Alumni, p. 119

¹⁷ Daniel Little. (1991). *Varieties of Social Explanation an Introduction to the Philosophy of Social Science*. Boulder-San Fransisco-Oxford: Westview Press, p. 14. According to

Daniel Little, there is 3 (three) categories of causality relationship; (1) The Causal Mechanism: (2) The Inductive Regularity. dan (3) The Necessary and/or Sufficient Conduction.

¹⁸ Satjipto Rahardjo. *Op. Cit.*, p. 154

¹⁹ Mochtar Kusumaatmadja, 1979, *Op. Cit.*, p. 9

²⁰ Satjipto Rahardjo. (1979). *Op. Cit.*, p. 156

For those who reject the law as an instrument of change, said although at one time raised the changes as required by law, but the change was rejected as a result of the law. According to them, new law is the result of the change, and in this case law is only building previous changes.²¹

Instead a group of people who still see the role played by law in order to social change. The group sees the law as a driving force of ideas embodied by the law. In addition to the law has legality is also implementing agencies. Here, the law conducts change through the ability to perform “*initial push*”.²² Another group that rejected the role of law in social change is Savigny, a pioneer of history, said that the law is something that arises naturally from the social relatedness itself. The legislation as a way of making law is considered by them as unusual activity. Therefore, the law

was actually only able to provide any attestation to the norms established formally by their own social life.²³

According to Satjipto Rahardjo, any proposed theories that argue against the use of law as a tool of social change consciously, but reality shows that the legislation is a state back to achieve wisdom.²⁴ Although it must be recognized that the process of achieving goals, through the law, will last long enough to effect raised. Here, the law is driving factor, which gives the first driver systematically.²⁵

A group of people who are still see a role that can be played by the law in the context of social change that essentially put the law as a motor that will spread and move the ideas to be realized by the law. In fact, a law creates a general condition, in which, the ideals of changes can be implemented. If thus, the role of law in social change seen in its ability to conduct an *initial push* to achieve the ideals set forth in the law.²⁶

²¹ *Ibid.*

²² The term of *initial push* is used by Arnold M. Rose. Arnold M. Rose as quoted by Soerjono Soekanto explained that there are 3 (three) general theories about social changes that lead to social change, namely: (1) progressive commutation than the discoveries in the field of technology; (2) contact or conflict between cultures; and (3) social movements.

²³ Erman Radjagukguk. (1983). "Perkembangan dengan Daniel S. Lev: Hukum sebagai Kerangka Idiologi Perubahan Sosial. Di dalam *Hukum dan Masyarakat*. Jakarta: Bina Aksara, p. 72-73).

²⁴ *Ibid.*

²⁵ Satjipto Raharjo. (1982). *Op. Cit.*, p. 173

²⁶ Satjipto Rahardjo. (1979), *Op. Cit.*, p. 158-159

Another group that rejected the role of law in social change is Savigny, a pioneer of history, said that the law is something that arises naturally from the social relatedness itself. The legislation as one way of making law is considered by them as unusual activity. Therefore the law was actually only able to provide any attestation to the norms established formally by their own social life.²⁷

According to Satjipto Rahardjo, any proposed theories that against the use of law as a tool of social change consciously, but in fact shows that the law is a state back to realize its wisdom.²⁸ Further, Roger Cotterrell argued that the changes occur only in the economic, technological, or basic attitudes of community members are understood as continual something and perhaps everywhere. Social change is considered to have occurred only if changes in social structures, patterns of social relations, social norms that have been established and the roles of social change. Therefore, a change in patterns of social relationships already

established between ethnic groups and races in a society can create social change, but the increase and decrease of economic prosperity in a society cannot be regarded as a social change.

Legal relationships and social change is a central issue, as many theories presented by experts. The centralization of law on state power through legal norms with the goal of social change will be highly dependent on the purity of the legal norms that are dedicated solely to the people, not the rulers alone. The law must be reactive in response to any social change so that produce changes in the law anyway. The importance of changes in the law as a response to the social changes certainly had a positive impact on any settlement of legal issues by promoting justice values in society.

Law Enforcement

Law enforcement is the process of doing an effort for the establishment or the functioning of legal norms significantly as a code of conduct in traffic or legal relations in the society and state.²⁹

²⁷ Satjipto Rahardjo, (Tanpa Tahun) *Penegakan Hukum untuk Pembangunan dalam Masalah Penegakan Hukum: Suatu Tinjauan Sosiologis*. Bandung: Sinar Baru, p 112

²⁸ Erman Radjagukguk. *Op. Cit.*

²⁹ Satjipto Rahardjo. (2006). *Sisi-sisi lain dari Hukum di Indonesia*. 2nd. Jakarta: Book Publisher Kompas, p. 169. Distinguishing the terms of *law enforcement* with *the use of the*

Law Enforcement in a broad sense includes activities to carry out and implement the law and to take legal action against any law violation committed by the subject of law, either through judicial procedures or through the procedures of arbitration and other dispute resolution mechanisms (*alternative disputes or conflicts resolution*).

In fact, in a broad sense, law enforcement activities also includes all the activities that are intended to be legal as the normative that regulate and bind the legal subjects in all aspects of social life and a state actually adhered to and earnestly executed properly. In a narrow sense, the law enforcement activities regarding action against any violation or deviation from the legislation, especially for more narrow through the criminal justice process involves the role of the police, prosecutor, advocate or lawyer, and justice agencies.

According to Asshiddiqie,³⁰ law enforcement may be viewed from subject and object positions. In terms

law. Law enforcement and the use of the law are two different things. People can enforce the law to deliver justice, but also to enforce the law to be used for the achievement of goals or other interests. Enforcing the law is not exactly the same as using the law.

³⁰ Jimly Asshiddiqie, *Op. Cit.* p 53.

of its subject, such enforcement can be done by a vast subject and it can also be interpreted as effort of law enforcement by the subject in a limited sense or narrow. In a broad sense, the law enforcement process that involves all subject of law in any legal relationship. Anybody who operate the normative rules or do something or not do something by basing self on the norms applicable legal rules, meaning he operate or enforce the rule of law. In a narrow sense, in terms of its subject, that law enforcement officials only be interpreted as an attempt to guarantee certain law enforcement and ensure that a legal rule as it ought. In ensuring the rule of law, if necessary, law enforcement officials were allowed to use the power of force.

While, the law enforcement is also be viewed from the position of object. In this case, understanding also includes the broad and narrow meaning. In a broad sense, law enforcement also includes the justice values contained in it the formal rules and the justice values in society. However, in a narrow sense, the law enforcement concerns only formal enforcement and writing alone. Therefore, the translation of the words

“*law enforcement*” into Indonesian language in using the words “*law enforcement*” in a broad sense and may also use the term “*regulation enforcement*” in a narrow sense. The distinction between the formality of written legal rules by the range of justice values in it, even also raised in English language by expand the term “*the rule of law*” versus “*the rule of just law*” or the term “*the rule of law and not of man*” versus the term “*the rule by law*” which means “*the rule of man by law*”.

In terms of “*the rule of law*” consist meaning the rule by law, but not in a formal meaning, but also includes the justice values contained therein. Therefore, use the term “*the rule of just law*”. In terms of “*the rule of law and not of man*” is intended to emphasize that essentially the rule of a modern constitutional state is done by law and not by the people or man. Otherwise, the term “*the rule by law*” is intended as a rule by the people who use the law merely as a tool of mere power.³¹

As described, it is clear that what is meant by the law enforcement was

an effort made to make, both in formal sense narrow, as well as in material sense broad, as the code of conduct in any legal actions, both by the legal subject concerned, or by law enforcement officials were given the task and authorized by law to ensure the proper functioning of the legal norms in force in the life of society and state.

Objectively, the rule of law to be enforced includes a legal sense both formal and material. In formal is only concerned with the written legislation, while in material is only includes sense of justice values in society. In the own language, sometimes people differentiate between the terms of *law enforcement* and *justice enforcement*. Law enforcement can be associated with the sense of “*law enforcement*” in a narrow sense, while the law enforcement in a broad sense, in a sense of material legal, it termed as *justice enforcement*.

In English, it also sometimes distinguishes between the conception of “*court of law*” in the sense of a court of law and the “*court of justice*”. In fact, with the similar spirit, the Supreme Court in the United States

³¹ *Ibid.*

referred to as “*the Supreme Court of Justice*”.³²

Responsive and Progressive Law Enforcement

Responsive law enforcement can be said as “*conditio sine qua non*” at this time, if want the law still regarded as the commander in the life of society, nation and state. The term of law as the commander that means the law is on the forefront that is able to respond to the justice values in the community to build a prosperous society.

Philippe Nonet and Philip Selznick introduce the typology of responsive law as the state law which is able to respond and accommodate the values, principles, traditions and interests of the community, thus reflecting the democratic system of governance adopted by the ruling government, especially in the implementation of law development policy.³³

In connection with the context of law enforcement in Indonesia, the responsive law suggests that law enforcement cannot be done partially. Enforcing the law, not just runs a law

or legislation, but it must have social sensitivity. Law not only rules, but there are also other logics. That impose jurisprudence is not enough, but law enforcement must be enriched by the social sciences.

Seek responsive law has become an activity of modern legal theory. As said Jerome Frank (1889-1957) the main purpose of the law realists is to make the law more responsive to social needs.³⁴ A responsive law is still to be fought in the implementation stage, so as not to conflict with justice and human rights dimensions. It required a progressive law implementation especially in its implementation. So, there is a very close correlation between responsive law and progressive law. On the one hand, the law accommodates the interests and alignments to the public and on the other hand is more bold and advanced in its enforcement, especially by law enforcement officials.

³⁴ Nyoman Nurjaya. *Reorientasi Paradigma Pembangunan Hukum Negara dalam Masyarakat Multikultural: Perspektif Hukum Progresif*. the paper on National Seminar Law Progressive I, organized by the Faculty of Law, Diponegoro University in cooperation with the Doctoral Program of Diponegoro University and Faculty of Law, Trisakti University. Jakarta. Semarang, 15 December 2007, p. 18-19

³² *Ibid.*

³³ *Ibid.*

In order to realize a responsive law, it required progressive law. On the basis, Satjipto Rahardjo offers a progressive law theory. Progressive law is a law manner that is based on a concern that is not end to encourage better law. The foundation of progressive law is human, not a legal matter. According to Satjipto, a man who became the foundation of law must be good and conscientious and worthy to be capital in building a progressive law.³⁵ In changing circumstances and to free themselves from function crisis and legitimacy to law with *status quo* (which emphasizes rules and textual), progressive laws were based on a number of postulates progressivism, among others: (i) the law for people not vice versa. Law is a tool for people to give mercy to the world and humanity; (ii) Pro-people and pro-justice. The law must side with the people, and justice must be positioned over the regulation; (iii) the progressive laws aimed to brings the people into the welfare and happiness; (iv) the progressive law emphasizes good living as a law base; (v) the

progressive law is responsive, the law has always been linked to the objectives beyond the textual narrative of the law itself (in the form devoted to human and welfare); (vi) the conscience law; (vii) the progressive law is operated with spiritual intelligence, an effort to look the truth or the deeper values.³⁶

The concept of progressive law by Satjipto Rahardjo emerged of anxiety facing legal anxiety. In principle, the progressive law approach emphasizes the importance of individual legal bearers (judges, prosecutors, and police). At the same time the interaction between the political system and legal system in which the individual legal bearers work should also receive attention.

Satjipto states that “the law is not just the regulation building, but also the building of ideas, culture, and ideals.”³⁷ This criticism focused on the dominance of state legal thought as an

³⁵ Philippe Nonet & Philip Selznick. (2007). *Hukum Responsif*. Bandung: Nusamedia, p.. 83

³⁶ Bernard L Tanya. *Hukum Progresif: Perspektif Moral dan Kritis* dalam Moh. Mahfud MD, dkk. (2013). *Dekonstruksi dan Gerakan Pemikiran Hukum Progresif*, Konsorsium Hukum Progresif. Universitas Diponegoro dan Thafa Media (Yogyakarta), p. 39; See Satjipto Rahardjo. (2009) *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing.

³⁷ Bernard L Tanya, *Op. Cit.*, p. 39-40

instrument (law building) aimed at achieving the development goals (economic) state versions, which for Satjipto it is not reflect the building of ideas, culture and ideals of a man who becomes the object of legal and development thoughts. Therefore, the human (people) is considered a determinant and be law orientation. The law aims to serve human, not vice versa. The quality of law is determined by the ability to serve for the people welfare. Therefore, the progressive law has ideology: “law pro-people and pro-justice”. The law must realizes a justice (substantive) and not procedural certainty. Thus, in Indonesia as legal state is more rely on the “spirit” to achieve justice and it is sensed as *rule of moral* or *rule of justice*.³⁸

These criticisms are more focused on the procedure of law that operated by judge power, it means for law enforcement and not on process or substance of legislation making or its implementation—that prioritize procedure (*written rule*) and not for justice achieving. In prospective law, the law

is not absolute and bound to the rational, procedure structures in facing the concrete case, unless must manage conscience. In other words, the emphasis is on progressivity and partiality of judges over justice.

Integrity Law Enforcement

Integrity is not a word or term Indonesia, but comes from English, which means “*the quality of being honest and of always having high moral principles*”. Integrity can be interpreted simply as a concept related to the consistency in the actions, values, methods, measures, principles, expectations and various things produced. Integrity related to a clean moral, honesty and sincerity towards others and God Almighty.

KBBI online³⁹ defines integrity as the quality, nature, or the circumstances indicate a unified whole that has the potential and ability that exudes authority, honesty. In other words, integrity is always associated with people or other subjects such as agency/institution. But if we take into

³⁸ Satjipto Rahardjo. (2003). *Liberalisme, Kapitalisme, dan Hukum Indonesia* dalam Karolus Kopong Medan, Frans J Rengkas (eds), (2003) *Liberalisme, Kapitalisme dan Hukum Indonesia: Sisi-sisi Lain dari hukum Indonesia*. Jakarta: Kompas, p. 22

³⁹ Satjipto Rahardjo. *Mesian atau Kreativitas* dalam Karolus Kopong Medan, Frans J Rengkas (eds). (2003). *Liberalisme, Kapitalisme dan Hukum Indonesia: Sisi-sisi Lain dari hukum Indonesia*, Jakarta: Kompas, p. 16

consideration the meaning of integrity in the dictionary, we will find that integrity is also a mission or common goal to develop and grow. Integrity is expected to lead to a common goal to achieve the aspired.

In connection with law enforcement, integrity is related to the integrity of law enforcement officials. Law enforcement officials including the sense of the law enforcement agencies and officers. In a narrow sense, the law enforcement officials involved in the enforcement of law, beginning with the police, lawyers, prosecutors, judges, and correctional officers. Each related apparatus is also includes the parties concerned with the task or role, which is associated with reporting activities or complaint, investigation, prosecution, evidence, sentencing and sanctions, as well as the efforts of convict re-socialization.

In the process of law enforcement officials, there are 3 (three) key elements that influence, namely: (i) the law enforcement agencies and its various supporting facilities and infrastructure and institutional work mechanisms; (ii) work culture related to the officials, including the welfare of officials, and (iii) a set of regulations

which support both institutional performance or governing law materials used as working standards, both to material or procedural laws. Systematically, law enforcement efforts should pay attention to all 3 (three) aspects simultaneously, so that the law enforcement and justice system itself internally can be manifested.⁴⁰

To realize the integrity law enforcement officials, requires law enforcement officials are professional, competent, honest, and thoughtful. Law enforcement officials have responsibility to enforce law authority and justice. The professionalism of law enforcement can be seen from the level of mastery of legal knowledge, skill and personality of the law enforcement agencies in carrying out its duties and authorities in the work.

The law enforcement official called professionals, *the first*, ability to think and act beyond the written law without injuring the justice values. In enforce to justice, demanded ability of law enforcement officials to criticize the law and practice of law in order to find what it is supposed to do as a professional. *The second*, professional

⁴⁰ Source: KBBI Offline
<http://kbbi.web.id/integritas>

violation is never lost; but its development can be prevented. It should be noted, the quality of commitment depending on the ability to build positive *self-image* and become a reflection of the importance of *self-esteem* as a value. Awareness of the importance of positive *self-image* and *self-esteem* as a value will help a legal professional is not easy to trade his/her profession. That is, the expertise is not enough. Necessary virtue to be professional: dare to uphold justice. Consistency act fairly create a habit to be fair. *The third*, the virtue of being fair becomes apparent not only through a fair treatment of the public interest, but also through the courage to be *whistleblower* when occurs miss-practices profession. A professional should not let the unethical actions of colleagues. This part of the implementation of the task is not easy, but it must be done because the ability to be fair requires courage to practice, not just knowing justice.⁴¹

Law enforcement officials in its position and function of each are required to act with spirit in accordance with the ideals and the demands of

his/her profession. Integrity and professionalism are not born instantaneously, but are formed in the process of performing its duties and obligations in a good system. Franz Magnis-Suseno et al., suggests there are 3 (three) moral personality traits required of persons or holders of this noble profession (law enforcement officials), as follows:⁴²

- a. Dare to do with the spirit to meet the demands of profession.
- b. Aware of the obligations that must be met for performing his/her professional duties.
- c. Idealism as the embodiment of the meaning of “*mission statement*” for respective professional organizations.

Law enforcement is an effort to realize the ideas and concepts of law, which is expected by peoples, becomes a reality. Law enforcement is a process that involves a lot of things, including the law enforcement officials. According to Soekanto, law enforcement depends on several factors that can influence it, includes: (a) law of regulation itself; (b) officers who

⁴¹ Jimly Asshiddiqie, *Ibid.*

⁴² Quo Vadis” Profesionalisme Hukum? *Artikel Kompas*, 12 Agustus 2005, by Andre Ata Ujan.

enforce the law; (c) facilities that are expected to support the implementation of law; (d) citizens that affected by the scope of the rule of law; and (e) legal culture.⁴³

Law or regulation intended to achieve social change is a progressive law. Progressive law enforcement focuses on two things; the law exists for man and not man for the law there. Law cannot work alone; it requires the institution or person to move it. Humans are a *unikum*, so it no longer works as automatic machine that stay pressed a button. It is not only business rules or laws alone, but also about the role of humans or human behavior as part of the embodiment of law. Involving human role is way of law out of dominant stagnation to the text of legislation.

The main points of the progressive legal model can be described as follows:⁴⁴

1. The progressive law is intended to protect people towards the ideal of law.
2. The law denied a status-quo, and do not want to make the law as

the technology is not a conscience, but rather a moral institution.

3. The law is an institution that aims leads man to life fair, prosperous, and makes people happy.
4. The progressive law is “the law pro-people and pro-justice”.
5. The basic assumption of progressive law is for man, not vice versa. In this regard, the law does not exist for itself, but for something greater.
6. The law is always in the process to continue to be (*as a process of law, law in the making*).

Therefore, progressive law has the following criteria:⁴⁵ *First*, Have a great objective in the form of welfare and happiness of humankind; *Second*, include the humanitarian moral is very strong; *Third*, progressive law is the law that liberates vast dimensions is not only moving in the realm of practice but also a theory; and *Fourth*, critical and functional.

Progressive law enforcement is enforcing the law not just words and black-and-white of the rules, but according to the spirit and the deeper meaning of the statute or the law. Law enforcement is not only intellectual intelligence, but spiritual intelligence. In other words, law enforcement

⁴³ E. Sumaryono. (1995). *Etika Profesi Hukum (Norma-Norma Bagi Penegak Hukum)*. Yogyakarta, Penerbit Kanisius, p. 165.

⁴⁴ Soerjono Soekanto. (2008). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali, p. 8

⁴⁵ Satjipto Rahardjo. (2006). *Membedah Hukum Progresif*. Jakarta: PT. Kompas, p. 6

conducted with full determination, empathy, dedication, commitment to the nation suffering with courage of law enforcement officials to find another way than usual.

Facilities and infrastructure is also important in the view of law enforcement. Without the facilities or infrastructure, it is unlikely that law enforcement will go smoothly. Facilities include educated and skilled man, good organization, adequate equipment, financing, and so on. Facility has a very important role in law enforcement. Without the facilities or infrastructure, would not be possible of law enforcement official to harmonize the role as the actual role.

In terms of affected citizen of legal regulation, that law enforcement comes from community, and aims to achieve peace in the community. Therefore, seen from a certain side, then the public can influence law enforcement. Indonesian society has a great tendency to interpret the law and even identify with the officials (in this case law enforcement as individual). One result is that the good and bad laws continue to be associated with the behavior of law enforcement officials.

Basically, in term of legal culture, cultural/legal system includes the values underlying the applicable law the values are abstract conception of what good is considered and what bad is avoided. Value pairs that play a role in the law are: a) the value of order and tranquility; b) the value of physical/material and spiritual morality; c) the value of conservatism and novelty/innovative.

The presence of law as a system to optimize the integrity of law enforcement is inherent to social stability in a society. Integrity law enforcement may not easily affect social change due to the norms of law; factors of facilities and infrastructure, legal culture may also contribute to law enforcement. However, at least the commitment of law enforcement will reduce the complexity of the social problems that corrupt law enforcement is often wounded sense of justice.

Law Enforcement and Morality

Modern law according to Radbruch (1961:36) sustains 3 (three) basic values, namely, “fairness, expediency and legal certainty”. The basic values contained in the legal ideals that will lead humanity in a law

life. However, the base values are not always in a harmonious relationship with one another, but face each other, contradictory, tension with one another. Justice could collide with expediency and legal certainty, could collide with expediency demands of justice and the rule of law and so on.⁴⁶

Such things bring a lot of criticism on positivism as the rule of law in question is not the actual legal certainty but the certainty of the regulation, therefore justice is expected of law is justice that is not true anyway.⁴⁷

For that, law enforcement official should have 3 (three) options as a key role to play in upholding the law:⁴⁸

1. Law enforcement officials just as *la bouche de la loi* or *spreekbuis van de wet*, the rule of law is already clear, he only act as a regulation funnel, except where the application would cause injustice, contrary to morality, or in conflict with an interest common, or public order.

2. Law enforcement official acts as interpreter a rule of law that a rule of law can be an instrument of justice. This is done because the existing law is not perfect either language or regulated object is incomplete.
3. Law enforcement official became the creator of law (*rechtschepping*), in the case of existing laws do not adequately address or found to be a legal vacuum.

Gustav Radbruch have emphasized the ideals of law comes from justice. This is a sign that the law cannot be separated from moral demands. Where, the birth of law in the hope of justice to the people will be inversely proportional if the law is driven by a group of immoral individuals. Law is more value would be bland without the morality support of enforcers. So that there is a close relationship between law and enforcer's moral that will implicate on the realization of the formation of a legal goal.

The law became an integral part of law enforcement officials cannot be separated by time and space in peoples' lives. The law became rules adhered to by all levels of society, the law enforcement has two layers of binding rules in themselves, the rules governing law generally as a rule addressed to the

⁴⁶ *Ibid.* Satjipto Rahardjo. (2006). *Pancasila, Hukum, dan Ilmu Hukum*, makalah pada Seminar Nasional tentang Nilai-nilai Pancasila sebagai Dasar Pembangunan Ilmu Hukum Indonesia, UGM-Universitas Pancasila, p. 72

⁴⁷ Dharma Setiawan Pagar Alam. *Implikasi Globalisasi Penegakan Hukum Progresif di Indonesia*. Jurnal Keadilan Progresif, Volume 2 Nomor 1 March 2011

⁴⁸ Bagir Manan, (2005). *Sistem Peradilan Berwibawa*. Yogyakarta: FHUII Press, p. 10

public and the rules governing enforcers themselves, in this case referred to the code of conduct of law enforcement officials.

Moral and law enforcer's ethic is to be held with absolute honesty, fairness and wisdom that must be improved to set a rule of law can be implemented properly. So, that all forms of legal applications can be implemented optimally and professionally in order to organize the peoples' lives better and will obey the rules as the provisions of applicable law.

A concept of law taught man to do well and fair in decision-making, especially in court. Sulistyono,⁴⁹ revealed that to get a quality decision and reflect justice, judges must meet the requirements in accordance with Act No. 48 Article 27 paragraph (1): *First*, the judge must decide based on the law as a wise person. Each judges' decision is binding and final, in command of decision is prevail when knock the gavel of the judge, so that all matters to be decided by a judge cannot be denied and refuted by a variety of

dissatisfaction and perceptions that arise in that decision.

Thus, good law enforcement refers to the manner, performance or *moral-legal* style in its implementation. The implementation of law enforcement may be called good moral style, at least fulfill four conditions which include the legitimacy, account-ability, transparency and participation. *Firstly*, law enforcement was legitimate or consistent, so that the shortcomings and advantages will be predictable beforehand. *Secondly*, law enforcement implementer can be accountable. *Thirdly*, the process is not done in secret that may indicate collusion (*transparency*). *Fourthly*, the process is open to accommodate the communities' critical opinion (*participated*). These four prerequisites do not stand alone, one separated from others. *Predictability* will determine whether rules of law, collectively by an institution, agency or organization with the quality of bureaucracy, or individually by official have been implemented rationally and objectively as part of a normative system that has been built. Thus, truly be held accountable.

⁴⁹ Adi Sulistyono. *Menggapai Muara Keadilan: Membangun Pengadilan yang Independen dengan Paradigma Moral*. Jurnal Ilmu Hukum. Volume 8. Nomor 2. September 2005, p. 164-165

Community participation can only be fulfilled if something to a certain extent has been carried out in a transparent manner. Meanwhile, it is impossible *accountability* norms can be realized if the opportunity of community to participate is not opened. And, the norm of transparency is of no use, if it is not intended to allow community participation and demand accountability. Community participation cannot be done without transparency. Accountability is difficult accomplished without monitoring and public participation in the process of law enforcement. The lack of clarity and transparency in the process of law enforcement, making the public always filled with questions, whether it is true that the public interest is always prioritized. For that community's ability to be improved (*empowering*), public confidence should increase and its opportunity to participate enhanced.

CONCLUSION

Law and community cannot be separated, for law the community is a resource that gives life (*to nature*) and move the law. The communities live the law with the values, ideas,

concepts. And also contribute the community to implement the law. The role of law in social change is highly dependent on the apparatus, upheld laws, and the community as a subject of the law enforcement. Components of law enforcement officials who are expected to move social change are integrity, respected and honest enforcers. Therefore, integrity law enforcement as an instrument of social change can only be achieved if the integrity of law enforcement officials, progressive law, and community support as subject of law enforcement. So, it's safe to say that, "*Good law enforcement agencies are not born but made*".

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