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Implementation of Civil Desicions in State Court and Various Execution of Indonesian Citizens (The Implementation on Sosiological Point of View)

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ABSTRACT

There are still many things that cannot be implemented on decision of Pengadilan Negeri (State Court) because it is considered not only accordance with the values justice that lives in the community but also creates a sense of justice. The purpose of this study is to point out that sociological approach needs to be implement in PN, according to the theory that community acceptance where the law is enforced, is one of the an indicators there must be recognize by community based on the value of justice that grows and develops in life in society. Whereas according to the theory of Power, sociologically the legal method applies the coercion of the authorities, regardless whether it is accepted or not by the community, with the indicators of coercion by the authorities regardless of whether obedience is due to coercion or not, and does not matter whether or not there is legal awareness that arises in society, as well as whether or not in accordance with the value of a sense of justice in society, of the law that applies to citizens. The method used in this research is descriptive method by document, and interview analysis. The result of this study, showed that in society, based on observations, excesses arise as a result of the implementation of PN decisions that do not reflect sociological enforcement, including (1) Community disobedience to the law in force. (2) Loss of public respect for the judiciary. (3) People tend to find their own way in solving problems outside the legal channels. (4) Horizontal conflict occurs in the community.

Keywords: Civil Decisions, Sosiological, State Court

INTRODUCTION

The Republic of Indonesia is a state based on law based on Pancasila and the 1945 Constitution. Furthermore, Indonesia's statement as a "rule of law" was reaffirmed in the Elucidation of the 1945 Constitution which said that the Indonesian state was a state of law (*rechtstaat*) and not mere power (*machtstaat*). This implies the consequence that all actions taken by the state apparatus and Indonesian citizens must always be based on the law (*Tresna*). The rule of law, according to Rahardjo, (1986) and Manan (1999), has the meaning of power that is limited by law and at the same time states that law is supreme compared to existing instruments of power.

The above shows that the teachings of the state based on the law (*de rechtsstaat* and the rule of law) contain the essence that the law is supreme and the obligation for each state or government to comply with the law (subject to law). There is no power above the law (above to the law). Everything is under the law (under the rule of law). In this connection there cannot be arbitrary power or misuse of power. Therefore state teachings based on the law contain elements of supervision over power so that there is no arbitrariness (Manan, 1999).

As a rule of law, everything that is carried out in the life of the state and society must be within the corridor of the law. That is, in society absolutely necessary law to regulate the relationship between citizens and the relationship between the community and the state.

The law regulates what may and may not be done, or what procedures must be passed, where the sanctions imposed by society for individuals who cannot adjust are strict. The creation of the law is in line with the natural desire of humans to obtain or obtain justice in a shared life as a member of the community, so as to create order and order in a social order (*social order*).

The search and process of justice for the people who need it is left to certain authorized institutions. The court is one of the focuses in resolving disputes between various parties. The court functions as an institution that accepts, examines, and hears and resolves every case submitted to it. The case starts

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with an examination and ends with a decision. However, with the dropping of the church, the problem is not over. This decision must be implemented or carried out.

Decisions of District Court (PN) judges can be carried out or carried out if they have obtained permanent legal force. This means that both the plaintiff and the defendant have accepted the decision well and what needs to be carried out is the decisions of the judge which contain an order for a party to commit an act (Mertokusumo, S., 1993).

PN decisions that have permanent legal force, which are punitive, must be accepted by various parties. Because it has been given the opportunity to take legal action, both resistance, appeal and cassation from various parties, and it is also possible that the parties did not take legal action which means they have received it. Then the consequences, especially to the losing parties, must be carried out or realize the PN decision voluntarily. But if the losing party does not want to carry out voluntarily, then it can be done by force by execution. Thus, in general the execution will be a problem if the losing party is the defendant (Harahap, M.Y., 1991).

With the judge's ruling, the losing party (executed) feels disadvantaged, or even indeed harmed, so that the loser can make legal remedies that are entitled to claim their rights with extraordinary legal remedies in *verstek* cases. The extraordinary legal remedies are, in general, carried out with due regard to matters not shown to the verdict to be executed, but only to the field of implementation or the reasons carried over in that field.

The objectives of extraordinary remedies against execution are: (1) To delay; (2) Cancel the execution by stating the decision to be executed is not binding; and (3) Reducing the value of the amount to be executed. But in practice, legal remedies as an objective of the resistance are carried out by the losing party in a way that is outside the law. For example by mobilizing certain community or community institutions / organizations that are already known and can provide services to obstruct the execution that has been decided by the PN.

Apart from these extrajudicial resistance efforts, it is not uncommon to be caused by PN decisions that do not meet the sense of justice that lives in the community. In that context, executions carried out, for example by bailiffs, only fulfill the juridical element. While the sociological element is lacking or not fulfilled, because the community thinks that the PN decision is unfair and does not comply with norms or rules that apply unwritten in the middle of the community.

On the other hand, as mentioned above, besides only the elements of *jusridis* which are fulfilled, it turns out that based on the author's observations, often the execution of decisions that already have legal force cannot or postponed their implementation and if the execution decision is postponed it will result in losses and it also shows no the existence of legal certainty and legal protection for parties who legally won the case. In fact what happens is negative excesses such as legal regulations that cannot be implemented and enforced, people do not respect the law and people no longer trust the law.

Another negative excess is that even if the execution can be carried out, it is accompanied by various acts of violence from the defeated party. Even people who are provoked are not uncommon to confuse the atmosphere and not only bring about property losses, but also lose lives. Difficult to realize the decision of the implementation of PN in the field to be carried out execution, even though it has obtained permanent legal force, occurs in cases of civil, criminal, and state administration.

Cases that often occur in civil cases such as inheritance cases (examples of cases of land inheritance claims on Diponegoro street, Bandung, West Java or examples of cases involving elementary school inheritance lawsuits in Tasikmalaya, West Java); divorce cases (examples of divorce cases between Bambang Trihatmodjo and Halimah in Jakarta), and so on.

Cases that occur in crimes, for example the case of execution of confiscation of property which is decided by the PN and is the result of corruption in the case of Gayus Tambunan. While cases in state administrative matters, for example the case of housing, villas, and the like construction in the Cianjur Regency, West Java, are prohibited by Regional Regulation because they violate spatial planning and without Building Construction Permit (IMB), but the demolition execution cannot be carried out because the owner has access to power in the Center (Jakarta).

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The series of various PN decisions that could not be executed finally gave a strong impression that legislation is difficult to implement and the law is also difficult to enforce. This fact is contrary to the saying in the famous field of law, namely: "Let the sky fall, the law, must be upright".

Based on this fact, to see the effect of sociology, can be seen through the means of empirical research on community behavior. If the research shows that the public behaves with reference to the whole rule of law, then there is an empirical rule of law. Thus, legal norms reflect the reality that lives in society. With this sociological basis, laws and regulations are made and accepted by the community in a natural and even spontaneous way.

It is better if the sociological ineffectiveness or ineffectiveness can be reviewed through empirical means regarding the behavior of people who do not behave in accordance with the existing legal norms, then there is empirical enforcement of the rule of law. Thus, the norm or rule of law does not reflect the reality that lives in society.

RESEARCH METHOD

The court's verdict is a judge's statement made at a hearing that is open to the public in order to settle and end a civil case (Syahrani, 1988). The definition of "judge's decision", according to Hamzah (1986), is the result or conclusion of a case that has been carefully considered in the form of a decision, both written and oral.

Meanwhile, according to Mertokusumo (1993), a judge's decision is a statement which the judge, as a state official authorized for, is pronounced at the hearing and aims to end or settle a case or dispute between the parties. Furthermore, Sudikno Mertokusumo states that judges' decisions are not only what are called what are called verdicts, but also statements that are stated in written form and then pronounced by judges at court. A draft decision (written) has no power as a decision before it is pronounced in court by a judge (Mertokusumo, 2003).

From the various meanings regarding the "judge's decision" above, it can be concluded that the judge's decision is the final conclusion that has been carefully considered as outlined in written form, then uttered in a session open to the public by the Panel of Judges who are authorized to do so in resolving or ending a dispute between the parties concerned.

Decisions of District Court judges can be carried out if they have obtained permanent legal force. This means that both the plaintiff and the defendant have accepted the decision well and what needs to be carried out is the decisions of the judge that contain an order to a party to commit an act (Mertokusumo, 1993).

Decisions of court judges who have obtained permanent legal force, which are punitive, must be accepted by the parties. For example, in a court decision for a civil case, if the parties do not accept the court's decision, then the party is given the opportunity to take legal action, both resistance, appeal and cassation. However, if those parties do not take legal action, it means they have received it. Then the consequences for the losing party must be carried out or realize the decision voluntarily. But if the defeated party does not want to carry out voluntarily, then it can be done by force by execution (Harahap, 1991).

In principle, execution as a forced act of carrying out court decisions that have permanent legal force (Harahap, 1991). The choice of law with a forced action was made because in reality it was rarely found that court decisions were carried out or realized voluntarily by the defeated party, even though they had obtained permanent legal force.

In the case of court settlement, the procedure must be in accordance with the provisions of the civil procedural law. Civil Procedure Law is a regulation that regulates how to ensure compliance with material civil law by the judge. In other words, Civil Procedure Law is a legal regulation that determines how to guarantee the implementation of material civil law. More concrete about how to file claims for rights, examine and decide, and implement than the decision (Anonim, 2009).

Judges in deciding cases, as mentioned above, must be free and independent, as stated in the 1945 Constitution which states that judicial power is an independent power to administer justice to uphold law and justice. It was further stated that judicial power was exercised by a Supreme Court and the judiciary

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below it within the general court, religious court, military court, state administrative court, and by a Constitutional Court (Soekanto, 1993).

Law Number 48 of 2009 concerning Judicial Power also mentions the freedom of judges to decide cases. However, "the freedom of judges", according to Harahap (1991), should not be interpreted as unlimited freedom by emphasizing the arrogance of power attitude by using the freedom to justify any means. But this freedom is relative, with the following references:

First, applying the law that is sourced from the right and correct legislation in resolving case cases that are being examined, in accordance with the principles and statutes of the law must prevail.

Second, it does not depend on anything or anyone, and therefore is free from any or anyone's influence. Judges or judges, which are places for people to seek justice, must be independent and independent, in the sense of not being dependent or bound to anyone, so they do not have to side with anyone so that the decision is objective. Independence also requires that judges in examining and deciding cases must be free. Thus, the independence of judges can't be separated from the freedom of judges, but it is a unity.

Third, it is not only ideals and desires for every nation, but is a principle or principle in every justice system, because the principle is the embodiment of human ideals. Every justice system everywhere knows and adheres to the principles of independence and freedom of judges or the judiciary.

RESULTS AND DISCUSSION

Decisions of judges that have been handed down, as described above, must then be implemented so that judges' decisions based on the laws and regulations have the power to be enforced effectively. The strength of the enactment of legislation, according to Rahardjo (1986) and Mertokusumo (1993), there are three kinds, namely as follows:

First, the force applies philosophically (*filosofische geltung*) which states that law has the force to apply philosophically if the legal method is in accordance with the ideals of the law (*rechtsidee*) as the highest positive value. To fulfill the philosophical demands, the law must incorporate the ideal element. Second, the force applies juridical (*juristische geltung*) which states that the law has the force of juridical effect if the material and formal requirements for the formation of the law have been met. Third, the force applies sociologically, according to Soekanto (1993) and Mertokusumo (1993), is a reality in society. There are two kinds of forces that apply sociologically to society, namely: (1) Theory of Strength or *Machtstheorie* in which law has power to apply sociologically if enforced by the authorities, regardless of whether the community is accepted or not; and (2) Theory of Recognition or *Anerkennungstheorie* where the law has sociological force if accepted and recognized by the citizens.

Regarding Sociological Enforcement in the Implementation of Court Decisions. Sociological validity based on Power Theory holds that positive law that gets legitimacy in society through formal institutions in achieving the legal goals provided by the state, such as courts, prosecutors, the police, and so on, regardless of whether the jurisdiction is based on compulsion because of fear of power, or because of lack of legal awareness or other causes.

The meaning of "social validity" according to the Power Theory above does not consider the aspects of sociological validity, but rather emphasizes the aspect of power. In this case, the power of legislators, such as between the DPR (the House of Representatives) and the Government or between the DPRD (the House of Representatives) Regional) and Regional Government, so it is not impossible to ignore the sense of community justice and community legal awareness.

Regarding justice, according to Huijbers, (1990), it must be closely intertwined with the law. Laws are fair laws; if a law (law) is contrary to the principles of justice, then the law is no longer normative and cannot be said to be law anymore. The law only becomes law if it meets the principles of justice. In other words, justice is a constitutive element of all notions of law.

Meanwhile, regarding the legal awareness of the community can't be separated from the discussion about compliance or public observance of the law. Real behavior is manifested in legal compliance, but this does not automatically mean that the law has public support. Community support can be obtained if legal compliance is based on satisfaction, because satisfaction is the result of achieving desire and

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justice. In other words, the law will get community support if the law is in accordance with the values that grow and develop in society.

Legal awareness is often associated with legal effectiveness. In other words, legal awareness concerns the issue of whether certain legal provisions really function or not in society? The relationship between legal awareness and legal compliance can be described in a hypothesis, namely high legal awareness raises compliance with law; while low legal awareness results in non-compliance with the law.

Meanwhile, sociological validity according to the Theory of Recognition relates to the people's acceptance of the laws and regulations. If the laws and regulations are derived from the wishes of the community, it will have implications for the community's recognition of these laws and regulations, so that acceptance and recognition will lead to effectiveness in their implementation. Conversely, if the laws and regulations are not derived from the wishes of the community, it will have implications for the community's rejection of these laws and regulations. The community's rejection shows the ineffectiveness of the implementation of laws and regulations.

In the implementation of court decisions must reflect the demands of the community's need for legal norms in accordance with community legal awareness, so that it can be applied sociologically (sociologische gelding). That means reflecting the reality of life in society, which requires resolution, so that the implementation of court decisions obtain sociological validity. This also means that the implementation of court decisions has sociological validity, not just obtaining juridical and philosophical validity.

In the context of obtaining sociological validity in the implementation of court decisions, one way for judges to formulate and explore living values among the people (community) must try to "plunge" into the midst of society with the aim of getting to know, feel, and able to explore the feelings of law and a sense of justice that lives in the community. It is hoped that, by using this method, the judge can make decisions in accordance with the law and a sense of justice that lives in the community.

The distinctive characteristic of a judge's decision that fulfills a sense of community justice can be seen from the community's reaction to the judge's decision in question. Even though there are those who are not satisfied with the verdict that fulfills that sense of justice, but the verdict of such a judge will certainly never get turmoil in the field. Because deep down, those who are dissatisfied actually accept and understand the truth of the decision.

Sociological behavior in the implementation of court decisions also implies that the law must be returned to its morality, cultural roots, and religious roots, because only in this way will people feel that the law is compatible with the intrinsic values they profess. As long as the rule of law is not in accordance with the intrinsic values of the citizens, the legal obedience that arises is merely compliance which is compliance, which is obedience only because of fear of sanctions, and not compliance that is internalization, which is obedience because it truly considers the rule of law to be suitable with intrinsic beliefs. Concerning excesses arising from the implementation of district court decisions that do not reflect sociological applicability.

The judiciary, which should be the last fortress to obtain justice, is often unable to provide the desired justice, in accordance with the principles of free and impartial judiciary. This did not materialize because in carrying out their duties, the judge sided with one of the parties having a case, not the truth and justice. In fact, free and impartial justice must absolutely exist in every country that claims to be a state of law, such as the state of Indonesia. In carrying out their judicial duties, judges must not be influenced by anyone, either because of the interests of office (politics) or the interests of money (economy).

In addition, in determining judgments and making decisions, judges do not live up to the values of justice that live in the midst of society. Judges should not only act as the "mouth" of laws or regulations, but also "spokesmen" for justice that voice feelings of justice that live in the midst of society. As a result of judges not acting so, many of the judges' decisions get blasphemous community because it cannot fulfill the sense of justice of the community.

Every society always has a culture that is an individual characteristic of its members collectively, one of which is a legal culture, namely an understanding of the norms or values that live in everyday life, both written and unwritten, which apply in society and is a reflection of the collective will of its members which is a good and bad measure of a legal act and a mirror of the sense of justice of the community. Therefore,

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every judge who hears a case is always required to explore, follow, and understand the legal values and a sense of justice that lives in the community as determined by article 5 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power.

The next excess of the lack of sociological validity in relation to the implementation of judges' decisions is obedience or compliance with the law which is influenced by community legal awareness. If the legal awareness of the community is low, it results in non-compliance with the law. Conversely, if the community's legal awareness is high, then the community's record of the law will also be high.

High public compliance with the law will in turn make the law effective which is posited by state power. Therefore, compliance is not always based on the strength of positive legal sanctions that exist. People's willingness to voluntarily obey the law is also an important prerequisite in law enforcement. Without a willingness to voluntarily follow what is ordered or prohibited by law, there will be no sanction as hard as anything that can fully control the subject's behavior. There are always gaps and opportunities, however small, that someone will use to avoid (with all calculated risks) from legal control. Willingness to obey the law is also a deciding factor for sociological application of law.

The next excess of the implementation of court decisions that are sociologically ineffective is the loss of respect and trust in the judiciary, including the judges, which have lately been virtually non-existent. So that people no longer optimally submit legal issues to the court. Except, if there is a guarantee that the legal system can run properly, then it can be pursued by law. If there is no guarantee or guarantee that the legal system can be implemented, an alternative channel must be sought to resolve disputes experienced by the community; because the completion of the dispute will be detrimental to all parties, especially those who are legally won by the judge.

At least the losses suffered by the parties won by the court's decision include time and material. Another disadvantage that is more severe is the lack of consistency in the application of regulations by court officials. This can be witnessed by the people in plain view as a result of unprofessional law enforcement officials who disappoint the people. All of this further degrades the image of law enforcement which, according to Friedman, (1975), (1984), and (2011) is influenced by the legal structure; legal substance (legal substance), and legal culture (legal culture).

Lawrence Friedman further mentioned three factors that influence law enforcement. First, the legal substance factor, what is meant is the rules, norms, real patterns of human behavior that are in the system. Substance means the products produced by people who are in the legal system, which includes the decisions they issue and the new rules they draft. The substance also includes living law and not just the rules in the law.

Second, structural factors, in this case, are the parts that persist, the parts that give some form, and the limits to the whole. In Indonesia, for example, when talking about the structure of the Indonesian legal system, it includes the structure of law enforcement institutions, such as the police, prosecutors and courts. Also included are structural elements, the number and type of court, the jurisdiction of the type of case authorized to be examined, and how and why it happened. Clearly, the structure is like a still photo that stops motion.

Third, cultural factors, in this case human attitudes and legal systems, beliefs, values, thoughts and expectations. In other words, legal culture is a state of mind that determines how law is used, avoided, or misused. Without legal culture, powerless laws are like dead fish lying in a basket and not like fish that live in the sea (Friedman, 1975, 1984, and 2011).

In brief, other ways to describe the three elements of the legal system are as follows: (1) The structure is likened to a machine; (2) The substance is what is done and what is produced by the machine; and (3) Legal culture is anything or anyone who decides to turn on or turn off the machine, and decides how the machine is used.

Apart from the three influential elements in law enforcement, as outlined by Lawrence Friedman above, in the context of law enforcement, which must always be considered is justice, legal usefulness, and legal certainty (rechtssicherheit) (Friedman, 1975). Because, in a good law is if it contains the values of justice for all people and benefits, in addition to the community expects legal certainty. Because with the existence of legal certainty, the community will be more orderly (Rawls, 1999).

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Normative legal certainty is a rule that is made and promulgated with certainty because it regulates clearly and logically. Clearly in the sense of not causing doubt (multi-interpretation); and logical in the sense of becoming a norm system with other norms so that they do not clash or cause norm conflicts. Conflicts of norms arising from rule uncertainty can take the form of norm contestation, norm reduction, or norm distortion. Thus, legal certainty is not in a vacuum, but in a space surrounded by various factors that influence the weakening or strengthening of legal certainty in resolving disputes.

In addition, other excesses that have been raised by PN (District Court) decisions whose social conduct is not in line with the growing sense of justice in society are the absence of legal protection for various parties. Though the law has a function to provide protection for the interests of various parties without exception. Therefore, legal protection must be implemented so that the interests of various parties can be protected.

CONCLUSIONS

Based on the description above it can be concluded that the sociological effect in the implementation of the District Court's decision, according to the Theory of Recognition, is the rule of law that applies based on community acceptance where the law applies. Thus, the measure is sociologically the measure is community recognition based on a sense of justice that grows in the community. On the contrary, according to the Theory of Power, sociologically, the rule of law applies because of coercion by the authorities, whether accepted or not accepted by the community. Thus, the sociological validity of the measure is the coercion of the authorities which in its form prioritizes sanctions without considering the sense of justice of the community.

The excesses that arise as a result of the implementation of the District Court decisions that do not reflect sociological applicability, namely: (1) loss of public respect for the court institution; (2) community disobedience to law; and (3) people find their own way in solving problems outside the legal channels.

Based on the conclusions above, it can be suggested that sociological behavior in court decisions pronounced by judges should consider the sense of justice that lives in the community, so that such decisions will reduce the negative excesses that arise from court decisions that are solely based on text. Contained in the Act. As for reducing the negative excesses above, the court institution should restore the court's authority so that the decision applies sociologically, in addition to being legal and philosophical, by making decisions that are acceptable or recognized by the public, so that people obey the law and resolve problems stay in the legal channels.

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