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THE PARADOX OF POSITIVISTIC VIEW AND PROGRESSIVE LAW OF CRIMINAL LAW ENFORCEMENT IN INDONESIA

ABSTRACT

The paradox of positivistic view and progressive law in the criminal law enforcement happened because there is a difference among the law enforcement officer's view and perception. Our law education from the beginning until now still teaches the students the positivistic view so that after the students becoming law officers in running the law they still use positive law or positivistic view. The positivistic view is often far from the substantive justice and close to the formal justice. In order to functioning the progressive law in law enforcement especially the penal code constraint of positivistic view which rooted inside of the law enforcer's mind, therefore it is need paradigm change by fixing the law system, law education, ethics and morality of law officers, and increasing religious consciousness.

Keywords: paradox, law positivism, progressive law, criminal law enforcement

I. INTRODUCTION

Background

According to Article 1, paragraph (3) 1945 constitution, Indonesia is a law state, but at the implementation it have not been reflect the law state, even in the execution there are law officers who contrary to the law when they are doing their duty.

Crime is always there, we might not possibly be separated from crime. Crime is a form of deviant behavior that always exists. Crime as a social problem is not only an issue for a particular society but also a problem across the world. Crime is constantly evolved along to the development of society. The progression of crime will always be accompanied with the development of the law.

Talking about the criminal law enforcement cannot be separated from crime countermeasures. The policy about crime prevention can be through the penal and non penal. The policy of crime prevention using penal efforts bears the term of Criminal Law Politic or Criminal Law Policy. Criminal law as a means of crime prevention, it appears with the enactment of criminal law. Criminal law includes the scope of policy in the substantive field of criminal law, in the formal criminal law, and criminal law enforcement. Criminal law policy generates criminal law reforms.

The inception of the law followed with the implementation by law enforcement officials. However, it frequently occurs which mentioned in the Law are inconsistent with public sense of justice. Law enforcement agencies in particular the judges hold fast to the text of the Law so that rather as mouthpiece of the Law. For example is Mbok Minah case who stole 3 pieces of mature cacao belongs to PT Rumpun Sari Antan IV the plantation company. This fact was certainly contradictory and ironic than Ayin case that are in prison with the "luxury room", and different from another case of Subandrio a lifetime convict of September 30th Movement of PKI case who got remission getting out of prison before the penalty completed. Each case has a "privilege" from the point of view of positivism and progressive law.

Formulation of the problem

Based on the background of the issues mentioned above, the existing problems formulated as follows:

1. How criminal law enforcement in Indonesia?
2. How to reform of criminal law enforcement the future?

II. DISCUSSION

Definition of Paradox

The paradox in this paper is the view contradictions between positivistic and the progressive law in enforcing the criminal law. The law should serves as a protection of human interest, but the fact is law enforcement agencies in carrying out their duties often adhere to the rules that contrary to public sense of justice. The paradox etymologically is the opposite of the principle,

while the principle is the fundamental or a basic of mind underlying the establishment of the rule of law. The rule of law is used as a guide for all law enforcement officers in the form of all kinds of regulations contained in the laws.

Definition of Positivistic

Positivistic outlook or law positivism in this paper is a stream which states the law only captured as juridical rules. Regarding the contents or law materials, is not an important issue. It became field of another scientific study and not the field of the law science. Law science is only dealing with the fact that there is the rule of law that created by the state and therefore should be obeyed. If it does not be obeyed, would be penalized. The law is not an issue of fair or unfair and it is not a matter of relevant or irrelevant to the real world struggle. The only relevant when talking to the law is it's exist and have validity juridical. According to Austin law was got a form of the positive from authorized institution, the law justification is in terms of its legalistic formal, either as a form of authority orders (Austin version) and Grundnorm derivation (Kelsen version) (Tanya, et.al., 2010: 116). For this stream the essential in studying the law is the form juridical, not the quality of the content. The content of law material is an area of non-juridical studied by other disciplines.

Definition of Progressive Law

The Progressive law starts from the basic assumption that law is for the humans, not the opposite. Progressive law does not accept the law as an institution which absolute and final, but largely determined by its ability to serve mankind. Progressive law tradition of analytical jurisprudence reject or rechtsdogmatiek, and share understanding on streams such as: legal realism, freirechtslehre, sociological jurisprudence, interessenjurisprudenz in Germany, natural law theory, and critical legal studies. Progressive law is a correction of the weaknesses of modern law system which is loaded with bureaucracy and wants to free themselves from the domination of a liberal law types. Progressive law against the idea that order is only works through state institutions. Progressive law intended to protect people towards the ideal of law and reject the status quo and does not want to make the law as a technology that is not conscience, but instead a morally institution (Rahardjo, 2009: 1).

Definition of Criminal Law Enforcement

Law enforcement is a process to realize the desires of law into reality. The desires of law were the legislator's thoughts which formulated in the regulations of law. Law enforcement is also reaching out to the rule making. The formulation of lawmakers thought that poured in the rule of law would also determine how the law enforcement was executed. In fact, the process of law enforcement is culminating in the execution by law enforcement officials (Rahardjo, 2011: 24).

The criminal law enforcement policy is a set of processes consisting of three stage of policy.

First, the stage of formulated policy or legislative policy stage of, that is stage of drafting/formulating the criminal law. Second, judicative policy stage/applicative is the stage of criminal law enforcement. Third, policy stage of the executive / administrative that is stage of implementation/execution of the criminal law. The first phase (legislative policy) is the stage of enforcement “in abstracto” while the second and third phase (stage of judicative policy and executive) are the stage of enforcement “in concreto” (Nawawi Arief, 2012: 10).

The three stages of the criminal law enforcement policy contains the three power or authority, that are the power / legislative authority to formulate or define acts as acts that can be punished (criminal offense) and criminal penalties, the power / authority of application of the law by law enforcement agencies, and the power / authority to execute or implement the law concretely by the authorities / competent institutions.

Criminal Law Enforcement in Indonesia: Paradox Positivistic View and the Progressive Law

Mbok Minah case shows how positive law or positivism had fetter the judge’s mind. They could not to come out from legality principle, in order to apply the legality principle then appears the decision of a criminal trial for Mbok Minah. That is later appeared the public response stating that the judge was unfair. Justice defeated by authorities, there is dominance between the rich against the poor, and so on. This would not be happened if the judge considered the precepts of humanity and justice in its legal considerations that could acquit the defendant. But this will not occur as long as the judge has a positivism minded, or guided by the article (text). In this regard, Yusriyadi argued: “Enforcing the rule is to enforce laws, so how arbitrate also often referred to the implementing of laws. Here, people should not think far away except reading the text and the logical implementation. In working out of science, it should be likened to draw a straight line between two points. The first point is the laws (concreted as article and paragraph), and the other point is the fact that happened. Everything can run linearly, so that the implementation of law science and primarily the legal practice, the law enforcement officers like an automatic machine which Van Apeldoorn described as a *sumptie uutomaat* (Yusriyadi, 2012).

Following the opinion of Gustaf Radburch that any implementation of Law into the society relying on three (3) legal basis values. They are certainty of law, justice and expediency. Each contains different demands, where each other has the potential to contradict, for example: value of legal certainty will override the value of justice and expediency (Rahardjo, 2006: 19). This happened in the case of Mbok Minah above to pursue legal certainty then the justice disregarded.

The case of Ayin greatly makes people embarrassed when discovered that she can “buy” prison room to “luxury room”, people are annoyed but more annoyed when Ayin got parole. Parole to Arthalyta Suryani alias Ayin has hurt the public’s sense of justice. It is a bad precedent for the eradication of corruption. This is a bad impression for the public. As though it seems that the government defends the corruptors. It is ironic indeed Corruption Eradication Commission struggled to process the perpetrators to court and eventually convicted, but the Government in

this case Minister of Law and Defense actually reduce the penalties and released perpetrators. Ayin parole is an order of the Criminal Code of Law Article 15. Similarly, according to Article 14 of Law 12 of 1995 regarding Penitentiary every prisoner gets 13 kinds of rights, including remission and parole. This showed that positivism has not been able lost in law enforcement, especially the criminal law.

In contrast to this case is the case of Subandrio convicted for life that can get out of prison before his punishment Cipinang discharged. At that time Muladi as Minister of Law and Defense Subandrio has released by humanity consideration, because the bad medical condition of convict, on humanity consideration then Subandrio a lifetime free from of criminal. Subandrio exemption does not exist in written rules that can be used as legal basis. Even according to the provisions of Article 7 of Decree No.5 of 1987 on Remission, convicted for life could not be given a reduction in the time to undergo of criminal (remission) before it was changed into temporarily criminal. Here, according to the author there has been breakthrough the laws (rule breaking). That is liberation from doctrines and principles of law which well established, because the aim of rule for the humans.

Rule breaking is main concept of progressive law. Progressive law does not enforce the regulations like spelling but seeks to understand the meanings contained within it (Susanto, 2005: 14). In the progressive law running of law is not only syllogisms and ratio but also with concern, feeling, honesty and bravery.

Pancasila is a guidance principle in the establishment and law enforcement. As the guidance principle Pancasila should get first and primary place. The four guidance principles that should be guidelines in establishment and law enforcement in Indonesia, according to Mahfud MD are:

1. Law should protect all the people and ensure the integrity of the nation and therefore should not be any law that sows the seeds of disintegration.
2. Law should ensure social justice by providing a special protection for the weak in order not to exploit in the free competition against Law State.
3. Law must established democratically and build democracy in line with the monocracy (Law State).
4. Law should not discriminative based on any primordial ties and should encourage religious tolerance based on humanity and civility.

The four guidance principles are very ideal in practice is only figment and very difficult to implement. It is difficult to be implemented because since the created of the law was already not value free. It has been loaded with political charges and interest. The law that is formed is the result of the agreement who "ruling" so that in working of the law is not free from value but constructed by the social actors. How the law enforced is depends on how the perception of social actors about the law.

In a complex society ever since the law making the power structures influences had already

been working. In making those who benefited from the law are the richer and their factions in the community who are active in politics (Chambliss & Seidman). The leaders of company (CEOs) of large enterprises will enjoy their success in bringing forth the legislation that benefits them. The contrary the interests of ordinary people will be marginalized or less attention (Rahardjo, 2006: 65).

Ironically, when it has become legislation, a law which was originally the result of the deal “of the authorities” turned out to hold onto by law enforcement officers without looking at the social setting which gets the law. Law is generalized as a result substantive justice could not be obtained from law that implemented as the text sound only.

Satjipto Rahardjo said that: Law enforcement is not a stand-alone activity, but have a close reciprocal relationship with the community. Therefore, in discussing the law enforcement should not be ignored about the discussion of the structure behind it (Rahardjo, 2006: 31).

Law has never operated in a vacuum state of the environment. The process of mutual entering between the law and environment is always happens. Law works through humans; it is clearly that the role of environment on the law life of a nation.

Even though the law, the legal system and rule of the law based on the principle of equality, but there is always a group that obtaining a higher place from another factions in society. This is caused by discriminative structure from society, because in each class of its own the law treats members of the group were the same, then discrimination only occurs between the factions of and it is not outside the group (Soemitro, 1984: 71). This can be seen in the case of Arthalyta Suryani that can buy a luxury room in prison. She purchased but precisely the correctional officer be sanctioned while she just moved to Cipinang Prison. This shows that discrimination is actually there. However, for the case of Mbok Minah based on the legal positivism unable to free up from bondage of the law, though only conditional convicted, but even this conditional punishment would be hard for Mbok Minah when she had required to report to BAPAS, especially when in the conditional convicted there is no BAPAS retrieve that BAPAS not always available in each District / City. Someone who is poor will get poorer when he or she comes to prepare weekly cost to compulsory reporting. Justice began to be questioned its fair? Why judges did not release it, because with the release of an impoverished will be more meaningful when compared to criminal conditional. Judge would talk another decision if the judge minded is not positivism.

According to Satjipto Rahardjo, “the law positivism openly assumes what determined by the competent authority is the right law (formal validity), the truth does not depend on the sociological fact, in history or political interests. Law only becomes fair that is capable of functioning neutral and impartial. Here the effect of finality, the law, justice and truth are identical with what is laid down by the authorities as the law, justice and truth. So, there is absolutely no other definition of justice than what was written in law (Rahardjo, 2009: xii).

Barda Nawawi Arief argues: “It is ironic, in country that believes in God the almighty but the student of law and the law enforcement officials only know about justice based on” guidance of

laws “, and had no idea of justice by “God’s guidance of”. The justice of Pancasila means trusting God’s justice, humanity justice, nationalistic justice, democratic and social justice, not merely a formal justice (Nawawi Arief, 2012: 34).

Furthermore Barda Nawawi Arief added that: “One of the weaknesses / deficiencies in the study of other strategic law science (criminal) in Indonesia is the study of positive criminal law more focused on the science of norms (positive) not on the study of (about) the value of / ideas the arrangement of national life / society that should expected. That is law that has character of national legal culture value. Thus scientific approach is not impossible produced by a partial thought of separating the science of norms with the science of value whereas both of them could not be separated. The study focused on the science of positive law (legislation) was the result of curriculum strategy which partial, not integral. The view of this criminal law science as a positive law science is reasonable producing positivistic way of thinking (normative in the narrow sense). But if you look at it from the political point of criminal law (how to make criminal law) is certainly the point of contextual (Nawawi Arief, 2012).

Talking about justice, it cannot be separated from discussion of Pancasila. Pancasila as *Rechtsidee* would need to be considered by the judge to taken into consideration when deciding a criminal case. Answer all these things, progressive law that according Satjipto Rahardjo, Progressivism departed from the view of humanity, man is basically good, have the properties of love and concern for others. It became the capital which necessary to build the live based on the law in society. Law becomes a tool to describe the basic humanity. Law is not the king, but only a working tool provides grace to the world and mankind. In connection with this progressive law contains a very strong moral content. Progressivism does not want to make the law as a technology that is not conscience, but instead a morally institution, in this case the moral humanity. Laws are for humans, progressive law has the objective form of the welfare and happiness of humans, then the law has always been on the status of “law in the making”. The law does not exist for itself, and it is unfinal. There is no word of status quo and stagnant in progressive law (Rahardjo, 2009: 47).

Muladi decision in freeing Soebandrio is an example of how law progressive tear down of legal positivism. Even though Soebandrio has received a permanent legal force decision, apparently Muladi as Minister of Law and Defense was brave issued Soebandrio on humanity consideration. Humanity is in the first principle of Pancasila. So, actually Pancasila as the source of all sources of law can be used as a legal basis for law enforcement action. As the source of all sources of law Pancasila has power over the law itself.

Pancasila as *rechtidee* philosophy has a very high of value and can used as legal basis consideration of the judge’s ruling before deciding the case. For the law enforcement officers, it is time to think about how arbitrate with the progressive law. However, this is not an easy thing already for decades the positivism of law rooted in the head of law enforcement officers. Since their study at the Faculty of Law always teach to arbitrate in positivism.

The law progressivism can be implemented by the judge, because according to the Basic Law

of Judicial Power, Article 5 of Law no. 48 of 2009 states that: "The judge and the constitution judge shall explore, follow, and understand the values of law and justice which exist in the community". From the article it is clear that a judge must follow the development of the law in a society that expected later in taking the decision they can fulfill people's sense of justice.

According to Article 5 of Law No. 48 Year 2009, the judge should discover law. Progressivism But can this is applied to other law enforcement officers, such as police. This is still a big question considering public spotlight of the police is not so well. Police discretion could use as of law justification for doing progressive. Through the mediation of penal justice can be realized which is the desire of the parties. But once again because a lack of public trust in the police makes the police did not dare come out on legal positivism much more in the investigation process. Police behavior often connoted with the corrupt, for example in the case of the suspension of detention under Government Regulation no. 27 of 1983 regulates that: "The money which is used as guarantees to the suspension of detention deposited in clerk of the court and if the suspect or the defendant escaped and after the expiration three months cannot be found, then the money has become property of State and paid to the treasury of the State". However, in implementation of the suspension of detention apparently clerk of the Court has never entrusted to save cash surety (Antoro, 2012). The things that will make the police image bad become in the eyes of the public, so that when the police conducted discretion in the investigation process that involves risk.

Satjipto Rahardjo said: The key word in the idea of progressive law is the willingness to free up from the status quo ideology. The idea of self-liberation is closely related to psychological factors or the spirit that is within law actors, that is courage (dare). The inclusion of factor such courage expand map arbitrate manner, which is not only promote the rule, but also the behavior. Arbitrate be not only textual, but also involves the personal preposition. Actors of law that were brave not just talk about something abstract but something that actually exists in society.

In the Attorney the implementation of progressive law will also be constrained, in making the indictment and demand will always based on positive law. In certain cases which did not continued there should be any positive legal basis to stop it.

From the few examples above, according to the author that: "Not all the cases and the stages in the criminal justice system (law enforcement officers) can be used progressive law. Opportunities can only be used at the stage the Court (that is also has a risk). "

The paradox of positivistic view and progressive law in criminal law enforcement in Indonesia occurred because of the differences in view / perceptions among law enforcement officers. Legal education from the first until now still teaches the students the positivistic view so that the students after become law enforcement officers in conducting law / arbitrate using the positive law / positivistic view. That always looks for the source / legal basis to hold onto in the act / deciding the case for law enforcement officers, rooted in the written law. The principle of legality as a principle which stating no criminal without the laws used to be a guide action, despite the fact that in our society also recognize the unwritten law.

According to Barda Nawawi Arief, criminal law enforcement as a part of criminal justice process should not merely based on the principle of a formal legality under Article 1 of the Criminal Code, which only recognizes the laws as a source of law (criminal sources) but also based on the principles of the national law enforcement that is need to consider the legal values which live in the community (local and national wisdom) (Nawawi Arief, 2011:88).

The existence of these unwritten laws may actually used as grip among law enforcers that is the teachings of material nature which against the law, both in negative and positive function. According to teachings of nature which against the law of material: "An act against the law or do not, is not only listed in the law (written), but also should be seen validity the principles of unwritten law. The nature the law against which is the act obviously included in the formulation of offense were able to clear by the provisions of law and also based on the rules that do not written (Sudarto, 1988:78). "However, the unwritten law applies only in certain areas of customs. For example there is offense Lokika Sanggraha Bali, which according to this offense if pregnancy occurs caused by the relationship between women and men who are both mature, Hindu religion, both live in Bali, and going there are promises to be married but then when the woman pregnant and the man would not be responsible under Bali customary law then the man can be imprisoned by the Book Adigama, which is an unwritten law.

This case prosecuted in the District Court did not use basic written law (Criminal Code), but using an unwritten law. Criminal Code does not regulate as they liked acts which resulted pregnancy for those who are both adults. This is because of the legacy of the Criminal Code of Dutch colonial era. The Netherlands has different customs and volkgeist with the Indonesian nation so that living together without marriage (Samen Liven) ordinary there but because of indigenous Balinese consider it's a violation of customary law, then the perpetrator convicted by the Book Adigama, which is an unwritten law. Balinese society is maintained and judged it was not on the customary court but at the District Courts. This shows that the customary law can be a source of law. Criminal Code is a written law as the influence of positivism can be intruded by customary law as an influence of historical ideology. It shall apply teachings of nature against the material law in a positive function that is unwritten law can be a source of the acts which obviously are not regulated in the legislation. This is contrary to the legality principle and teachings of nature against the formal law (legal positivism).

Ironically the power of unwritten law is only applicable to certain areas only. Then the question is how if this occurs in the area of Java that does not recognize customary laws. Such on the other side of the Penal Code does not set it up, this is a progressive law needed to complete it, which arbitrate with humanity however once again disagreement will occur when this case prosecuted later with progressive law. There are pros, there are cons. If this cannot be resolved amicably, then in some areas there are judged by a mass and forced to marry her, but the marriage that is based on coercion eventually also unsustainable.

Based on the provisions of Article 5, paragraph 3 sub b Emergency Law No. 1 of 1951 allows

the validity of unwritten law along the acts according to the living law should be considered as criminal acts, but unequaled in the Civil Criminal Code, it is considered to be threatened with punishment no more than three months in jail..... etc “. So here unwritten law can be used as a source of law to convict a criminal case, which obviously is not regulated by law, so-called teachings of nature against the material law in a positive function.

Related to this, according to Barda Nawawi Arief: “In order to improve the quality of law enforcement, it is necessary to reform and optimize the three science approaches as an integral, namely: scientific approach-juridical-religious, juridical-contextual approach (Integrality Systemic), and the judicial approach global perspective / comparative (especially of the family law system “traditional and religious law system)” (Nawawi Arief, 2011: 71).

The juridical-religious-scientific approach is an approach that oriented / based on “science” (criminal law) and “Guidance of God” in enforcing criminal law positive or the approach of law science who believe in god. Many people know the “guidance of laws” but did not know or did not want to know the “guidance of God” in the law enforcement / justice, when the principles of justice based on the guidance of the Almighty Godhead is religious juridical principle firmly listed in Article 2 of Law No.48 in 2009 on Judicial Power. God’s guidance by Barda Nawawi Arief contains: The principle of equality (equality / non-discrimination), the principle of objectivity (not subjective), the principle of does not favoritism (non favoritism / non nepotism), and the principle of impartiality (fairness / as impartial).

The juridical- approach is contextual cultural the approach in enforcing criminal law based on positive law (Penal Code / WvS and laws outside the Penal Code) should be in the context of national development / construction of national law. Although the criminal law in Indonesia is derived from the Dutch Penal Code artificial (WvS) but in law enforcement must be different from the enforcement of criminal law as in Dutch era. This is caused by the environmental conditions or the national legal framework (national legal framework) as the implementation of WvS has changed. In other words positive criminal law enforcement should be in the context of Indonesia (in the context of national law system/ national legal framework) and even in the context of national development or the development of national laws.

Reform of Criminal Law Enforcement the Future

Reform of Criminal Law Enforcement the Future, are the following:

1. Improve the justice system.

According to M.Friedman there are 3 elements which working on the law as a system, namely: the substance of the law, law structure and law culture. The substance of the law needs to be improved by inserting Pancasila and the 1945 Constitution as a source of law which can used as a foundation in the operation of the law, not just a slogan but truly applied in its implementation.

In criminal laws there is actually the teachings of nature against the substantive law in a positive or negative function, where it can be used also as a foundation to arbitrate, where the unwrit-

ten law, appropriateness and justice as the basis to declare the acts against the law or otherwise do not break the law.

The legal structure needs to be improved the functional coordination relationships of each of the law enforcement agencies (police, prosecutors, judges, prison) that while shows the central ego in performing their duty and neglecting that they are actually one criminal justice system. According to Muladi: "As a system, the criminal justice has a device or sub-system structure that is supposed to work in a coherent, coordinated and integrated in order to achieve maximum efficiency and Effectiveness. The combination of efficiency and effectiveness in the system is very important because it is not necessarily the efficiency of each sub-system by itself generate the effectiveness. The functional fragmentation of sub-systems will reduce the effectiveness even able to make the system as a whole is dysfunctional" (Muladi, 1995: 21).

Law culture also needs to be improved of how the community law cultures respond to the law, how law enforcement officers act in accordance to the law, and so on.

Discussing the aspects the law enforcement without offending the human who run the enforcement is a discussion which has sterile character. When discussing the law enforcement which holding on the imperatives as stated in the provisions of law, it is only get a stereotypical empty. Discussing the law enforcement is important when linked to the concrete implementation by humans (Rahardjo, 2011: 26). According to Van Doorn, "People always tend to give their own interpretation of the functions within the organization, based on his/her personality, social origin and level of education, economic interests and political beliefs and view of his/her own life". Therefore, the human factor is important; because it is only through human factors the law enforcement is executed.

2. Improving the morality and the ethics of law enforcement officers.

According to Aristoteles moral function is to guide people to choose a middle way between the two opposite extremes, including in determining justice. Within the context of ethics, the judges should also become moral and rational human beings. Because without a tendency of social ethical heart good in the judges, then there is no hope for the highest justice is achieved in the State. The crucial point faced a judge in the judge is to determine what is right, what is good and what is appropriate about the case at hand. Therefore, ethically a judge in judging need while utilizing pure ratio, the ratio of practical and moral. The way that relies on pure ratio, perhaps only produce certainty about what is right and what is wrong. The standard of right one usually formulated explicitly in the rules. On the other hand, practical ways that relying on ratio, may just lead us to the belief of good and noble. What is good and noble; actually exist in the goals and intentions. While way that relying on moral, brings us to the wisdom determining what is appropriate and what is not appropriate (Tanya, 2011: 103).

The morality is covering an extensive field of human behavior which has the nature both personally and the social. Sensitivity of law enforcement to the community social situation needs

to be explored in more depth. Moral and ethic hold the key to arbitrate progressively.

According to Soerjono Soekanto the indicator of moral good is rationality, honesty, responsible, fair, and productive. The basis of deviant behavior such as the heart was unclean. This is because with a clean conscience, then people will be able to distinguish which is bad behavior and which one is good behavior (Soekanto dan Abdullah, 1987: 166).

According to the authors: "The Pancasila morality will be different from the non - Pancasila morality. Ethics in harmony with the values of Pancasila will not distort the guise of progressive laws for the benefit of individuals and institutions. Mediation as the reason but behind it is occurs extortion or levies and so on ".

3. Improvement law education.

Law education is very important, because education is the transfer of knowledge. Law education should begin when scholars with convey to students that the law is dynamic, that the law follows the changing times, laws are constantly changing in the process of becoming. So the arbitrate is not static, also be changed according to the social setting of the community, namely the social setting in Indonesia with local wisdom and customary law binding on the community is still strong in some regions.

On this subject Anthon F. Susanto, quoting Zudan Arief Fakrulah said: "It is undeniable law education is still not well if not known worrying, one indicator is very dominant hegemony of Western education (European and Anglo-Saxon) are taken for granted (given) without any selection first (Salman dan Susanto, 2009:153).

According to Barda Nawawi Arief: "The difference between the problems and needs of the Dutch East Indies era Indonesian independence era to the reform era, the of course must be followed by changes in the curriculum of higher education and the law system. The big problem facing Indonesia does not lie how to implement the positive law (*ius constitutum*), but how to make the positive law and how to make / design *ius constituendum*. Science makes law rather than science to formulate / formulate norms, but in fact the science of explore / design and implement the basic ideas / concepts / values / thoughts / paradigms into the formulation of the law (Nawawi Arief, 2010: 27).

The same thing suggested by Satjipto Rahardjo about the need changes to higher education the law that: "The entrance to the law school, suggested learning and opened with a discussion on the justice, injustice, truth, honesty, human suffering, love (caring), and discrimination in the community and beyond. Then it is followed by the discourse of the law. Which expected from the law draft could be used as a means to serve the humanity (Rahardjo, 2006: 64).

4. Increasing awareness of religion.

Religion is an essential element in human life which is a spiritual need. Because everything that has been outlined by religion can guide people towards the right path and also can show

things that are forbidden and required, which one is good and which one is bad. If people being more religious then they will be afraid doing crime especially corruption.

III. REMARKS

Conclusion

1. The Criminal law enforcement in Indonesia occurred paradox of positivistic view and progressive law because of the differences in the views/perceptions among law enforcement. Law education from the first until now still teaches the students so that the students after the positivistic view of law enforcement in conducting a law/the law arbitrate using positive/positivistic view. Always look for the source/legal basis to hold onto in the act/rule on cases for law enforcement.
2. Reform of Criminal Law Enforcement the Future are the following: paradigm change is needed with improve law system, law education, legal, moral and ethics of law enforcement and increase the religious awareness.

Suggestions

1. Pancasila can be used as a legal basis by the law enforcement officers in progressive law enforcement, because Pancasila listed in the preamble of the 1945 Constitution that can said to be the source of all sources of law.
2. In any law / legal products (especially criminal law) is necessary to formulate the precepts in the Pancasila to be included as source / legal basis in the handling of criminal cases.

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