

The Law Enforcement of Employment: Can Local Otonomy Make the Law Enforcement Run Effectively? (Case Study in Tulungagun Sociologic Juridis Perspective)

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ABSTRACT

The function of the law enforcement is framing the rules to increase the legal certainty, justice, and the beneficial. The meaning of three values is to show that the law enforcement contains the justice and expediency. But, there are many obstacles with the policy between central government and local government, especially in the law enforcement of employment. The solution is the coordination between institution or law product amendment which must be used to avoid the malfunction of law enforcement in employment. The researcher used normative and empirical method for this research (perspective of Juridis Sosiologis). The empirical method supports normative method to understand the law, the interest between central government and local government especially regency and city, and the function of law enforcement toward the legislative crush and regulation which is used by the central government and local government in holding each policy. From the explanation above, it can be concluded, from law construction perspectives and applications, the law theory need the pillar to enforce the laws such as law regulation, law enforcer, realization, society compliance, and infrastructure.

Keywords: law enforcement, employment, government, justice.

INTRODUCTION:

The 1945 Constitutional act (article 27, section 2) describes the guarantee that every citizen has the right to work and lead a proper life in the society. The prosperity must be suitable with the human needs without any denial of their right. To make it meaningful, the participation of the government is needed to supervise and take action against those who break rules. The government intervention is allowed based on the rules and supervisor can control from the employer's perspective during law enforcement² These rules are based on the Constitutional act No. 13, 2003, (article 178) about the employment which states that the supervision is usually performed by that unit itself though it comes directly under the supervision of the central government, province, regency, or the city. The further implementation is managed by presidential decree technically³.

There are two main functions when it comes to law enforcement, namely civil supervision and taking measures of investigation. It is the main authority of the supervisor. Both of these functions authorizes the supervisor to take administrative action and order criminal law against the doer. However, it is not easy to implement it, since it crushes the legislation and regulation. The constitutional act No. 32, 2004 about Local Government, Government Regulation No 38, 2007 about the segregation of govt. problems, especially article 13 (section 1, letter h), article 14 (section 1, letter h) along with the constitution No 32, 2004 gives the authority to the local government to do the main duty by paying attention as per the article 11 (section 1) about externality, accountability, and to be efficient. It has to maintain the harmonic relationship between government structure and province government, city and regency or between the local governments which local government still

depends on the government system. The authority of central government with the regency/city supervises the functions and enforces the law. With regards to the government regulation No 38, 2007 (article 8, section 2) and (article 7, section 2 letter 1), the authority problem can be solved by the statement that ‘local government especially regency and city, if they disobey the implementation, it can be the obligation, so that the implementation will be carried out by the authority of central government using the funds collected from the local government. The fundamental aspect of supervising function is due on Constitution No 13, 2003 and constitution No 21, 2003 (ILO convention 81 about the supervising the employment in industry and trading). By regulating the supervision, it can be the center of the constitution and government regulation. But the problem cannot be considered as finished as it lies in the interpretation of constitution itself. Indonesia has presidential system which is based on the constitution whereas the country’s basic structure is law that acknowledges and protects the human right to live, enter politics, live in a society, and work for the economy in addition to practice culture, and education. Especially in law, there is the guarantee of free justice, equality before law which is legality in formal and material. These areas have formal legality, namely the obligation to pay attention to the hierarchy of constitution as the logic consequences of lawful country, and involve all law fields inclusive of civil law and criminal law in order to keep the legal certainty and justice. Moreover, the material value is concerned in implementation aspects namely procedure and the obligation of law decision which are based on the legal certainty, justice, and beneficiary. Both of these laws are included in perpetrator in employment sector.

The first object of the ‘law enforcement in employment’ is the employee and the boss, while the second object is government, society, and the employee outside the company. The first object is the main object of employee and boss in the same company which has law product disturbance of local government based on the Constitution No 12, 2008, constitution No 32, 2004 and Government Regulation No 28, 2007

The crush between the activity in law enforcement and the function of law enforcement in employment with the bureaucracy, especially in regency level and city level which are not in harmony with the government policy can be known. The local government has the authority to manage the government problems based on broad otonomy asas and accomplishment, not including the foreign policy, the defense and security, jurisdiction, fiscal monitoring, fiscal and religion.² Concerning with these problems, the local government especially regency/city only handle the main authority such as the employment sector.³

The principal of local otonomy as wide as possible is to foster the society’s prosperity, democracy, and justice. Besides giving authority to manage and handle the local government, based on their own aspiration, it must obey with the national law of Indonesia with more attention paid with the specialization from their local potential. .

The main problem and the potential make the crush problem to be more serious, especially between the central government and local government, at regency or city level. It is about the mutation especially the mutation of supervisor and investigator of civil servant at the regency/city level. The potential cannot be denied because the system gives the chance to make the potential appear. The effect of this condition is shown through proper functioning for supervisor whereas the investigator’s role becomes dull.

PROBLEM FORMULATION:

Based on the background of the studies, it is necessary to comprehend and analyze the crush problem towards the central government and local government, especially in regency or city level. Is the local otonomy can make the law enforcement run effectively? What kind of policy should be used if the local otonomy can be the obstacle of law enforcement?

THE OBJECTIVE OF THE STUDY:

The objective of the study is to analyze the rules of conventional local otonomy system and especially to find the problem of law enforcement after the implementation of the Conventional act No 23, 2014 about the authority of central government and local government, especially at regency and city levels and also the obstacles of law enforcement because of local otonomy, and also pay attention to the article 176 section (2), Jo. Pasal 182 ayat (1) Undang-Undang No. 13 Tahun 2003, Jo. Undang-Undang No. 21 Tahun 2003 tabout. The Legalization of ILO Convention No 81 about the supervision of employment independently, centrally, and also supervision under the local government, based on Government Regulation No. 38, 2007 and also Presidential Decree No. 21, 2010.

METHODOLOGY :

The researcher used normative and empirical method for this research (perspective of Juridis Sosiologis). The empirical method is to support normative method for various outcomes such as to understand the law, the interest between the central government and the local government especially regency and city, and the function of law enforcement towards the legislative crush and regulation which is used by both governments in holding each policy.

The use of normative method, as the analysis step, is used to know the existence of local government law with local otonomy system while empirical method is used to analyse how the law works. This provides the answer whether the law is effective or not as the social power substance is high in society behavior coupled with law-based institutional structure (decision maker in concreto)¹. These methods are used to complete each other based on the each doctrine (custom) without making the normative empirically and vice versa.

LITERATURE REVIEW:

Indonesia, being a country that obeys laws, has an obligation (das sollen) to keep the order, appeacement, certainty, justice, and beneficially for society, while as the Pancasila country, the law enforcer must care about phylosophis aspect namely the understanding value and society norm such as customary law. The reality of law and dan value, must be balanced with the global reformation building . Based on that case, it is necessary to pay attention on the law aspects as the basic law enforcement. First, it is all about legal certainty. It means that there is significant value to keep the order, right protection and manner based on the law (justifiable). Legal certainty value can create the attitude order, also disorder attitude of the boss (normative). Second, justify value. It means that the law function must have value quality, the furthest goal of law, namely justify. Justify cannot be created in society if the legal certainty also cannot be created. Third, beneficial value. The law must have benefits for society and country (sociologic). These three values namely law certainty, justify, and beneficial are set as the grand theory to create law enforcement. The law value lies on the conventional rules of law based on the article 7 section (1) and Conventional No 12, 2011 about making the laws. The law value is the basic to enforce it as in the norm or pandect.

One must pay attention to the requirements of meddle rang theory to create law enforcement, namely the law regulation which is made based on law realization and right beneficial for anybody in the society. Related with these requirements, Robert Seidman said that how law works is influenced by law regulation, law forcer, realization, and society's alignment toward the law. Soerjono Soekanto adds that besides the three factors above, the infrastructure and funds are also important. According to Muchsin, there are also other factors to support the law, namely the prosperity of law forcer, the appreciation and punishing the one if the law force cannot do its function.

All these requirements are suitable for all law forcers in special sector, namely employment and to create justify by paying attention to the procedural justice dan substantive justice, where these aspects guide the fundamental aspect of law enforcement process. The law can be enforced only by the institutional mechanism and many predict this would fulfil the legal certainty and the 'justify of personal right and society'.

Based on the understanding of modern law perspectives, 'justify creation' is based on the legal certainty although, the condition of the certainty itself can be opposed with justify value whereas the modern law views that without certainty, there is no justify. On the other hand, justify value without certainty make subjectivity, which create unjustify. The legal certainty must complete and support each other. Especially for justify, this value must pay attention to the society, its surroundings and the individual. Both of these values influence the substantive justify value.

Substantiating the 'justify' must make the individual justify and make a closer connection with social dimension. Both of these values make the crush of each concern and the individual's social dimension concern. However, if these two aspects join, where the personal justify containing justify becomes the individual justify sublimation, then it will result in substantive justify. The law enforcement also has the same thing with the law enforcement in other sector. The main object of law enforcement of employment is employees and boss in the company. Another object is the boss of human resource department who handles the recruitment and training department. The main object in the object of law enforcement is finishing the right among boss and employee including the outsourced job.

The law enforcement get many serious obstacles when the crush policy between central policy and regency/city policy exists in the otonomy government, as stated in article 10 (section 1). Constitution No. 23, 2014, also

government regulation No. 38, 2007 of government system, especially related with law enforcement, do not chance the law enforcement especially when it has justify value.

The crush concern of law enforcement, with the administration system, especially in regency/city which is not in harmony with the government policy was described in article 10 (section 1), Conventional No. 23, 2014. The substance is the local government which has the authority to manage the government affairs based on the otonomy asas as wide as possible. This authority does not include abroad policy, defence and security, justify, monetary, fiscal, and religion.² These items are exception from the control of regency/ city, especially regency/city only do the main affairs such as employment affairs.³

The main potential problem which can make the crush more serious is the time when the supervisor performs the function and main duty as law enforcement is mutated. It can disturb the investigation of supposition in criminal act of employment. The main duty is to do the law enforcement to make the order legal certainty for justify. Another potential is when the process is carried out, the unpredictable event occurs under unpredictable previous conditions which is handled by unknown investigator. Its speculation cannot release from government affairs which are based on the wide government otonomy, such as the mutation between the intern institutions and moving the supervision functions of civil servant from regency/city to province. It can influence the law enforcement of employment in regency/ city level.

Due to the broad meaning of otonomy, the government explained the otonomy in Conventional No. 23, 2014. It was explained as ‘giving otonomy for faster the prosperity’. Then, based on Conventional 1945, the local government must be increased with the authoritative powers as wide as possible and also must be allowed with rights and obligations to carry out the local otonomy in a country.⁴

The understanding of otonomy itself gives the perspective that the implementation of local government, including regency and city, can do the otonomy as far as possible. It denotes that the otonomy regency includes obliged affair and choices affair. For obliged affair, one of the example is employment sector by using the aspects of accountability, efficiency, externality and strategy.

By framing these rules, the step from regency government must be in line with the policy of central government. It is based on article 17, section (3), the implementation of government must be done classically according to the central policy. When the local policy is not obeyed, one can consider that it is cancelled.

Is there any chance of crush between central government and regency government? If we understand these regulations above, there is no crush of affair, especially toward the bureaucratic administrative policy, namely the mutation of employees for career development and removal of those employees who doesn’t obey the rules. This case also can affect the supervising affair along with the investigation affair of the cases.

Basically, the policy of employee’s mutation must pay attention to the aspect of accountability, efficiency, externality, national strategic affair, and also the harmony of central government and local government. Here, the head of the regency cannot make policy by her/himself without using these aspects.

Besides these regulations, the supervising function is based on the conventional no 23, 1948 related with conventional No 3 1951 related with article 1 (section (1) *letter (a) about supervising Hunting, that the empowerment of supervising function for law enforcement*. It is also considered that the Conventional No 21 2003, that states to guarantee the law enforcement which must also ensure to protect the employees, supervise must be implemented for a regulated employment. This supervising is a step of law enforcement to make the balance of rights and obligations of each one, namely boss, employees and the system to create the survival of business and employment. Because of these reasons, the centralistic and independent supervising is needed.

FINDINGS AND DISCUSSION:

The significant nature of supervising function and the investigation of law enforcement need to manage the function and duty of supervisor and investigator who has to take care of the law enforcement. As far as the authority of supervisor and investigator are concerned, it means that the supervisor and investigator will become free from mutation. This condition had not been carried out in Tulungagung Regency, especially in Social and Workers Agency and Transmigration, where the work unit is very dominant in supervising and investigating. So, the limitation of the authority is required or at least the coordination between central government and the head of regencies is required to limit the authority of mutation as the part of helping section to nurture the implementation of one country government.

² Article 10 section (1), Convention No. 23, 2014 about Local Government.

³ Article 12 section (2) letter (a) Convention No.23, 2014

⁴Article 1 (6) Convention No. 23, 2014 give the limitation about otonomy: right, authority, and obligation of otonomy to manage their own government for Hak, weweng, danthwir society in a country

The description of Social and Workers Agency and Transmigration of Tulungagung Regency at glance is doing the main duty as the institution to serve the society affairs in social sector, employment, and also transmigration. This main duty manage the human resource employment using training center to educate and train them while doing the function and coordinate with other institutions such as BNP2TKI, dan PPTKIS.⁵ Another function is to supervise and enforce the law, especially in relationship of boss and employee in the company.

In this institution, the supervisor who does the main supervising does not have the function as the investigator because he doesn't fulfil the requirements as the investigator. Being the investigator must get the special education as the investigator. Because of unfulfilled requirements, the supervisor cannot investigate the law breaker who is currently employed since it may break the law of normative right, such as employee salary, the assurance of employment. So these legal consequences upon the supervisor is challenging and he is not supposed to investigate.

Since the requirements are not fulfilled, there are two choices which must be paid attention such as giving the case to province institution or central employment department and the other option would be to give to Polri based on article 182 convention No 13, 2003 related with article No 6, section (1) a KUHP. The investigator also has the authority as the coordinator of supervising the investigator in employment and it is based on the article 7 section (2) KUHP. But, there is still a chance to choose another alternative to finish the law case, namely making coordination with regency/city which has investigator (PPNS) to help in investigation of case, especially another city/ regency in the status of lend to use. This pattern will make personal handover with each regency/city.⁶

The need of law cases can use many models, namely the case is given to province, or central employment department, or POLRI criminal directory of province or lend from other provinces.

The phenomenon of title in employment case is enough for the first investigation to happen. By using this model, the company who breaks the law tend to obey the regulation. During the 30 days period, after the first investigation got published, the company which broke the must oblige the material published by employment supervisor.⁷ Is only the realization of guilt makes the employee feel satisfy? The problems are more serious, when the company knows that Social and Workers Agency and Transmigration does not have the investigator, and it makes the effect of uncertainty of law and unjustify. The process does not continue into law process, which will make the company more freely to break the law and the solution can only be pra- projustitia. In such case, the law enforcement is not finished although the alternative is possible such as giving the case to province, lend to use of each regency/ city in employment department, or involve POLRI for investigation. The empirical data states that the supervisor who performs the investigation does not have experience of supervising and investigating except the standard operating procedure that warns according to warning sota I, II, dan III. It is common that the company must obey the suggestion of supervisor towards the rules and performs these rules, especially SOP, nota (investigation) I.

Based on the previous description, the cases that involve the company as the consequence of law breaker acts during the investigation of pra-projustitia. This case is performed between PT. Dwi Tunggal Marmer and Kenny Company the Chips Industries, which is located in: Pahlawan street No. 20 Tulungagung.

Next, the standard operation procedure was published step by step, based on Selanjutnya standard level of law compliance. Administratively and technically, the supervisor comes to the company to perform the preventive action. Besides the function and duty of supervising, the supervisor joins with Tripartit institution and perform sudden visits and inspects the other companies such as PT. Goeno (peralatan TNI), RSU. Iskak, PG. Mojopanggung, and BCA. The purpose of visit may be for consultative or socialization. It is hoped that the company must obey the regulation normatively and also this kind of visit act as the reminder to the company with their obligation to the employee such as establishing employee cooperation, prosperity, recreation, and the employee's right which does not include in regulation (such as salary increment, allowance are not fixed, namely the salary which counting when the employee is absent of work). The primary and secondary obligation

⁵ PPTKIS (Pelaksana Penempatan Tenaga Kerja Indonesia Swasta), is a institution to handle the abroad labour based on article 1 section 5, related article 1 section (3) convention no. 39, 2004 about the placement and protection of employee in abroad. While BNP2TKI, is a government institution of non department under the presidential and responsibility to the president. (article 94 section (3) Convention No. 39, 2004, related . Perpres No. 81 , 2006 about BNP2TKI.

⁶ In academic and draft of law about the local government is possible to use lend to use method, and the personal is from the institution which needed to help the problem solving.

⁷ During the procedure of law problem there are several steps, namely first investigation (first interrogation nota),the company is given 30 days to respon the result of interrogation. Second interrogation, the company gets 14 effective days to see the second interrogation nota) If the second interrogation nota is ignore, so the third interrogation nota to pay attention. perusahaan mendapat tenggang waktu 14 hari kerja, untuk memperhatikan nota pemeriksaan II. If the company still ignore the law command, then the interrogation comes into investigation (pro-justitia). The dialog result with Kabid Pengawasan, Kasi Syarat Kerja dan HI, Kasi Kesejahteraan Pekerja dan Jamsostek, dan Kepala Dinsosnakertrans, Kabupaten Tulungagung.

must be under the supervising of law enforcement regularly to keep the potential and to reduce the chance of breaking the law again. By social control pattern, especially the supervising of the supervisor working in the institution tripartite, the company that break the rules can be avoided.

Basically, this supervising is preventive and meditative, especially for Tripartit. The persuasive step is hoped about the understanding of each other in this obligation. For Tripartit, the obligation of the boss or company to do the law order, and also secondary regulation as the moral obligation such as paying salary and social guarantee.

Tripartit is much expected to obey the law and the supervisors are viewed as the implementers and law enforcers. They attend the institution to know further about the company's problems in order to conclude whether the company is conducive, friendly or vice versa. The attendance of two institutions is hoped to provide the best solution for both the bosses and the employees where usually they may have problems in normative aspect, the agreement material, the last worktime, salary increment and allowance. The empirical data shows that this company had not performed the normative regulation based on the visit at Tripartit. The employees who break the rules or the process of company must be in Limited Liability Company and they do not fulfill the outsourcing criteria to be a non-Limited Liability Company in the Iskak Hospital Tulungagung. These companies are CV (Commanditaire Vennootschap) and their existence is not based on article 65 section (3) Convention No. 13, 2003 related with the article 24 Permenakertrans No. 19, 2012 due to which the qualification of job consignment to another company must be legal, namely Limited Liability Company.

Generally, the findings in the field shows that the company is visited by Tripartit and the employment is supervisor from which it was understood that broke the regulation of the company and cannot be restored. By empirical potential of this visit, especially the supervisor has warned the boss to obey the rules, and report the activity which is documented in a month.

All these problems are so common since the normative obligation is also included in this which must be fulfilled by the boss of the company as the consequences of work coordination between two institutions. The essence of the material is right, obligation, and responsibility of each institution. On the other case, the boss has another non-technical problem, namely the unpredictable outcome and it is supposed to be the hard burden to the company. It can impact the employees in terms of their salary being noncompetitive resulting in the increase of employee turnaround. The consequences make illogical thinking, where the burden of company must be taken by the employees, the reduction salary is the irresponsibility form of it.

What is the quality of supervisor in law enforcement? It must be a question about the education and regular training during this process. The existence of supervisor must be continued and to be managed professionally and functionally. The condition must be consistent and consequences must be faced as per law independently, but it is likely to improve the law forcer by education whereas the training must be continuous which must be the agenda of the government yet. From the discussion, it seems unclear for the employee who wants to be supervisor whether he or she must get education and training or not. The effect of unclear decision makes the employees, who being the supervisor, do not well understand the law and vertical relationship with province, central, and across horizontal with regency/city, especially supervising and PPNS. This impact also occur in law enforcement further. So, all the comprehensive problems, in regency/city level, must be investigated by employment of province and automatically the function of supervising back to the authority of Social and Workers Agency and Transmigration in province. Here the problem is solved for the employment affairs especially about the conflict of job in employment department in regency/ city for civil side only, while the criminal side problem for the authority of province is yet to be solved.

CONCLUSION:

From the explanation above, it can be concluded that from the law framing, perspectives and applications, the law theory, which need the pillar to enforce the law are such as law regulation, law enforcer, realization of the law, obeying the society, and the infrastructure (education and training to increase the quality of pro-justitia). These aspects are needed to guarantee the legal certainty, justice, and also to give benefit for the society. However, the problems of law enforcement and employment have not given the legal certainty yet, but has given the benefit to the society with the issues such as the attendance of supervisor and investigator among the regency/city and province, moreover the government, based on article 8, section (2) about the main affairs. Employment must be taken by the central government or delegate to the province. This pattern was not applied in supervising, especially in Tulungagung. The empiric data shows the case process is stopped when the first nota investigation is published and the pattern of visit by combined team of Tripartit Institution and the supervising of Employment Department occurred. On the other hand, the supervising is done by supervisor and investigator of province, PPNS.

Although the local government possess the authority based on otonomy, it must pay attention helping asas to keep the harmony in relation between central and local (Tulungagung regency) based on efficiency, accountability, and externality. By function change of PPNS authority, the law enforcement in employment and the function of investigation is not effective, but we found that the efficiency of institution coordination is being in good relationship, especially between supervising and investigating of PPNS cross the area, and investigator from Indonesian Police. By the good cooperation, it is hoped that the law enforcement of employment can be achieved.

Based on the analyses above, it can be described that the obstacle of case investigating of employment case of pro-justitia can be solved by cooperation patterns of institution horizontally and vertically and also well coordinative with the Indonesian Police, especially Directoray of Reserse Criminal Polri.

SUGGESTION:

For the question i.e., in order to increase the quality of supervising and case solving in law employment, is the aspect of legal certainty, justice is needed?, this review answered that education and training is needed regularly and at continuous phases. It must think seriously to antipate a case which may probably go to the court, but does not need to overflow into another area horizontally or vertically. This pattern is the process of maturity of Tulungagung Regency to be independent without any dependence on the institution, or other place.

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