

## Institutions In Legal Systems As Embodiments Of Legal Purposes

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### ABSTRACT

*The statement that human life in society is governed by law. The law referred to here is the law known in the Regulations of State product legislation, established by the authorities, socialized through books, books and writings, not understood as the law that lives in society as a social construction even those that are thus only classified as social norms. The presence of law in the community agrees to integrate and coordinate interests that can conflict with each other that are integrated in order to be able to strengthen as little as possible. Organizing those interests is carried out with those interests and interests. The law that discusses this is a community-made law that contains the daily knowledge of each individual member of the community as a starting point for the birth of a social order.*

**Key word : Institutions; Legal Systems; Legal Purposes.**

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### INTRODUCTION

Paul James Bohannon states that law is a re-institutionalization of habits or habits that are reinvented specifically by bodies in society in a more narrow and clear form. Paul James Bohannon also stated; *Both custom and law are stages of development. Custom develops when isolated norms in group become institutionalized (that is, those norms become the basic for regular operation of such institutions as family, religion or politics) and law is a later development made necessary by the growing inability of custom by stating them more exactly (so there will be less chance of disagreement over what they say) and by putting their application into the hands of special agents who supervised their use.*<sup>1</sup>

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<sup>1</sup> Robert L. Kidder. *Connecting Law And Society: An Introduction To Research And Theory*, New Jersey: Prentice Hall Inc, p. 31.

Giddens structuration theory of the formation of agents (society) and structure (law) is not a phenomenon which is independent of one another and nothing exists without the existence of another. This theory concentrates on structuring institutions throughout time and space which Giddens identified as symbolic order, political institutions, economic and legal institutions.<sup>2</sup>

The statement that human life in society is governed by law. The law referred to here is the law known in the Regulations of State product legislation, established by the authorities, socialized through books, books and writings, not understood as the law that lives in society as a social construction even those that are thus only classified as social norms.<sup>3</sup>

The law apparently cannot explain the fact that a great deal of human interaction occurs in society which seems orderly, even though the relationships between people are not regulated by law. In places where people live far from urban life, people seem to live orderly in small communities in the form of villages or villages without the presence of state equipment that are normally associated with law enforcement such as police, prosecutors or the courts.<sup>4</sup> Mochtar Kusuma Atmadja explained that from the beginning the law was something that was intact, integrated with the people and people where the law was located.<sup>5</sup>

This paper attempts to clarify that how institutions in legal systems as Embodiments of legal purposes. Therefore it is important to explain how important institutions in legal systems as embodiments of legal purposes.

## ANALYSIS AND DISCUSSION

### Institution as the Embodiment of Legal Purpose

This understood law is the law made by society, the result of social construction. According to Peter L. Berger, social construction puts the daily knowledge of each individual member of the community as the starting point for the birth of a society.<sup>6</sup> Society must therefore be understood from the point of view of the maker, namely the community, then as the opinion of Boaventura de Sousa Santos quoted by Dominikus Rato, said that a law that truly lives is a law that is born as a mirror of the soul and spirit of its people, consciously understood and consciously obeyed not because of coercion.<sup>7</sup>

Esmi Warassih expressed in her inaugural speech that the application of a legal system that did not originate or grow from the content of society was a problem, especially in countries that were changing due to a mismatch between the values that supported the legal system of other countries with values that lived by members of the community itself.<sup>8</sup>

Basic norms or the highest norms found in society, these norms are the most prominent and the most powerful work on the members of the community. Parsons argues, that the so-called norm is a written description of a series of concrete actions and is seen as desirable.<sup>9</sup> The

<sup>2</sup> George Ritzer, Douglas J. Goodma. (2013). *Teori Sosiologi*. Bantul: , Kreasi Wacana, p. 572.

<sup>3</sup> Dominikus Rato. (2009). *Hukum Dalam Perspektif Konstruksi Sosial*. Yogyakarta: Laks Bang Mediatama, p. v

<sup>4</sup> Mochtar Kusumaatmadja.(2000). *Pengantar Ilmu Hukum Suatu Pengenalan Pertama Ruang lingkup Berlakunya Ilmu Hukum*. Bandung:Alumni, p. 21

<sup>5</sup> Satjipto Rahardjo. (2004). *Ilmu Hukum Pencarian, Pembebasan dan Pencerahan*, Universitas Muhammadiyah Surakarta, p. 46

<sup>6</sup> Mudzakir. (2004). *Hukum Islam Di Indonesia Dalam Perspektif Konstruksi Sosial Peter L. Berger*, Jurnal AL-‘ADALAH Vol. XII, No. 1 Juni 201, p. 156, periksa juga Margaret Poloma yang menjelaskan Istilah konstruksi sosial didefinisikan sebagai proses sosial melalui tindakan dan interaksi dimana individu menciptakan secara terus-menerus suatu realitas yang dimiliki dan dialami bersama secara subyektif, Margaret Poloma, *Sosiologi Kontemporer*, Jakarta: PT.Raja Grafindo Persada, p. 301.

<sup>7</sup> Dominikus Rato, *Op. Cit.* p. vi.

<sup>8</sup> Esmi Warassih Puji Rahayu, *Pemberdayaan Masyarakat Dalam Mewujudkan Tujuan Hukum (Proses Penegakan Hukum dan Persoalan Keadilan)*”; Pidato Pengukuhan Guru Besar Fakultas Hukum. Semarang: Undip, 14 April 2001.

<sup>9</sup> Satjipto Raharjo.(1979). *Hukum dan Masyarakat*. Bandung: Penerbit Angkasa, p. 77-78.

presence of law in society is not merely driven by social necessity, but because of the tasks that must be carried out.

Law is not only understood as the building of rules, but the building of ideas, culture and ideals. So that it can be understood that the law is not only seen as rules and procedures which all mean value-free. The law is seen functionally related to efforts to maintain the continuity of social life, such as maintaining peace, resolving disputes, eliminating deviations. In short the law maintains order and exerts control.<sup>10</sup>

The law in general is also related to the overall rules or methods in a shared life, the whole about the behavior that applies in a shared life that can be enforced with a sanction.<sup>11</sup> The presence of law in the community is to integrate and coordinate interests that can conflict with each other that are integrated in such a way that can be suppressed as little as possible. Organizing those interests is done by limiting and protecting those interests.<sup>12</sup>

Found a variety of activities or activities of life in the community. This forum will organize the norms regulating public behavior in all its activities, both concerning the relationship of individuals with individuals with groups and between groups with groups. Containers as a place for human activities in the context of living together (in groups) are institutions or institutions, so institutions are very useful for humans to meet their daily needs. Djoyodiguno explained that the institution as a place to meet human needs.<sup>13</sup>

The institutional aspect needs attention, because the realization of legal objectives cannot be carried out without the existence of a legal institution. The process for realizing legal purpose through legal institutions is determined by the resources provided by the existing institutions. These resources include human resources, physical resources, finance, information, regulations, culture and social, political economy. The purpose of law is often difficult to realize, because there are differences in interpretation and understanding of legal norms caused by differences in the legal culture of legal actors, both law enforcement officials and the community.<sup>14</sup>

Institution is termed as institution as defined by Macmillan, a set of real relationships, norms, beliefs and values, centered by social needs and a series of important and recurring.<sup>15</sup> Adelman and Thomas define an institution as a form of interaction between humans that includes at least three levels. First, the level of cultural value which is a reference for lower level institutions. Second, it includes laws and regulations that specialize in so-called rules of the game. Third, includes contractual arrangements used in the transaction process. An important element of this institution is how a variety can operate within certain norms so that it gives birth to a continuous action that is recognized and followed as a guideline and can be used as a characteristic of the unity. An action that continues to be a habit will be institutionalized<sup>16</sup>.

Social institutions or institutions as a group of people who are united so that they are organized for a particular purpose, which has material and technical means to achieve that goal or at least makes a reasonable effort directed at achieving the goal, then all human activities can be said to be institutions.<sup>17</sup>

Institutions have a variety of meanings, ranging from family life to village and country life. In economics there are institutions of buying and selling, renting, credit and so on. In the social

<sup>10</sup> Satjipto Rahardjo, *Ilmu Hukum, Op.Cit.*, p. 80.

<sup>11</sup> Sudikno Mertokusumo, in Esmi Warassih, *Op.Cit.*, p. 21.

<sup>12</sup> Satjipto Rahardjo, *Ilmu Hukum, Op.Cit.*, p. 53.

<sup>13</sup> Sugiyanto. (2002). *Lembaga Sosial*. Yogyakarta: Global Pustaka Utama, p. 1-2.

<sup>14</sup> Esmi warassih, *Pemberdayaan Masyarakat Dalam Mewujudkan Tujuan Hukum (Proses Penegakah Hukum Dan Persoalan Keadilan)*. *Op. Cit.*, p. 13.

<sup>15</sup> Saharuddin. (2001). *Nilai Kultur Inti dan Institusi Lokal Dalam Konteks Masyarakat Multi Etnis*, Jakarta, p. 1.

<sup>16</sup> Miftah Thoha. (2011), *Birokrasi Politik di Indonesia*. Jakarta: Raja Grafindo Persada Indonesia, p. 205.

<sup>17</sup> T.O. Ihromi. (2000), *Antropologi Dan Hukum*, Jakarta: Yayasan Obor Indonesia, p. 57.

sciences known institutions of marriage, family, association and others. In political science there are state institutions, political parties and others. Based on some of the figures above, the institution can be interpreted as people's behavior.<sup>18</sup>

John Lewis dan John Pholip Gillin, states the institution is a functional configuration rather than cultural patterns in the form of actions, ideas, attitudes and equipment as well as permanent cultural equipment to meet the needs of the community.<sup>19</sup> An institution is formed as a result of various human activities both consciously and unconsciously, both intentional and unintentional. Events of human behavior that are always repeated in the context of meeting the needs and looking for alternatives to meet those needs finally institutionalized and inherent in each individual. Thus the institution will one day be born, grow and develop, change and die, along with birth, body and human development and death as perpetrators of these activities.

### **Institutional in the Legal System**

The institution referred to in this legal system is formal institution. The link between law and institutions can be better understood by seeing law as a system. The basic understanding contained in the system includes that system is always oriented towards a goal, the whole is more than just the number and parts, the system always interacts with a larger system, namely its environment.

Lawrence M. Friedman stated the components contained in the legal system, i.e;

Structure, is an institution created by the legal system, both formal institutions such as courts and non-formal institutions such as everything that is recognized by the community and carried out in a consistent and continuous manner. Structure is one of the basic and tangible elements of the legal system. The structure of a system is the body's framework, it is the permanent form, the institutional body of the system, the hard and rigid bones which keep the process flowing within its limits.

The structure of a judicial system is related to the number of judges, the jurisdiction of the court, the authority of the court and the people involved in the various types of court. Structure in the community mining system, for example, is related to parties that can be classified as community mining, which gives permits and which areas can be mined by the community mining category.<sup>20</sup>

- a. The structural component is an important part of the legal system, the structure directing and driving the energy that flows through it. There is a certain strength that cannot be denied to the legal structure, in the short and medium term the structure must be influential, it can even determine the severity of the law, the severity of the sentence, who gets the rights and bears obligations. Existing structures may also allow the availability of barriers for people occupying strategic places in the short and medium term (in an election).<sup>21</sup>
- b. The substance (regulations) is another element that is as an output of the legal system in the form of legal norms, both regulations and decisions. Substance is composed of regulations<sup>22</sup>, for example laws and regulations related to community mining, starting from the highest regulation, i.e. UUD NRI Pasal 33 ayat 3, UU Minerba, to Regional Regulations, for example, Regional Regulations in Bangka Regency Number 9 of 2012 concerning Management of Mineral Mining.

<sup>18</sup> Sugiyanto, *Op. Cit.*, p. 20.

<sup>19</sup> *Ibid.*

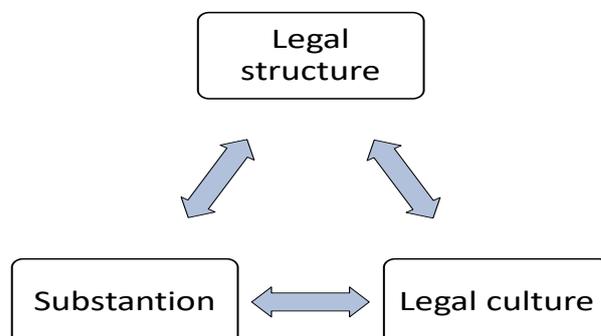
<sup>20</sup> Lawrence M. Friedman, Penerjemah M.Khozim (2013). *Sistem Hukum Perspektif Ilmu Sosial*. Bandung: Nusa Media. p. 15-16.

<sup>21</sup> *Ibid.*, p. 204-205.

<sup>22</sup> *Ibid.*

c. The culture component consists of ideas, attitudes, hopes and opinions about the law. Refers to people's understanding of the law that determines whether the structure and substance of the law is implemented.<sup>23</sup>

Overall it can be described as follows:



### Legal System

Linking the law with the social environment both forwards and backwards is possible to obtain a truer picture of the position, role, disadvantages and various other qualities inherent in the law.<sup>24</sup> Satjipto Rahardjo also explained that the law has a strong social base. Social structure is defined as a form of organizing a social life that is how it determines the relationship between social institutions, how it arranges its social strata, constructs its rules and so on.<sup>25</sup> is a social basis of law, especially the social structure is a set of values that apply in society and the attitudes and patterns of relations of community members.<sup>26</sup> Therefore it is often said that the law does not fall from the sky, but proceed along with the speed of the dynamics of behavior that is patterned with certain diagens along with changes in society.<sup>27</sup>

The relationship between social structure and law in Indonesia, among others<sup>28</sup> :

- 1) In the framework of making and implementing effective law
- 2) Diagnostic Needs, which means explaining the diseases in our legal life which originate from the mismatch between the social structure and the law used.

Parson said that the balance in the social system can be analyzed according to 4 law ;

- a. Continuity of the pace and direction of a process unless the opposite driving force befalls the process
- b. The principle of action and reaction which confirms that every change in the direction of a process will be balanced by other changes whose driving force and strength from the opposite direction are equal
- c. The principle of effort which states that changes in the process rate are proportional to the magnitude of the driving force used or taken.
- d. The principle of system integration which asserts that the fate of the elements of a pattern depends on the values of these elements as a unifying or integrating factor.<sup>29</sup>

<sup>23</sup> *Ibid.*

<sup>24</sup> Satjipto Rahardjo. (2003). *Sisi-Sisi Lain Dari Hukum Indonesia*. Jakarta:Kompas.p. 151.

<sup>25</sup> Satjipto Rahardjo.(1976). *Hukum, Masyarakat dan Pembangunan*. Bandung:Alumni.p. 29.

<sup>26</sup> *Ibid*, p. 24.

<sup>27</sup> Suteki. (2013). *Desain Hukum Di Ruang Sosial*. Yogyakarta:Thafa Mediadan Satjipto Rahardjo Institute, Semarang.p. 79.

<sup>28</sup> Satjipto Rahardjo, *Hukum, Masyarakat dan Pembangunan, Op. Cit*, p. 20.

<sup>29</sup> Parson dalam Robert H. Lauer. (2001), *Perspective on Social Change*, diterjemahkan oleh Alimandan, Jakarta: Rineka Cipta, p. 110-111.

There is a vision of a type of legal defense expertise, expertise regarding principles regarding the institutional model and institutional diagnosis. Such principles will analyze the problems of institutional characteristics related to carrying out different mandates.<sup>30</sup>

## CONCLUSION

The institutional aspect needs attention, because the realization of legal purpose cannot be carried out without the existence of a legal institution. The process for realizing legal objectives through legal institutions is determined by the resources provided by the existing institutions. These resources include human resources, physical resources, finance, information, regulations, culture and social, political economy. The purpose of law is often difficult to realize, because there are differences in interpretation and understanding of legal norms caused by differences in the legal culture of legal actors, both law enforcement officials and the community.

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<sup>30</sup> Philippe Nonet, Philip Selznik. (2008), *Hukum Responsif*, Bandung: Nusamedia, p. 123.

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