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### **Netizens' Opinions On Law Enforcement And Social Responsibility**

**Hartanto<sup>1</sup>**

*hartanto.yogya@gmail.com*

**Agus Santoso<sup>2</sup>**

*email: uwmaguss@gmail.com*

Faculty of Law, Widya Mataram University Yogyakarta  
Jl. Ndalem Mangkubumen KT III. 237 Yogyakarta 55132

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#### **ABSTRACT**

*This research is to capture what the Indonesian Netizen considered and hoped (“Opinion”) regarding the law enforcement proceeding on the criminal case of kakao theft accused to Nenek Minah (Case Number 247/Pid.B/2009/PN.PWT). The Case of Nenek Minah is regarded as a case which harass the society’s sense of justice. The Indonesian Netizen considered that it is an irony and againts conscience to bring Nenek Minah to a legal proceeding just for stealing 3 pieces of kakao. The Indonesian Netizen compared the inequality between the level assertiveness of legal enforcement on the Case of Nenek Minah with corruption cases or cases concerning the sovereigns and the haves. The Indonesian Netizen hoped that the law would be more fair, humane and full of conscience instead.*

**Keyword:** *law enforcement, criminal, netizen, Nenek Minah*

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## **A. Background**

After the fall of the New Order, Indonesian society experienced the euphoria of free speech, not to mention the chatter in coffee shops that even dared to openly discuss criticism and disapproval of the ruler's policies. Now the presence of internet technology is pushing that freedom to a more massive level. A person does not need to be an academic, does not need to have expertise and other conditions necessary to publish his opinion in the mass media. In the internet age, a person only needs a blog account (Wordpress, Blogger, Kompasiana), an internet forum account (Kaskus, detikForum, Viva Forum), or a social media account (Facebook, Twitter) to voice his opinion on an issue that interests him. The Internet allows everyone to talk about any problem at all times all the time.

Technological advances and the impact of lockdowns during the Covid-19 pandemic have encouraged individual internet users from Indonesia (Warganet) to transform into a force of opinion that influences the law. Although often the power is used negatively, such as spreading hoaxes to influence the political situation or in the context of power struggles (elections). However, in the author's observation, regarding matters that are not related to politics and elections, the opinions of netizens on an issue tend to be sincere and honest.

The topic that attracted the attention of netizens was the Case of Nenek Minah which was considered a form of very sharp enforcement downwards. This case is also one of the things mentioned by Commissioner General Listyo Sigit Prabowo when undergoing a fit and proper test as a candidate for the Chief of Police on January 20, 2021 before Commission III of the House of Representatives of the Republic of Indonesia. He stated that the

Nenek Minah Case is a case that disturbs the community's sense of justice and should not be repeated just to realize legal certainty.

Nenek Minah's case occurred on August 2, 2009 in the jurisdiction of the Purwokerto District Court. At that time, Nenek Minah was in the cocoa plantation area owned by PT RSA IV Darmakradenan and saw cocoa fruits dangling on her tree. Furthermore, secretly without the owner's knowledge, Nenek Minah picked 3 (three) cocoa fruit beans from the tree. This action was caught by the foreman of the plantation who was conducting routine patrols. Furthermore, Nenek Minah was secured to the Ajibarang Police Station for processing and then charged with having committed criminal acts as regulated and threatened with criminal punishment according to Article 362 of the Criminal Code. Article 362 of the Criminal Code (KUHP) reads: "Whoever takes the goods, which are wholly or partly in the possession of another person, with intent to possess them unlawfully, shall be punished for stealing with imprisonment for a term of five years"

Against the charges of the public prosecutor, the panel of judges decided that Nenek Minah was proven to have lawfully and convincingly committed the crime of theft and sentenced her to 1 (one) month and 15 (fifteen) days with probation for 3 (three) months. This verdict is lower than the public prosecutor's demand, which is a prison sentence of 6 (six) months.

## **B. Problem Formulation**

Based on the description in the Introduction section above, the author formulates the subject matter as follows: How netizens think of law enforcement in the case of Nenek Minah and corporate social responsibility.

### C. Research Methods

This type of research in terms of sources is normative research with analytical descriptive properties; then use a secondary data source. According to Soerjono Soekanto & Sri Mamuji secondary data has a very wide scope including personal letters, diaries, books and official government documents. The collected data is then systematically compiled, studied, then drawn a conclusion in relation to the formulation of the problem above.

### D. Discussion

#### 1. Law Enforcement of Nenek Minah's Case

The verdict of Nenek Minah's case was read by a panel of judges in a hearing open to the public at PN Purwokerto on November 19, 2009. Previously, Nenek Minah had undergone an examination at the Ajibarang Police Station at the end of August 2009 and an examination at the Purwokerto District Attorney's Office from October 19, 2009 to November 1, 2009. During this period, Nenek Minah was under house arrest at the Purwokerto District Attorney's Office. The legal facts obtained in the trial are: 10 Legal facts:

- a. Defendant Mnh alias Mrs. S binti S, an old woman, aged 55 years born in Banyumas, residing in Darmakradenan Village RT 04 / RW 09, Ajibarang District, Banyumas Regency;
- b. Defendant Mnh as a farmer was forced to take 3 (three) cocoa fruits for his seedlings on August 2, 2009, Sunday afternoon at 1:00 pm;
- c. 3 (three) cocoa fruits grow on trees on the PT RSA IV Darmakradenan Plantation in Darmakradenan

village, Ajibarang District, Banyumas Regency;

- d. PT RSA IV Darmakradenan was harmed Rp 30.000,- (thirty thousand rupiah);
- e. The arrest of defendant Mnh was intended to have a deterrent effect.

That the panel of judges concluded that the facts after being connected with Article 362 charged to Nenek Minah turned out to be satisfied, as follows:

- a. The element of "Whoever", fulfilled in the person of Nenek Minah (defendant);
- b. The element of "Taking", fulfilled in the deed of Nenek Minah taking 3 pieces of cocoa;
- c. The element "Which is completely or partly included the property of others", fulfilled in the ownership of 3 cocoa beans is in PT RSA IV Darmakradenan; and the element "With the intention of possessing goods unlawfully", fulfilled in the intention of Nenek Minah taking 3 pieces of cocoa for the seeds in her field.

The tribunal found that with the fulfillment of these elements, Nenek Minah's actions had been proven to be unlawful and no justification was found.

According to Moeljatno, the reason for the justification is the reason that removes the unlawful nature of the act, so that what the defendant does becomes a proper and correct act. In the Criminal Code, what is considered as a justification is Article 49 Paragraph (1) regarding the defense of the defendant (noodweer), Article 50 regarding implementing the provisions of the law and Article 51 Paragraph (1) regarding carrying out the orders of superiors. According to the panel of judges, there was no forgiving reason because in

the observations of the panel of judges during the trial:

- a. the defendant is in good physical and spiritual health, able to follow the course of the trial properly;
- b. the acts committed by the defendant of his own accord, not because of an unlawful order of office, are considered valid;
- c. no reason for emergency defense was found.

Forgiving reasons, that is, reasons that abolish the guilt of the accused. The act done is still considered an unlawful act but because there is no mistake, the act is not punished. In the Criminal Code, what is considered a forgiving reason is Article 49 Paragraph (2) on defense that exceeds the limit and Article 51 Paragraph (2) on the grounds for criminal removal due to an invalid order of office. Article 48 on coercive force (*overmacht*) can also be categorized as forgiving reasons.<sup>13</sup> According to the panel of judges Nenek Minah did not fulfill it all so that she could be held accountable for the deeds she did. Furthermore, regarding the defendants, the panel of judges did not find anything incriminating. Meanwhile, the mitigating matters according to the panel of judges are: elderly, farmers who are classified as poor, cocoa fruit can be replanted because there are very few, the defendant cooperatively attends the hearing despite being elderly and limping, the defendant has received punishment with unsettled soul.

The mitigating consideration of the letter e is in accordance with the purpose of criminal law according to J.B. Daliyo, which is to repressively educate criminals to return to being good persons and accepted by society.<sup>15</sup> Moreover, in her plea Nenek Minah stated:

- a. regrets his deeds and promises not to repeat them again;
- b. the first time to do the deed;
- c. apologies for his actions;
- d. please punish as light as possible and as fair as possible.

Based on the consideration of the fulfilment of all the elements of the deliberations, the Panel of Judges found as follows: Declaring the accused Mnh alias Mrs. S complete with having been validly and conclusively proved guilty of the crime of theft; Criminalizing. Therefore, the defendant shall be imprisoned for 1 (one) month and 15 (fifteen) days with the provision that the crime does not require the defendant to undergo unless in the future there is a judge's decision to sentence the defendant because the defendant committed a criminal act before the expiration of probation for 3 (three) months.

The judge's decision turned out to be inconsistent with the views of netizens, while according to F. Jadidah based on humanitarian reasons, the law is seen as building a set of rules that humanize people. The law must be textually or contextually logical, when no forgiving and justifying reason is found, the judge can pay attention to the opinion of the developing society. Although the prison sentence imposed by the judge does not need to be served by Nenek Minah because it is a suspended sentence, the verdict is still considered unfair by the majority of netizens. For them, the case against Nenek Minah is a form of injustice against the poor. Examples of netizens' opinions are as follows:

- a. "Justice is still very expensive and unaffordable for the poor."
- b. "the case of Minah's grandmother's "3 cocoa beans", to the case of the "watermelon scabies" of Basar and Kholil, became a contrasting scene of

how the goddess of justice easily slashed the rights of the plebeians "

The case of Nenek Minah is also considered an irony and something sad and further strengthens public opinion that the law does not favor the poor, this is obtained from the quote:

- a. "This is the reality of the legal and judicial world in the motherland of Indonesia. Whose heart is not sad to see the reality of the law that Nenek Minah lived through."
- b. "Law enforcement in Indonesia is now controlled by officials and the "money" and ensnares the poor as victims."

The law must be based on conscience, not limited to justice as in the case of Nenek Minah, quote:

- a. "The law that is supposed to protect society by upholding justice, for Minah's grandmother, turns out to have no conscience.."
- b. "We are again facing bitter facts. Law enforcement officers who are obliged to protect society by upholding justice have no conscience." (Netizen No. 5)

Netizens contrasted the inequality between the strictness of law enforcement in the Nenek Minah Case and the strictness of law enforcement in corruption cases or cases involving the ruler and the surrounding circles, quote:

- a. "Corruptors who eat billions of people's money escape the entanglements of the law. But this grandmother, Minah from Sidoharjo Hamlet, Darmakradenan Village, Ajibarang District, Banyumas Regency, had to face legal problems just because of three cocoa beans worth Rp. 2,000."
- b. "Ordinary people like Nenek Minah and her friends, who only committed minor

acts of theft, were immediately arrested and thrown into prison. Meanwhile, a state official who corrupts billions of rupiah in state money can roam freely."

Even netizens who can understand that Nenek Minah is indeed guilty still imply an injustice in the criminal process. "stealing 3 pieces of cocoa which only costs Rp. 30,000 is worth comparing to 1.5 months of imprisonment<sup>29</sup> which if we convert it to a fine may reach 2 billion. So here is not looking for who is right and wrong, because it is clear that Minah's grandmother is guilty, but from this case must seek justice in law, Remember Justice In Law."

Netizens questioned why in processing the Nenek Minah Case only focused on enforcing legal certainty whose results were insignificant, lame and did not choose progressive legal settlements and restorative justice. "What's the matter with the investigators and prosecutors of Minah's case? Doesn't progressive legal thinking and restorative justice get to them? Don't they understand the basic value of the law? stuck in legal certainty?"

From the description above, it can be seen that netizens and the panel of judges are of the same view if Nenek Minah's actions have met the elements of deliberation in Article 362 of the Criminal Code. However, Warganet did not agree with the panel of judges if Nenek Minah was guilty so that she deserved to be punished. The application of criminal law is the principle of *geen straf zonder schuld* or no criminal without fault, which means that one can commit a criminal act but is innocent, has no criminal responsibility.<sup>34</sup>

The panel of judges had already carried out that principle, that in order to convict Nenek Minah must be found to her. "To convict a person must be proved of the existence of a criminal offence and it is the accused who must be held liable for the

criminal act. As to the existence of a criminal act, it must be proved by the fulfillment of all the elements of the articles of the statute charged against him and no justification is found, while regarding the liability for the occurrence of the crime and a forgiving reason is found that can remove criminal liability.<sup>35</sup>

Criminal law also recognizes the term *vis compulsiva*, that is, the coercive force arising from one's inner (psychic). Further, *vis compulsiva* is divided into *overmacht in enge zin* and *noodtoestand*. *Overmacht in enge zin* is coercive power in a narrow sense, that is, coercive power generated by the coercion of others for example people are held to give up their wallets. While *noodtoestand* is a force due to an emergency, that is, a force arising from a certain state or situation or condition. According to Simons *noodtoestand* is a forgiving reason that removes the unlawful nature of an act.<sup>36</sup> Further to force force, to interpret the *noodtoestand* (emergency) that a person experiences so as to be a forgiving reason to remove the unlawful nature must examine each case. And as outlined above, the panel of judges did not find a forgiving reason that could remove Nenek Minah's criminal liability, on the other hand, the judge agreed that the theft committed by Nenek Minah was a phenomenon of social inequality but the panel of judges judged that Nenek Minah's poor situation, which forced her to steal, was not a forgiving reason but merely a mitigating matter. Minah's grandmother's actions are a symptom of PT. RSA IV Darmakradenan does not empower the local community, causing inequality and social jealousy. On the other hand, there are studies that contain a more surprising aspect: in New York City, the relatively high poverty rate of Asians is accompanied by a very low crime rate. This weakens the common belief that poverty and crime go

in the same direction. Other research in the view of utilitarianism, however, would say what a poor thief has done for medical expenses is morally correct. For utilitarians, stealing itself is not judged bad or good, but what makes it bad or good is the resulting consequences, the event is that Peter steals from one well-off person, and spends it on three people who are more in need of money, this justification is because the calculation of the benefits of theft outweighs the harm caused by theft.

The author catches that this is where it seems that Warganet disagrees with the panel of judges that according to netizens the condition should be considered enough as a *noodtoestand*. The author himself considers that the panel of judges does not explore if PT. RSA IV Darmakradenan acts as a victim who causes inequality and social jealousy that becomes a situation and condition that results in (psychic) Nenek Minah being forced to steal.

Netizens hope that the Nenek Minah Case will become a starting point for learning so that the law becomes more conscience in justice and humane. And for law enforcement officers to exercise authority appropriately, and not get caught up in positivism but rather embody substantial justice.

## **2. Corporate Social Responsibility**

Initially, the regulation on Limited Liability Companies in Indonesia was implemented with the Dutch Trade Law (*Wetboek van Kophandel* or KUHD for short) and then replaced by Law Number 1 of 1995 concerning Limited Liability Companies (Law 1/1995). On August 16, 2007, then replaced by Law Number 40 of 2007 concerning Limited Liability Companies which is valid until now. When compared to Law 1/1995 and KUHD, Law 40/2007 has a peculiarity, namely the

existence of regulations on Social and Environmental Responsibility (TJSL) or more popularly known as Corporate Social Responsibility (CSR).

According to M. Yahya Harahap, the existence of TJSL in Law 40/2007 is based on a recently developed view that teaches the Company as a company that carries out business activities in the midst of community life, must take responsibility for social problems faced by the local community. This teaching opposes neo-capitalism which is opinionated if the responsibility of the Company is only to seek the maximum benefit for shareholders, while social issues, people's welfare and environmental problems are not the responsibility of the Company but the responsibility of the government. Law 40/2007 goes further by stipulating that TJSL is a legal responsibility, so it is not just a moral and ethical responsibility whose implementation is very subjective.

The General Explanation of Law 40/2007 explains that the purpose of TJSL is to realize sustainable economic development in order to improve the quality of life and the environment that is beneficial to the Company itself, the local community, and the community in general. It is also explained that the purpose of TJSL is to support the establishment of a harmonious, balanced, and in accordance with the environment, values, norms, and culture of the local community. So TJSL is an obligation of a Company to the quality of life of the community and the environment around the Company's business activities, referring to Article 74 paragraph (1) regulates if: "Companies that carry out their business activities in the field of and/or related to natural resources are required to carry out Social and Environmental Responsibility." PT RSA IV Darmakradenan strives for cocoa plants in a plantation area, which means that its

business activities in the field or at least are related to or have an impact on the function of natural resources so that they meet the qualifications as a company that bears the obligations of TJSL. Furthermore, according to Law Number 18 of 2004 concerning Plantations (Law 18/2004) which was in effect at the time of the Nenek Minah Case, a plantation company has the obligation to establish partnerships with the surrounding community to further improve the welfare of the surrounding community in addition to maintaining the security, sustainability, and integrity of the plantation business; Article 22 Paragraph (1)<sup>45</sup> "Plantation companies carry out mutually beneficial partnerships, mutual respect, mutual responsibility, mutual strengthening and interdependence with smallholders, employees, and communities around the plantation."

PT RSA IV Darmakradenan can be summarized as having 2 (two) types of legal responsibilities, namely:

- a. carry out Social and Environmental Responsibility; and
- b. establish partnerships with the surrounding community. which aims to improve the quality of life and welfare of the surrounding community.

Whenever PT. RSA IV Darmakradenan does not carry out its two legal responsibilities, so PT. RSA IV Darmakradenan actually plays a role in causing inequality and social jealousy in the surrounding community and if it has a direct causality that creates situations and conditions that force Nenek Minah to commit theft then the author agrees that there is a noodtoestand as a type of overmacht that does not occur not due to human actions, but because of other things.

So far, noodtoestand has always been interpreted as a dangerous state related to life and death such as the classic example of the Carneades Board or the

proverbs of people who are forced to steal bread because they have not eaten for several days.<sup>46</sup> But judges can rechtsvinding, for example, by conducting sociological interpretations, namely interpreting laws based on civic purposes.

The judge made a legal discovery and the extension of the meaning of a provision of law is permissible by law, this has been taken into consideration in various jurisprudences, as also in the Arrest Hoge Raad of January 31, 1919 in the case of *Lindenbaum vs. Cohen* which expands the meaning of *onrechtmatige daad* (unlawful acts). Also Arrest Hoge Raad dated May 23, 1921 about the case of electricity theft in Gravenhage which gave a new meaning to objects not only limited to *roerend goed* (moving objects) and *stoffelijk goed* (tangible objects) but also includes something part of human wealth. The latest societal goals related to demanding that a company must take responsibility for the social problems faced by the local community where the company carries out its business activities. This kind of social situation did not exist in this case before. Thus the narrow meaning of the *noodtoestand* is no longer compatible with this new social situation; In perceptive, judges can also refer to Law Number 48 of 2009 concerning Judicial Power, namely Article 5 paragraph (1) which reads: "Judges and constitutional judges are required to explore, follow, and understand the values of the law and the sense of justice that lives in society"

## E. Final words

*Ubi societas ibi ius*, Cicero said; Law is a necessity in social life. However, the relationship between law and society is not like a puzzle of which comes first between a chicken and an egg. It is logically very clear that the existence of society is ahead of the law. The law does

not exist without society. Thus the existence of the law is to serve the needs of society. The case of Nenek Minah the law that applies and is practiced in its interpretation does not serve the needs of the community, especially regarding the aspect of justice for the poor. The situation of Nenek Minah, who was misplaced because she was poor, then committed theft, should be considered as a *noodtoestand* from PT. RSA IV Darmakradenan which does not fulfill legal obligations. As a suggestion, researchers should in the future return to using moral instruments in legal studies, and not based on the dichotomy of poor or rich, but considering *mens rea* or the process of occurrence of a delik and its consequences/losses.

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