

Reformulation of Indonesian Criminal Justice System Based on Principles of Humanity, Justice, and Morality

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Abstract. Principles in the legal system consist of norms, institutions, and processes. Norms include the rule of law, both primary regulations (which directly define the behavior) and secondary regulations (which govern the application of primary regulations and the functioning of institutions and system processes, including the process of extending or modifying regulations). Legal institutions include facilities for the operation of processes and the application of norms. The status and relations identified and controlled by norms, the relationships on which norms operate are dilemmas in Indonesian law enforcement. Besides, a reformulation in the Indonesian criminal justice system is needed to enforce laws based on the principles of humanity, justice, and morality. Reformulation of the Indonesian criminal justice system based on the principles of humanity, justice, and morality is very much needed in law enforcement. As a result, it really becomes a means of development and renewal of law enforcement agencies as expected and they can enforce the law as implied in the whole content of Pancasila.

Keywords: Reformulation, Criminal, Humanity, Justice, Morality

1 Introduction

Criminal law enforcement is one of the important agendas that must be realized during this reform period. However, an effort to enforce criminal law is not an easy and simple task.

Criminal law enforcement through a system approach is known as a criminal justice system. In general, a criminal justice system can be interpreted as a process for the operation of several law enforcement agencies through a mechanism implemented in sequential activities including investigations, prosecutions, examinations in court proceedings, and implementation of judges' decisions by correctional institutions [1].

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Soerjono Soekanto argues that law is a concretization of the value system prevailing in society. The desired condition is a conformity between the law and such a value system. Consequently, changes in values will be followed by changes in the law underneath, while

changes that occur at the bottom are not necessarily followed by changes in the underlying values.

The effort to enforce the law to humanize humans, to enforce justice, and to uphold morality is how to make a harmony between the ideals of the law and the reality of the daily implementation of the law. One of the factors causing the gap between them is the attitude of law enforcers. Thus, the implementation of law and justice in a legal system is influenced by the thoughts of law enforcers, i.e., their views on justice formulated in legal theory they adhere to are inserted into the decision-making process of the criminal justice system which is reflected in the content or substance of the results or legal decisions they make [3].

In fact, the legal culture of implementing criminal action enforcement in Indonesia shows a very bad image. Institutional arrogance that is agency-centric, inconsistent, and contradictory actions in law enforcement, tends to think fragmentary (which prioritizes the interests of power over the interests of society) and sectorally, but not systemically. In addition, there is a phenomenon that tends to occur in law enforcement in Indonesia, that the community's weak legal awareness is influenced by the weak legal awareness or integrity of law enforcement officers [4].

Based on the facts elaborated above, several factors leading to the bad image of criminal enforcement in Indonesia are: (i) the crisis of law enforcement officers' behavior that causes distrust and unrest in the Indonesian people over all the instruments of the criminal justice system; (ii) the intimidation of suspects to admit their actions in the investigation process; (iii) a bargain in deciding the level of punishment in the prosecution process; (iv) no justice given to the defendants under the portion of their criminal actions during the trial examination process; and (v) the failure of correctional institutions in restoring the prisoners to the good condition due to improper treatment. Thus, the judicial officers in Indonesia are obviously unable to carry out their duties as law enforcers based on the values of humanity, justice, and morality.

This incident is a dilemma in Indonesian law enforcement; therefore, a reformulation in the Indonesian criminal justice system is obviously needed to enforce laws based on the principles of humanity, justice, and morality.

2 Research Method

This is a descriptive-analytical study using an observational method to provide an overview of the study by direct observation supported by the data from literature studies.

This study uses a normative legal research method. A statutory approach is used by referring to legal norms contained in statutory regulations and doctrines as well as theories that are relevant to the problems identified and the discussion.

3 Results and Discussion

3.1 Reformulation of the Criminal Justice System Based on the Principles of Humanity, Justice, and Morality

The Criminal Justice System is an effort to overcome and control crimes occurring in society. Mardjono Reksodiputro comprehensively explains the objectives of the Criminal Justice System as follows [5]:

- a. Preventing people from becoming victims of crime;
- b. Resolving crimes occurring in society, so the people feel satisfied because justice has been served and the guilty is sentenced;
- c. Making sure that those who have committed crimes do not repeat their crimes.

Humanity Values are universal values that can be developed to shape the character of law enforcers. The Humanity Values consist of truth, virtue, peace, compassion, love, and non-violence.

Humans, as creatures of God Almighty, are naturally granted basic rights called human rights, without differences from one another. With such rights, they can develop their personality traits, roles, and contributions to the welfare of human life. Humans, both as individuals and as citizens, in developing their personality, take part in and contribute to the welfare of human life which is determined by the nation's worldview and personality. The Indonesian national worldview and personality as a crystallization of the noble values of the Indonesian nation place humans in the nobility and dignity of the Almighty God's creature, with the awareness to develop their nature as a personal being as well as a social being as stated in the Preamble of the 1945 Constitution [6].

Romli Atmasasmita argues that the Criminal Justice System can be seen from various approaches [7]:

- a. Normative approach. This approach views the four law enforcement officers (police, attorney, courts, and correctional institutions) as the implementing institutions for the prevailing laws and regulations; therefore, these four officers are an inseparable part of the law enforcement system.
- b. Management or administrative approach. This approach views the four law enforcement officers (police, attorney, courts, and correctional institutions) as a management organization with its respective working mechanism, both horizontal and vertical relationships following the organizational structure prevailing in the organization. The system used is an administrative system.
- c. Social approach. This approach views the four law enforcement officers (police, attorney, courts, and correctional institutions) as an inseparable part of a social system; therefore, society as a whole takes responsibility for the success or failure of the four law enforcement officers in carrying out their duties. The system used is a social system.

Comprehensive enforcement of criminal law can be said to be a process of upholding material criminal law that seeks the truth of the prohibited acts alleged to perpetrators, both in the Criminal Code and regulations outside the Criminal Code. Every action that fulfills the formulation of the law can be accounted for regardless of the objective factor of why the act was committed. By only looking at the elements of the law, it can be interpreted that criminal law is rigid because it only tends to the law. Structurally, it relates to law enforcement agencies/institutions/officers that enforce the law. Today's law enforcement officers, e.g., judges, are still constrained by a positivist paradigm which only races on the written elements that can be applied

to the perpetrators. In passing their decisions, judges cannot apply rule-breaking in their decisions to achieve substantial justice [8].

A law enforcement system is basically a compilation of combined several sub-systems such as substance system, structural system, and cultural system. If a reforming element is inserted, then it must cover all the three subsystems, i.e. reforms in the substance, structure, and legal culture [9].

Legal reform for a country is absolutely necessary to realize a national criminal law. The internal conditions of Indonesian people which develop rapidly along with the development in other parts of the world and very strong demands for legal certainty and justice make some of the criminal law formulations contained in the Criminal Code no longer capable to be used as a legal basis to overcome crimes.

A comprehensive criminal law reform – which regulates the balance between the interests of the society and the interests of the state with the interests of individuals, between protection of perpetrators and protection of the victims, between elements of action and mental attitudes, between legal certainty and justice, between written law and law living in society, between national values and universal values, and between human rights and human obligations – must be realized as soon as possible. This is the desire to realize the mission of decolonization of the Criminal Code from colonial heritage/legacy, the democratization of criminal law, consolidation of criminal law, and adaptation and harmonization of various legal developments that occur as a result of both the development of criminal law science and the development of values, standards, and norms that live and develop in the life of the Indonesian legal community and the international community. Besides, such a desire is a reflection of responsible national sovereignty [10].

3.2 Reformulation Expectation Based on the Principles of Humanity, Justice, and Morality

In a criminal justice system, there is an input-process-output mechanism. Input is a report or complaint about the occurrence of a criminal act. The process is actions taken by the Police, Attorney, Courts, and Correctional Institutions (as the four law enforcement sub-systems). Meanwhile, the output is the results obtained [11].

According to Sajitpto Raharjo, legal thinking should return to its basic philosophy, i.e., law for humans. With such a philosophy, humans become the determinant and point of legal orientation. A law must serve humans, not the other way around. Therefore, a law is not an intuition that is separated from human interests. The quality of law is determined by its ability to serve human welfare. Based on this paradigm, a law adheres to an ideology of pro-justice and pro-people [12].

Law enforcement mechanisms by law enforcement officers must be oriented towards the purpose of law enforcement as an instrument of social order, and the implementation process of protecting individual interests must be in the framework of a social order system. Thus, the existence of law and its implementation are not autonomous and closed from people's life [13].

Integrity is a basic characteristic that a person must possess completely in the sense that his personality is not compartmentalized but consequent in various dimensions of life. People with integrity are people who are honest, match their attitudes with their actions, do not lie, and can be trusted, cannot be bought, are autonomous, and dare to be independent [14].

This context implies that the protection of human rights must receive attention because human rights are the principal elements in every person. This situation requires a means or a forum to accommodate various interests which aim, not only at legal certainty and justice but

also at the protection of human rights, including the rights of suspects. Such a facility includes pretrial hearing, which so far has been used as a means of upholding and protecting the human rights of suspects from arbitrary actions by law enforcers who are considered to have carried out their duties such as arrests, detention, termination of investigations, and prosecutions of the suspects that is not based on the prevailing legal provisions [15].

Therefore, creating responsive law enforcers and placing law as a means of responding to social provisions and public aspirations are obviously required. Under its open character, a law puts forward accommodation to accept social changes to achieve justice and public emancipation. A law must be functional, pragmatic, purposeful, and rational. Competence becomes a benchmark for evaluation of all law enforcement. Because competence as an objective serves as a critical norm, the responsive legal order should be emphasized on [16]:

- a. Substantive justice as the basis for legal legitimacy;
- b. Regulations which are subordinated to principles and policies;
- c. Legal considerations that must be oriented towards the goals and consequences for the benefit of society;
- d. Use of discretion which is highly recommended in making legal decisions while remaining goal-oriented;
- e. Fostering a system of obligations instead of a system of coercion;
- f. The morality of cooperation as a moral principle in implementing the law;
- g. Power of law in serving the community;
- h. Rejection of the law must be seen as a challenge to the legitimacy of the law; and
- i. Access to legal and social advocacy integration.

The legal method that relies on and prioritizes behavior, which starts from the interaction between members of a certain community and then creates law so that it is called interactional law, is a substantial legal method. This interaction is a chemical process that will produce an established pattern and ultimately functions as a law. Using a substantial legal method does not require a special body to make a law deliberately (hierarchically of norms), but a law grows spontaneously (spontaneously generated) in the interactions between the members of society. By using a substantial legal method, a law will continue to exist and work even though life is becoming more formally-rationally structured. It will continue to exist and work side by side with other laws formally-textually [17].

Legal methods must go beyond conventional methods and the status quo, and encourage the perpetrators or actors to break free and make changes so that problems in a dynamically moving society can be answered and resolved by a static legal “container”.

The task of the judicial body is to administer the judiciary to uphold law and justice. Considering justice seekers in obtaining justice is imperative for every judicial body to improve public services and guarantee a judicial process based on humanity, justice, and morality [18].

The essence of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid principles and embodying attitudes as a series of final value descriptions to create, preserve, and maintain peace and order in society [19].

4 Conclusion

Reformulation of the Indonesian criminal justice system based on the principles of humanity, justice, and morality is extremely needed in its role to enforce the law so that it really becomes a means of development and reform of law enforcement agencies as implied in the

whole content of Pancasila. The condition of the Indonesian criminal justice system that has not yet achieved the principles of humanity, justice, and morality, has made the law enforcement system seen by the public no longer as a place for seeking justice as a whole. The criminal justice system has not yet achieved a sense of humanity, justice, and morality for the community and is considered unable to implement the values embodied in *Pancasila*, especially humanitarian values. In terms of future reformulation of the Indonesian criminal justice system, changes are obviously required by referring to the 1945 Constitution of the Republic of Indonesia and the values of Pancasila in all its sub-systems: structural, substantial, and cultural sub-systems. Such reformulation is intended to achieve a sense of humanity, justice, and morality in upholding the law.

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