

Law Enforcement in the Criminal Justice System

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Abstract. Indonesia adheres to an integrated criminal justice system, which is the Criminal Procedure Code (KUHP). There has been widespread criticism of law enforcement's reality in Indonesia, especially on the criminal justice system's performance, justice for law, and people's rights to legal certainty. Formulation of the research problem: How are the efforts to create a justice system of law enforcement in the criminal justice system? The research findings show that to create a justice system of law enforcement in the current Indonesian criminal justice system, besides referring to the crime control model and due process model, namely the moral of law enforcers to realize a sense of justice. Law, legal protection for both individuals and society, as well as legal certainty as norms agreed upon by organization in the form of national law which reflects the socio-cultural and religious values as manifestations and philosophical values of Pancasila as the source of Indonesian law and finally guarantees its maintenance in the criminal justice process.

Keywords: Law enforcement; criminal justice system in Indonesia

1 Introduction

Indonesia integrated the criminal justice system, the Criminal Procedure Code's legal spirit (KUHP). This integration is philosophically an instrument to realize the Indonesian nation's national goals formulated in the 1945 Constitution, namely protecting the community (social defense) to achieve social welfare. The Criminal Procedure Code adheres to the principle of division of functions by separating the duties and powers of investigation, prosecution, and examination in the judicial process and implementing integrated court decisions and decisions, leading to an integrated criminal justice system. However, in its implementation, there has not been any synergy between the relevant agencies (Supriyanto, 2020).

Increasing criticism of law enforcement's reality in Indonesia, especially against the performance of the criminal justice system, which is considered detrimental to justice and people's right to legal certainty, is a natural thing, according to Mambaya. In his legal journal: Ethics in the Criminal Justice System: A Critique of Judicial Errors in Indonesia. Judicial errors in the criminal justice system remind the existence of the dangers behind the optimistic basic assumption, namely the negative basic assumption that the authority and power given to law enforcement officers always has the opportunity for abuse, deviating from their duties. Enforce law, truth, and justice. Facing the task of enforcing the law, all law enforcers have a moral obligation to comply with the norms of criminal procedure law. A law enforcer must

critically take law enforcement actions, which can be ethically accounted for in the context of realizing justice (Mambaya, 2015).

In a criminal justice system, the main focus is during trial processes or judges' decisions, such as in cases of corruption which are decided to be released or free. The Indonesia Corruption Watch (ICW) study stated:

"The trend of verdicts in corruption cases in Indonesia shows an increase in convictions sentenced to acquittal or acquittal throughout 2019. The court decided to be acquitted and acquitted of the highest corruption cases in 2019 compared to 2018 and 2017. In 2017 35 people were acquitted or released. In 2018 There were 27 defendants, while in 2019, there were 54 defendants. Throughout 2019, ICW recorded that 842 defendants were lightly sentenced (82.2 percent), 173 people severed moderate (16.9 percent), nine people severely severed (0.9 percent) and 54 people released/released (5, 2 percent) originating from 1,019 corruption cases".

This concern must be seen as a wish of all parties to be a change for the better in the future because there is no established and permanent criminal justice system that can be implemented throughout the ages in any country, including Indonesia. The Criminal Procedure Code makes Indonesia's judicial system adopt an accusatory approach, namely proof of a criminal case leading to scientific evidence and the suspect as a party to investigate a criminal act. The judicial system is also affected by due process models, namely a fair and proper legal process and recognition of the rights of suspects /defendants. However, the implementation of criminal justice based on KUHAP is still not running smoothly, and there are still many weaknesses. The crime control model (crime prevention model) and due process model (rights protection model) are still far from expectations. Even the incubator approach still dominates. The loss of enthusiasm and trust in the law is a tomb end in obtaining justice and legal certainty by most of the community.

Law enforcement efforts to create public trust in justice, legal certainty, security, and order are carried out jointly in a criminal justice system that is a long process and involves many elements in it, several subsystems that include the police subsystem subsystems. Attorney General's Office as public prosecutor, judicial subsystem as a judge who decides on court cases, and correctional institution subsystem as rehabilitation subsystem.

The four subsystems above can only run well if all interact and work together to achieve one goal, namely seeking truth and material justice as the soul and spirit of the Criminal Procedure Code. The integration of subsystems in the criminal justice system is directed at tackling crime and directed at controlling crimes within acceptable tolerance limits. As a general reference used as a common goal for upholding justice, legal advisors' involvement (advocates) poses the criminal justice system's operation in the Criminal Procedure Code.

2 Problem Statement

The formulation of this research is "How are efforts to create a justice system of law enforcement in the criminal justice system"?

3 Literature Review

3.1 Law enforcement

Law functions as a protection for human interests. For human parts to be protected, laws must be enforced. Law enforcement can usually take place peacefully, but it can also occur because of lawlessness. In this case, the law that has been violated must be enforced. Through law enforcement that has been broken must be implemented, and through law enforcement, this law becomes a reality. According to Satjipto Rahardjo in his legal theory, he said that:

"Law enforcement is a series of processes for elaborating legal ideas and ideals that contain moral values such as justice and truth into concrete forms, in realizing it requires an organization such as the police, prosecutors, courts and prisons as classic elements of law enforcement established by the State, other words, law enforcement essentially contains the supremacy of a substantial value, namely justice.

Furthermore, Satjipto Rahardjo said that: "Law enforcement always involves humans and human behavior. The law cannot be upheld by itself. The law is incapable of realizing the promises and wills stated in the law (regulations). Efforts to realize law enforcement in public services, the apparatus of administering public services, must avoid ordinary or conventional methods, but require extraordinary methods (progressive law enforcement), meaning that working with a clear determination is not the same as "justifying all kinds of methods." Progressive law enforcement is carrying out the law not just according to the black and white words of the regulations (according to the letter) and laws or laws".

According to Faisal Santiago, law enforcement can be formulated: "as an effort to implement the law properly, supervise its implementation so that there is no violation, and if there is a violation of the law then restore the violated law so that it is re-enforced." According to the legal system theory of Lawrence M. Friedman said that: "An effective legal system and the success or failure of law enforcement depends on the legal system which includes three components or subsystems, namely "legal structure components, legal substance, and legal culture.". Whether or not law enforcement effectively depends on the overall relationship can involve the legal system's three components, namely the legal structure, legal substance, and traditional culture.

According to law enforcement theory, Sudikno Mertokusumo said that: "in upholding the law there are three elements that must always be considered, namely: legal certainty, benefit, and justice.". In law enforcement, it is not permissible to pay attention only to legal certainty. Other elements are sacrificed. Likewise, if what you pay attention to is the benefit, legal certainty and justice are offered, and so on. In law enforcement, there must be a compromise between the three elements. The three components must receive balanced, proportional attention. But to find it is not easy a proportionally balanced compromise between the three aspects in practice. The law must be implemented and enforced. Everyone expects the law to be enacted in the event of a definite possibility. How the law should apply, basically it is not permissible to deviate: even though the world is collapsing, the law must be enforced.

3.2 Criminal Justice System

The criminal justice system was introduced by criminal law experts and experts in criminal justice science in the United States in line with dissatisfaction with law enforcement officials and law enforcement institutions' working mechanisms. According to Mardjono Reksodiputro in H. Edi Setiadi and Kristian, provides a limitation that what is meant by the criminal justice

system is: "The crime control system consisting of the Police, the Attorney General's Office, the Court and Corrections for the convicted person." Implementing the criminal justice system as a tool for dealing with crime is carried out by bringing the perpetrators to court to create a deterrent effect on the criminals and make potential criminals think twice before committing a crime.

According to Philip P. Purpura in Lilik Mulyadi stated that: "*criminal justice system* is a system consisting of lawyers, police, prosecutors, courts and correctional institutions to protect and maintain public order, and detaining the perpetrators of crimes, providing limits, and understanding the perpetrators of crimes, imposing limits on the guilt or innocence of a person, punishing the perpetrators who guilt through the components of the system as a whole can provide legal protection for the rights of suspects."

According to Romli Atmasasmita, the characteristics of a systems approach in criminal justice are as follows:

- a. Emphasis is on the coordination and synchronization of the components that make up criminal justice (Police, Attorney General's Office, Courts, and Correctional Institutions)
- b. Supervision and control of the use of power by elements of criminal justice.
- c. The effectiveness of the crime prevention system is more important than the efficiency of case resolution;
- d. The use of law as an instrument to strengthen the administration of justice.

More clearly, the gradual criminal justice system can be studied through the approach of the legal, sociological, economic, and management dimensions as well as Satijpto Raharjo's description in Rocky Marbun, that:

"There are several options for studying a legal institution such as a criminal justice system (SPP), namely with a traditional approach and a broader approach, such as sociology, economics, and management. From a professional perspective, SPP is commonly discussed as an independent legal institution. Here we pay attention to the principles, doctrines, and laws that govern the SPP. In law, such an approach is called positivist analytical".

According to Larry J. Siegel and Joseph J. Senna, they view the criminal justice system as follows: "*Criminal justice may be viewed or defined as the system of law enforcement, adjudication, and correction that is directly involved in the apprehension, prosecution, and control of those charged with criminal offenses.*"

Remington and Ohlin in Trisno Raharjo argued that: "*Criminal justice system* is a systems approach to the administrative mechanisms of criminal justice, and criminal justice as a system that results from the interaction between laws and regulations, administrative practices and social attitudes or behaviors.". A slightly different definition is given by Barda Nawawi Arief, who explains that: "The criminal justice system is essentially identical to the law enforcement system, which is criminal. The law enforcement system is a system of power/authority to enforce the law, which can also be identified with the term judicial power. Therefore, the criminal justice system or law enforcement system is essentially identical to the judicial power system in the field of criminal law."

All this can only be realized if the trial is conducted based on the principles of a fair legal process (due process of law). According to Tobias and Petersen, mentioning the minimal elements in the due process of law are hearing, counsel, defense, evidence, and fair and impartial court.). which is the spirit of the criminal justice system itself. According to Mardjono Reksodiputro, states that: "The success of a system, if it is directly proportional to the acceptance of community villages that are victims of crime, is capable of bringing the actor to trial and carrying out court decisions."

According to Trisno Raharjo, the dichotomy approach is generally used by criminal law theorists in the United States, namely: "Herbert Packer, a legal expert from Stanford University, with a normative approach oriented towards practical values in implementing the mechanisms of the criminal justice process." In the dichotomy approach, there are two models, including:

a) Crime control model

Eradicating crime is the most critical function and must be realized from a criminal justice process. The emphasis of this model is effectiveness, speed, and certainty. According to Keith A. Findley in Koerniatmanto Soetoprawiro, stated that: "*Crime control model* based on a value system that achieves repressive actions on crime as the most important function in a criminal justice system." *The crime control model* constantly emphasizes the efficiency and use of power in every corner of the criminal justice process.

b) Due Process Model

The rights protection model emphasizes all fact-finding findings from a case obtained through formal procedures stipulated by law. The system is essential and should not be neglected. Through a rigorous examination stage starting from investigation, arrest, detention, and trial and a reaction for each detainee of examination, it can be expected that an innocent suspect will be able to obtain freedom from the accusation of committing crimes. A criminal act, and vice versa, a person who commits an illegal action will be processed following the criminal justice system for the sake of realizing justice for the law. According to Raul Soares da Viega and Andre Ventura, the criminal justice system's purpose from the due process model is "to handle criminal defendants fairly and under constitutional standards."

The Due Process Model is much less skeptical of administrative, investigative processes and the capacity to make accurate judgments of guilt without judicial oversight. The due process model respects individual rights and dignity in the face of state power, not just the oppression of crimes.

4 Research Methods

This research uses a normative approach to research or literature law research: "Legal research is carried out by examining library materials or mere secondary data. Secondary data is the reference in this study, namely data whose sources are obtained from literature review and carried out by making an inventory of all regulations and data related to the research object obtained from primary legal materials, secondary legal materials, and tertiary legal materials. These materials explain primary legal materials and secondary legal materials in the form of dictionaries and encyclopedias".

5 Analysis and Discussion

Law enforcement in Indonesia's criminal justice system translates legal ideas and ideals into concrete forms. In realizing this tangible traditional form, a complex organization is needed. Organizations in the criminal justice system consisting of the police, prosecutors,

legal advisors (advocates), courts, and prisons are classic law enforcement elements established by the State. KUHAP is an objective rule that is generally accepted as a guideline for law enforcement officers (investigators, prosecutors, judges, including legal advisers). In operating the criminal justice system, the relationship between institutions in the criminal justice system must be established, namely:

5.1 The Principle of Functional Differential

Explanation of the division of tasks and powers of law enforcement officials as an institution. Thus, the Criminal Procedure Code provides clarification and modification (clarification and modification) of each law enforcement agency's functions and powers. The explanation is arranged so that there are mutual correlation and coordination in the interconnected and sustainable law enforcement process between one agency and another. Starting from the police's initial stage of investigations to the execution of court decisions by the prosecutor's office under the supervision of a judge, there is always a continuous functional relationship that creates a mechanism for mutual correction and oversight among law enforcement officials.

5.2 The Principle of Mutual Coordination

The Criminal Procedure Code has outlined the division of duties and authorities as an investigating agency, while the prosecutor's office is the public prosecutor and the official executing court decisions. Meanwhile, judges are stated judicial officials who are empowered to judge. However, even though the Criminal Procedure Code outlines the division of provisions that establish law enforcement agencies in a cooperative relationship that emphasizes clarifying tasks and work efficiency and preventing law enforcement officials' actions that exceed their functions and authorities' limits.

The criminal justice system outlined by the Criminal Procedure Code is an integrated system (integrated criminal justice system). The integrated system is based on functional differentiation among law enforcement officials or agencies according to the process stage of the authority granted by law to each law enforcement apparatus or agency. Therefore it must be obeyed morally unconditionally (categorical imperative). Without obedience to the categorical imperative, it is difficult to imagine a law enforcement process running in an orderly manner. Otherwise, there will be an abuse of authority from law enforcers, which in the end is treated as an object to achieve the goal.

The natural integrated criminal justice system is not only an understanding of the concept of integration itself, but an integrated criminal justice system also includes a substantial meaning of the symbolic urgency of an integrated procedure but also touches the philosophical aspects of the intention of justice and benefits in an integrated manner. The enforcement of material criminal law, which is guarded and framed by the norms of legislation, which is the area of procedural criminal law, can be closer to law enforcement's principles and substance, which simultaneously enforces justice or law helpful enforcement. The Indonesian criminal justice system regulated in the Criminal Procedure Code refers to a dichotomy approach. There are two models, including the crime control model and the due process model. The crime control model that focuses on eradicating crime is essential and must be realized from a criminal justice process. The values that underlie the crime control model are.

a. Repressive action against a criminal act is the most critical function of a judicial process;

- b. Primary attention must be paid to the efficiency of law enforcement to select suspects, determine their guilt, and guarantee or protect the rights of suspects in the judicial process;
- c. Law enforcement criminal processes must be carried out based on the principle of speed and thoroughness, and a model that can support the law enforcement process is an administrative model and a managerial model.;
- d. The principle of presumption of guilt will cause this system to be implemented efficiently;
- e. The law enforcement process must focus on the quality of administrative fact findings because these findings will lead to (1) the Release of a suspect from prosecution or (2) the suspect's willingness to find himself guilty.

Meanwhile, the due process model (rights protection model) emphasizes all fact findings from a case obtained through formal procedures stipulated by law. The values contained in the due process model are :

- 1. Prioritizing formal-adjudicative and adversary fact-findings, this means that in every case, the suspect must be brought before an impartial court and examined after the suspect has obtained full rights to present his defense;
- 2. Emphasize prevention and eliminate as far as possible errors in the administrative justice mechanism;
- 3. The judicial process must be controlled so that its use can be prevented to an optimum point because power tends to be misused or to choose the potential to place individuals in the State's coercive power.;
- 4. Uphold the legal audit doctrine, namely: (1) A person is considered guilty if the determination of the error is carried out procedurally and by those who have the authority for the task; (2) A person cannot be considered guilty even though the reality will be burdensome if the legal protection given by law to the person concerned is not practical. An impartial court can only determine a person's guilt.
- 5. The idea of equality before the law takes precedence
- 6. Prioritizing morality and the utility of criminal sanctions.

The concept of the due process model highly upholds the rule of law. In a criminal case, no one is and puts themselves above the law. Every law enforcement must comply with constitutional requirements and must obey the law, and must respect the following:

- a. *With the right of self-incrimination*, no one can be forced to become a witness incriminating himself in a crime;
- b. It is prohibited to revoke, eliminate the right to life, freedom, or property without complying with the provisions of the procedural law;
- c. Everyone must be guaranteed the right to self, residence, documents for unwarranted inspection and confiscation;
- d. The right to confrontation in the form of cross-examination with the accused or reporting person;
- e. The right to a speedy examination;
- f. Equal protection rights and equal treatment in law;
- g. The right to get legal advisory assistance.

In law enforcement, the principle of due process of law is analogous to fairness, a legal process that is fair, accessible, and impartial. The nature of freedom and impartiality in the trial is necessary and even an absolute necessity for all parties, especially the judge as an assessor, court, and controller of the trial process.

In Indonesia's current criminal justice process, it is not enough to refer to the crime control model and due process model in the Criminal Procedure Code. Still, it does not think about upholding justice. The rights of the wider community, compared to rights the rights of suspects, are like in cases of corruption, where many corruption cases are released or accessible due to a reason such as a lack of evidence in the evidentiary process or even the absence of elements of criminal acts of corruption so that the defendants receive an acquittal of all charges. There proves the unpreparedness of law enforcement officers and parties holding positions within Indonesia's criminal justice system's scope. The law enforcers do not think about the consequences of the criminal act of corruption which is an act that is very detrimental to the State. Degeneration causes a country's economic growth to slow down, decrease investment, increase poverty, and increase income inequality. The level of happiness can decrease due to high corruption cases in a country.

Therefore, efforts to create a justice system of law enforcement in the current Indonesian criminal justice system and referring to the crime control model and due process model, namely the morale of law enforcers.:

- a. Investigators are a moral obligation to seek and collect evidence that can explain a criminal act to find a suspect within the limits of authority determined by law.
- b. JAKsa Public Prosecutor (JPU) is authorized by law (KUHAP) as the person with the litis principle (the controller of the case process, which determines whether a person can be declared a defendant and submitted to the court). Behind the prosecutor's great authority as a person with the dominus litis principle, an ethical demand is attached, namely moral responsibility for his obligation to examine and examine the Investigator's Investigation Report, to determine whether or not a criminal act can be prosecuted.
- c. Judges are given the authority to judge, as regulated in Article 1 point 8 of the Criminal Procedure Code, that: Judges are stating judicial officials empowered by law to think. The meaning of judging according to Article 1 point 9 of the Criminal Procedure Code, namely: Adjudicating is a series of actions by a judge to accept, examine and decide a criminal case based on the principles of freedom, honesty, and impartiality in a court session in matters and according to methods regulated in this law.

The judge is given the authority to test the investigator and prosecutor's facts summarized in the indictment and the defendant and witnesses' points. Still, behind this authority, the judge is burdened with a moral obligation to carry out the trial process based on the principle of independence. Honest and impartial. There is emphasized in Article 4 of Law Number 48 the Year 2009 concerning Judicial Power, that: (1) The court's judge according to the law without discriminating against people; (2) Courts assist justice seekers and try to overcome all obstacles and obstacles to achieve a simple, fast, and low-cost trial. Herein lies the principle of fairness. Judges must be obliged to unconditionally (categorical imperative) obey the Criminal Procedure Code's objective principles (free, honest, and impartial), which underlie the trial process. Judges are also obliged to explore existing legal facts, understand traditional values, and comply with the code of ethics and regular code of conduct, as confirmed in Article 5 of Law Number 48 of 2009 concerning Judicial Power, that:

- a. Constitutional judges and judges are obliged to explore, follow, and understand the values of law and a sense of justice that live in society.
- b. Constitutional judges and judges must have integrity and personality beyond reproach, be honest, fair, professional, and have experience in the field of law.
- c. Judges and constitutional judges are obliged to comply with the Code of Ethics and Code of Conduct of Judges.

A state system is regulated based on applicable law, which is justified in a constitution. Everyone in the country must obey the same directives to be treated equally. Everyone is treated differently without rational distinctions, regardless of skin color, race, gender, religion, region, and belief. The judges' authority is limited based on the principle of power distribution not to act arbitrarily. And doesn't violate community rights.

In Indonesia, the criminal justice law enforcement system is a legal system that provides and guarantees a sense of legal justice, legal protection for individuals and communities, and legal certainty as norms agreed upon by society in national law. By reflecting on socio-cultural and religious values as the embodiment and philosophical meaning of Pancasila as the source of Indonesian law and ultimately ensuring its maintenance in the criminal justice process.

6 Conclusion

The criminal justice system outlined by the Criminal Procedure Code is an integrated system (integrated criminal justice system) based on functional differentiation among law enforcement officials or institutions under the process stages of law's authority. To realize a justice system of law enforcement in the current Indonesian criminal justice system, besides referring to the crime control model and due process model, namely the morale of law enforcers for the realization of a sense of legal justice, legal protection both to individuals and communities, as well as legal certainty as a norm agreed upon by society in the form of national law that reflects socio-cultural and religious values as manifestations and philosophical values of Pancasila as a source of Indonesian law and finally guarantees its maintenance in the criminal justice process.

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