



The implementation of criminal law principle on quick court session, simple and low cost process

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Abstract

The Journal will try to answer problems like, first how consists the principle of equality before the in theory and in the practice. Second, how the judicial power to be applied in Criminal Justice System. Third how is the law enforcement to reward or punish the deviant law enforcement personal? To answer such question the Author perform several research mostly but not limited, statute, regulation and law sources including policy and books. The research using qualitative method analysis. The Author adoption three different law theory which actually very general theory such; The Law State (*Rech-staat*), Criminal Justice System, Due Process of Law and Law Enforcement Function. The research found that first, the consistency between equality before the principle and the application of good court process is the main principle in modern law. Based on that the author agree that all people is equal before the law. The principle of equality if to be relates to the judicial system means every person in or in the process of law are equal and no condemnation before the court deliver their decision. Equal in the court means to equal or have the same position and right the correctional facilities. The second is the independency of judicial power means freedom for and to take their decision without fear not to be interfere. The third the enforcement system in Indonesia Judicial System put front the integrity of the law enforcer such as, judges, police officer, public prosecutor and including correctional officer. Those for law enforcement agency are regulated is and under the act of public prosecutor, police department, and judicial power in general. The author take the conclusion that the quality of law enforcement in Indonesia must be raise and reward and punishment must be delivered without hesitation.

Keywords: criminal law principle, quick court session, simply and low cost proceeding, equality before the law, due process of law

Introduction

This writing is intended to explore the implementation of the basic principles of substantive criminal law and its procedure one, in the execution of quick court, simply with low cost. Th is kind of procedure to believe become good implementation of court processing activity.

In criminal law system there are some law sources that consider as what so called “what should be doing” or *das sollen*. *Das Sollen*, is a very recognized term from legal scholars in continental law atmosphere and describe as a Norm or What Should Be Done as a opposite of *Das Sein* for Law in Action. Some sources are colonial rule or been adopted with some modification and some are created after the Independent era.

This study begun with the act number 48 year 2009 which regulates judicial power in Indonesia and to manage four different body that involves in the execution of judicial power such as; Police Department, Public Prosecutor, Judging Department and the Correctional Body.

In the criminal procedure public prosecution has strategic position mainly in the criminal process that relates to subversion manner, corruption or economic criminal action. Point to be interest in this criminal justice study area is error happened in delivering justice to society such as miscarriage of justice. It is not about only a victimized error but also the interfering the administration of justice ^[1].

The legal phenomena like “*miscarriage of Justice*” ^[2] can be traced back to hundred years ago. Even, Abraham Lincoln as a lawyer in that time defend for defendant after his client to judge guilty. What is actually matter with this miscarriage of justice.

Problem

Article 1 Act No 48 Year 2009 define that Judicial power is a independent state power to administer the tribunal in order establish law and justice according to a Grund-norm Panca Sila in so far for the interest State Law of Indonesia (*Das Sollen*). Many consider about some error happen in the court system when administrating justice as mala-legal and point out several problem. First the legal system of the administering Justice is not capable yet. Second the system failure or false and the third is law enforcer itself.(Police, public prosecutor, judges).The Four, unskillful namely fail to examine facts ^[3]. This journal tries to answer legal issues around the application of Criminal Justice System in quick court session, simply and low cost court processing? In detailed will study the execution of how the equality before the law implemented, how this criminal justice system could be error like miscarriage of justice. What kind of reward may be burden to law enforcer which intentionally engaged to abuse of power.

¹Periksa, Black Law Dictionary., 2nd Ed.

²UIA (United Against Injustice) sebagai salah satu contoh, secara regular melakukan pertemuan empat kali dalam setahun untuk membahas masalah-masalah miscarriage of justice in.

³ “The International Commission of Justice”

Methodology

To delicately answering those tenet question the writer tried to perform several library studies using law sources as statutes, with some doctrinal studies and it is from books. These two law sources are in fact is positive law^[4] as what Hart says about legal positivism, but the reader must understand that what Harts meant with the legal positivism is not in this truly study. Looks like but not the same.

Information is collected from interviewing several key informan using open-ended question with list of question. Using quality method and interpretation to legal document and court decision.

Theoretical Review

State Law/Rechtstaat

There are at least four legal theory which can be used to underline for this study to those three legal issues. These theories are state law, criminal justice system, due process of law, and law enforcement.

State law or in Dutch, recht-staat is focusing to law, which is its formality. According to this state of theory, the law is more interest to a state of individual and on its form like regulation, procedure, doctrinal thus this state law of formality laid the position of act (statute) as the most supreme source of law. Critically, this formality of law is hard to create social welfare for people. And, as consequence of this kind, the difference between citizen with one is not becomes very sharp and clear and thus this kind state law is difficult to promote equality before the law^[5].

Different from those countries in the common law tradition, continental states tend to develop their social community and social studies to develop the conception of state law compare to with countries in common law tradition. Countries which are in the common law tradition more developing the rule of law even-though most the country were under kingdom state.

Equality before the law as principle, A law as supremacy means all action for publics or public order must in line with the tone of rule of law. Thus, the rule of law is considering to become main mechanism of the quality before the law, Specific in legal term the spirit of rule of law requisite an action and legal procedural. No legal action without legal basic. To this context law plays its function to control power and on the other the same time, to protect any social action, includes politics.

Criminal Justice System Theory

Criminal justice system, at the most describe the process of stepping from state to state about the procedure one must follow in the criminal processing and procedure. In this situation, we talk about criminal procedure act as a formal law to accessing the court.

Frank Remmington is first develop criminal justice system^[6] and in two decade this concepts, if is not to mention theory, become more wide recognized and become one single approach of study, new discipline to exchange the subject of "law enforcement" atau "Police Studies." Center of the criminal justice system is solely the administration of justice which is according to my believe encompasses four different function such as Police department, Public Prosecutor, Judges and Institutional Correction^[7].

In other words the study of criminal justice system widely consider how the system of coordination work among those four institutions. Ramli Atmasasmita once mention about this as typology of criminal justice system. One must consider the eradication of crime and the effectiveness of those typology is more important than finishing the criminal case and the law itself can be function to promote the administration of justice.

In the Indonesia system of law, is well known to this that The Act of No. 8 Year 1981 as Criminal Procedure Act a law that produce by the Indonesian not under the influence of colonization atmosphere. This is the criminal justice system of Indonesia which are to coordinate those four institution.

Due process of law

The Clause of Due Process of Law, originally was doctrine on its nature is "“No state shall deprive any person of life, liberty or property without due process of law.” This clause is very well-know and may be find in the Fourteenth Amendment of the United State. Theoretically, the Fourteenth Amendment laid down two kind of due process of law which is procedural of due process and substantive due process. *Procedural due process based on the principal of "fundamental fairness"*^[8] *addresses which legal procedures are required to be followed in state proceeding; including notice, opportunity for hearing, confrontation and cross examination, availability of counsel. Meanwhile substantive due process is used to evaluate whether one regulation may be applied by the state in the spot without consider the procedural one*^[9]. Substantive due process generally dealt with specific subject area such as liberty of contract or privacy and over time include of noneconomic and economic matters

Originally this due process of law doctrine merely focus on the procedural one, which means a step that must be follow by an agent to process one particular person before one becomes inducement to access the court proceeding. Meanwhile, the substantive due (Liberty) Liazes fair the freedom to contractual and other rights as economy (property) and non-economy matter. Due process of law" becomes more important because its substantive matter such as personal

⁶ Romli Atmasasmita, Sistim Peradilan Pidana Indonesia, Putra Bardin; Jakarta, 1996,hlm 33, (lihat juga dalam tulisan yang lain Strategi Pembinaan Pelanggaran Hukum Dalam Konteks Penegakkan Hukum di Indonesia, Alumni Bandung 1982 hlm 70.

⁷ Frank, Remington, Criminal Justice System, dikutip oleh buku Barda Nawawi dalam buku Perbandingan Hukum Pidana, PT. Citra Aditya Bakti. Jakarta 2001.

⁸ See, also, John Rawls, Justice as Fairness (1985) comprises two main principles of liberty and equality.

⁹ Due Proses of Law, www.law.cornell.edu/constitution-conan/amendment-14/section-1/due-process-of-law.> last visited August 11, 2019

⁴ H.L.A Hart, Legal Positivim,

⁵ Satjipto Rahardjo, Indonesia Jangan Menjadi Negara Hukum "Kacangan," Kompas. 19 Agustus 200)

Law Enforcement Function

Law enforcement is considered law in action to response to the legalistic normative approach (law in the book) which mainly to conceptual and contemplation of law but not have a sight how this law works in the society. Some sociological approach is used to understand the law in action, even sociological is not the law one.

Law enforcement function may be near with social order. The more one community to be function the more effective social order. Thus law enforcement officer become the agent of social order and so the law enforcement itself.

Discussion

The consistency of the equality before the law principle under the Indonesia Court System.

The tenet of equality before the law, treat different people in same manner especially when he/she before the bench. All people to be treated fairly using the assumption no quilt before court decision. In the case one court using its power to apply rule of precedent, in accordance of judge made law, then one general rule apply; different case, with same modus of operandi, with the same crime then the judges must look to the similar case before.

Unfortunately this kind of general rule is hard to find. This is because, accordingly, the judges on the bench no give any personal or deliver their own legal opinion on the case. The experience what the common law practices such as dissenting and concurrent opinion are never been practices.

The principle of equality before the must apply as well in the correctional institution. According to the ACT No. 12 Article 12 Year 1995 which states that; "the re-civilization System to Implemented under the tone of guidance, equal in treatment, education scheme, and honor to humanity and the right of family visitation ^[10]." This law must apply to all in jail without question.

Judicative Power: Under the Indonesia Criminal Justice System

According to Mudjono that the aims of the Criminal Justice System are; a) to prevent the innocent people to be victimized. b) to proses the criminal due to for the law enforcement are on the process and people to be satisfied. c) As effort to those were criminal not to re-doing the crime ^[11]. The balancing ^[12] of three branches of power to be implement through the check and balance policy. As accord to the Constitution 1945 the Judicative Power, cq Supreme Power to execute the power free from interference in order to enforce the law and justice. In Balance to this, the legislative power may control the judicative power through their power to appointing or dismissing the judges. The court decision, for cassation especially, in balance it may be check or endorse by the Executive power in mention, the head Prime ministry or the President.

The freedom of the Judicative Power in general may be trace back from The Universal Declaration of Human Right and The International Covenant on Civil and Political Right are related to stem on Article 10 which; everyone is entitled in full quality to a fair and public hearing by in independent and impartial tribunal in the determination of his rights and

obligations. Again, it accord to Article 14, under the ICCPR, in the determination of any criminal charge against him, or of his rights and obligations the suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

It is clear that the Judicative Power is independent while during court session or the deliver their opinion and decision. Check and balance may execute before the implement their power of after the deliver their decision or opinion. In accordance to the Constitution 1945 in regard to Article 1, verse (3) and especially in the existence of the Article 24 the same law, thus the independency is of judicative power is for the absolute.

Hans Kelsen through his notion about the independency of the judges; "The Judges are, for instance, ordinarily "independent," that is, they are subject only to the laws and not to the order (instruction) of superior judicial or administrative organs". In the execution of the power Judges only subject to law not the order or instruction." The same echo is delivering by Harold J. Laski, ^[13] (The Element of Politics), Certainly No man can ever estimate the importance of the mechanism of justice"

Accord to the question of this research about the power of the Judicative under the Criminal Justice of Indonesia Law, that the judicative branch constitutes a mandate from the states, in this not government, to judicative branch. If this principle to be executed to specific situation (case) and individual and concrete. Professor Muladi once states that the integrated criminal justice system is constituting among synchronization of structural, synchronization of substantive, synchronization of cultural. Follow to this notion the judicial power is suitable with culture, structural, and vertical or horizontal scheme. It is open and adopting the system which is open system itself.

Law Enforcement System: How the system reacts against the un-justice law enforcer.

Using the theory of Lawrence Friedman and adopting to the Indonesia Criminal Justice System He makes some categorical. At least three category, Structure of Law and Substantive and latest is culture of Law. Compare to Professor Satjipto Raharjo which divides four category; the regulation, citizen, bureaucracy and social networking. Based on this categorical Satjipto Rahardjo ^[14] found itself that are some kind of law which what said; *the unconscious law; the paralyzed law,*. The first one related to the because of those for reason are not being enforce (to let unconscious). He does not any specific reason for this. And, the second one is the certain law are not able to execute and people act their own way to dissolve their needs.

Friedman states about matter that some modernization process only into account to what it said; structural and substantive matter and left the cultural side behind. One research finding, which execute by the University of North Sumatera found that; a) a dishonor of lw, b) inconsistency of law implementation by the court (formal law), c) court management process not effective. d) Dominance influenced by the government due to dualism in judicative power inner

¹⁰ Indonesia, Undang-undang No. 12 Tahun 1995 Tentang Pemasysrakan. Pasal 5.

¹¹ Romli Atmasasmita, Sistim Peradilan Pidana, Op.Cit. hlm.15

¹² Check and balance theory

¹³ Laski, J,Harold, 1957, A Grammar of Politics, London, George, Allen & Unwin.Ltd

¹⁴ Satjipto Rahardjo, Indonesia Jangan Menjadi Negara Hukum "Kacangan" Jakarta, Kompas, 19 Agustus 2002.

mechanism, e) corrupted court ^[15].

One argue that this situation it is not self-processing but it's a legal heritage that could be seek back under the colonization era, even some academicians are disagreed with the cord. 1) Judges has no self-trust to quote the previous law made by other judges, no rule of precedent; 2) or there is no good law to follow ^[16]

How the law is reacts against untruthful law enforcer?

L.A. Hart states thus, it cannot seriously be disputed that the development of law, at all-time and places, has in fact been profoundly influenced both by the conventional morality and ideals of particular social group, and also by forms of enlightened moral criticism urged by individuals, whose moral horizon has transcended the morality corruptly accepted. But it is possible to take this truth illicitly, as a warrant for a different proposition. Namely that a legal system must exhibit some specific conformity with morality or justice or must rest on widely diffuse conviction that there is a moral obligation to obey ^[17].

The integrity of law enforcer play a main role (Judges, Public Prosecutor, and Police Officer), to produce one just case. Indonesia has their own criminal justice system as been provided by the Law No 8 1981 concerning Criminal Procedure Act. So. Thus what is the reaction against untruthful law enforcement personal? The law provides Article 1 sub 1 which is could be apply to law enforcement untruthful personal beside the process of certain formality for them that subject to specific law such; police or special agent.

Conclusion

Inconsistency in criminal justice system for those four component (Police, Public Prosecutor, Judges and Correctional Institution) have not been fully achieved since there is overlapping authority on a specific case such Police and Special Agency for Eradication Corruption Body. The application of different standard may also create uncertainty in law. An independent judicial power means a power that freely from interruption or intervention from other branches but not meant free to do anything without legal cause. Implication general principle of proper justice is in standardized. Action against untruthful law enforcement personal may be implement through the effective and the existence of the existing law

Recommendation

Since the consistency for the four component in criminal justice system have been fully accomplished and on some function such as police department, public executor with the commission for corruption eradication, in the future in order to deliver clear message and about the application of the law, these two function must be in one coordination or under one national body.

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¹⁵ Diagnostic Assesment of Legal Development in Indonesia, 1999. World Bank Projek, Pengadilan Tinggi Siber Konsultant (Reformasi Hukum di Indonesia) yang disusun oleh Kantor Konsultan HUKUM A.B.N.R)

¹⁶ Zudan Arief Fakrullah, Membangun Citra Hukum Melalui Putusan Hakim Yang Berkualitas, Artikel Jurnal Keadilan, Vol 1 No.3 September 2001.

¹⁷ H.L.A Hart, The Concept of Law, Oxford At Clarendom Press, 1988, page 181

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