

The Reality of the Criminal Justice System in Independence of Law Enforcement Based on Pancasila Law System

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Abstract.

The purpose of this research is to find out how is the Independence of the Criminal Justice System by the law enforcement sub-system and how is the Reconstruction of the Independence of the Criminal Justice System. This research approach uses normative juridical. Based on the research, it is concluded that the independence of the National Police mainly lies in the implementation of "police discretion", which unfortunately has not been adequately accommodated in the provisions of the applicable laws and regulations. This resulted in the face of the Police solely as an organization whose main task is to protect and serve the community. Meanwhile, the performance of the National Police as an effective, efficient, fast and measurable crime eradication organization has not been accommodated in the existing police regulations.

Keywords: Criminal; Enforcement; Independence; Justice.

1. Introduction

Juridically and factually, the sub-system of the Criminal Justice System (SPP) as the bearer of law enforcement power, is not under the same roof of judicial power. The Police, Prosecutors and Judges are the three pillars of law enforcement in carrying out the functions of investigation and prosecution in addition to the Correctional Institution as a criminal implementer under the control of the Government's power. From a constitutional perspective, institutionally the three institutions carrying out Judicial functions are Executive organs and are under the subordination of Executive power. If the Judicial Power is constitutionally recognized as an independent power, of course, the sub-system of implementing Judicial Power in the field of criminal law enforcement must also be under one roof or within the realm of judicial power.¹

Law enforcement is an effort to enforce real legal norms as a code of behavior related to legal traffic in the life of society, nation and state, which is expected to encourage creativity and an active role in developing state society, especially in guaranteeing the independence of human rights because it is a right. Natural basic rights, which are inherent in humans and the universe.²

Law enforcement in the criminal justice system for law enforcers must be based on Pancasila which is used as the basis of state ideology. Pancasila in his life is often referred to as the philosophical basis or the basis of state philosophy

¹Pujijono, Rekonstruksi Sistem Peradilan Pidana Indonesia Dalam Perspektif Kemandirian Kekuasaan Kehakiman, *MMH*, Vol. 41 No. 1 January 2012, p. 119.

²Tasmo and Suharto, Rahmat Bowo. (2019). The Legal Consequence Of The Judge Decision In The Case Of Children Criminal Justice Which Do Not Based On Society Research From Society Supervisor (Studies on Settlement Case of Children Crime In State Court of Cirebon), in *Jurnal Daulat Hukum Vol. 2 No. 4*. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8362/3900>.

(*Philosoficche Gronslag*) of the state, state ideology or (*staatsidee*). In this sense, Pancasila is a basic value and norm to regulate state government or a basis for regulating state administration.³ So in this case, Pancasila must be the basis in running the legal system, especially in the criminal justice system in Indonesia.

According to Lawrence M. Friedman, the legal system is a legal entity consisting of three elements, namely the legal structure, legal substance and legal culture. In simple terms, the legal structure is related to law enforcement institutions or institutions or can be said to be law enforcement officers.⁴ In terms of criminal law, the institution in charge of implementing it is manifested in a criminal justice system, which is essentially a system of power to enforce criminal law which consists of investigative power, prosecution power, adjudicating power and making decisions as well as the power to implement decisions/ punishment by the agency/implementing/executional apparatus.⁵

Legal substance is the entirety of legal principles, legal norms and legal rules, both written and unwritten, including court decisions in terms of the substance of criminal law in Indonesia while the parent of formal criminal legislation (procedural law) is the Criminal Procedure Code (KUHAP). The third element in the legal system is legal culture, namely the customs or culture of the community that accompanies law enforcement. The legal culture resides in the community as well as in law enforcement officers. In principle, the legal culture of a nation is proportional to the progress achieved by the nation concerned because the law of a nation is actually a reflection of the social life of the nation concerned.⁶

In the process of the criminal justice system by the Police, Prosecutors and Judges in carrying out their duties. It needs to be based on progressive Pancasila values, and the need for independence in it. In Black's Law Dictionary, independent means "not subject to the control or influence of another."⁷ From this understanding, independent means not subject to the power or influence of other parties. Independence here can involve individuals or institutions in relation to status or relationships with other parties.⁸ So that independence includes the independence or freedom of individuals and institutions against the influence of external parties.

Independence contains two meanings, namely institutional independence and functional independence. Institutional independence is an independent institution and must be free from intervention by other parties outside the system. While functional independence, namely independence in carrying out its duties and

³Sutoyo, (2011), *Pendidikan Kewarganegaraan Untuk Perguruan Tinggi*, Yogyakarta: Graha Ilmu, p. 20.

⁴Lawrence M. Friedman, (1975), *The Legal System, A social Science Perspective*, Russel Sage Foundation, New York.

⁵Barda Nawawi Arif, (2001), *Masalah Penegakan Hukum Dan Kebijakan Penanggulangan Kejahatan*, Citra Adhya Bakti, Bandung, p. 28

⁶Satjipto Rahardjo, (1986), *Pembangunan Hukum Dalam Perspektif Politik Hukum Nasional*, Cv. Rajawali, Jakarta, p. 27

⁷Bryan A. Garner, (2009), *Black's Law Dictionary*, St. Paul, Minn: West Group, p. 838

⁸David Phillip Jones, (2002). "Recent Developments In Independence And Impartiality." *Canadian Journal Of Administrative Law & Practice*, accessed Via [Http://www.westlaw.com](http://www.westlaw.com),

functions.⁹ One of the most influential factors on the independence of both institutional and functional is its position in the institutional structure.

Based on the background as stated by the author above, the purpose of this study is to find out how is the independence of the criminal justice system by the law enforcement sub-system and how is the reconstruction of the independence of the criminal justice system.

2. Research Methods

The method used in research is a normative juridical approach, while the research specifications used are descriptive analytical. The type of data used is secondary data, while the secondary data in this study comes from primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method used is literature study and document study, while the data analysis method uses qualitative analysis.

3. Result and Discussion

The enforcement of criminal law is carried out through a system called the criminal justice system. The criminal justice system is a term that indicates a working mechanism in crime prevention using a basic system approach. According to Remington and Ohlin, the notion of the system itself implies an interaction process that is prepared rationally and in an efficient manner to provide certain results with all its limitations.¹⁰ The criminal justice system includes the stages of investigation, prosecution, examination in court and execution of decisions. By looking at these stages, the components in the criminal justice system include the police, prosecutors, courts and correctional institutions

Article 4 of Act No. 2 of 2002 concerning the National Police of the Republic of Indonesia (Police Law) stipulates: "The Indonesian National Police aims to realize internal security which includes the maintenance of public security and order, orderly and law enforcement, the implementation of protection, protection and public service, as well as the establishment of public peace by upholding human rights.

On the one hand, the National Police is an organization that aims to protect society (to protect society), namely by maintaining public security and order, and implementing community protection. On the other hand, the National Police can be an organization that aims to serve the community (to serve society), namely the implementation of community protection and services, and the establishment of community peace. Meanwhile, when the Polri organization is aimed at maintaining order and law enforcement, then it is a cumulative goal, namely both in the context

⁹Artidjo Alkostar, "Menjaga Keselarasan Antara Moral Dan Hukum; Reformasi Peradilan Di Indonesia." Papers Presented at the National Seminar, Dialectic Between Law and Morals; Lessons for Legal Reform in the Reformation Era for the 68th Anniversary of the Indonesian Islamic University On April 29, 2011 At the Kahar Muzakkar Auditorium, Indonesian Islamic University, Yogyakarta, 2011, p. 7-8

¹⁰Romly Atmasmita, (2010), Sistem Peradilan Pidana Kontemporer, Jakarta: Kencana Prenada Media Group, p. 2

of protecting and serving the community (to protect and serve society). This is the basis for a normative relationship between the community and the Police.

The provisions of Article 4 of the Police Law do not at all imply that there is a reflection of the face of the Polri organization which is expected to be able to eradicate quickly and measurably in combating crime. Especially against unconventional crimes. Yet this should also be reflected in the organization of the Police. Instrumental relationships with the community are not accommodated, so that the Police will lose the "legal umbrella" when acting harshly against certain criminal offenders. .

The law enforcement subsystem includes investigations and prosecutions, which are led by the Attorney General's Office. Meanwhile, the crime prevention subsystem also involves the community in other social institutions led by the National Police. So the criminal justice system is not only repressive, but also preventive. In line with this, the theoretical conception of Polri as a "gatekeeper" as well as a "goal prevention officer" can be implemented within the framework of the criminal justice system. Meanwhile, when the criminal justice system is differentiated into the subsystem of the police, prosecutors, courts and correctional institutions, within this framework only the repressive function of the National Police as the "gatekeeper" of criminal justice can be applied. Unfortunately this has also become the master mind of various groups who have a legal reform mission though.¹¹

The guarantee for the independence of the National Police is the existence of public accountability for all implementation of duties, authorities and responsibilities. Just as the independence of the judiciary requires public accountability so that the objectives of certainty, justice and the benefit of the law can be achieved, the independence of the Police also requires public accountability.

The Indonesian National Police's institutions and systems have almost no channels in the Indonesian criminal justice system. Pre-trial institutions as specified in the Criminal Procedure Code do not accommodate all of the above problems. Considering that it is only limited to three main issues, namely arrest, detention and termination of investigation. Meanwhile matters, searches, confiscations and other coercive measures are not under the jurisdiction of the Pre-Trial.¹²

The independence of the National Police mainly lies in the implementation of "police discretion", which unfortunately has not been adequately accommodated in the provisions of the applicable laws and regulations. This resulted in the face of the Police solely as an organization whose main task is to protect and serve the community. Meanwhile, the performance of the National Police as an effective, efficient, fast and measurable crime eradication organization has not been accommodated in the existing police regulations.

The next component is the Prosecutor's Office. As a component of the criminal justice system, the prosecutor's office is required to always maintain its independence from interference from any party, including the executive. However,

¹¹Romli Atmasasmita, *Independensi Kepolisian Republik Indonesiadalam Penegakan Hukum*, https://www.bphn.go.id/Data/Documents/Independensi_Kepolisian_Dlm_Penegakan_Hkm.Pdf, p.23.

¹²Ibid, p. 27.

it seems that the prosecutor's office will find it difficult to be free from executive intervention because structurally, the prosecutor's office is under executive power. However, the Attorney General as the leader of the prosecutor's office must structurally submit to his superiors, namely the President as the highest holder of executive power.

Regarding the independence of the prosecutor's office, in his paper presented at the 6th International Criminal Law Congress in Melbourne in 1996, John McKechnie QC, the chief justice of Australia stated:

*"The potential for ultimate dismemberment of the office by a government is so obvious it barely needs stating. If a government or a parliament really wishes to destroy a prosecution service, each is capable of doing so. Parliament can abolish courts. Governments can withhold funding. Ministers can decline to reappoint troublesome directors who are therefore not immune from destruction."*¹³ ("The potential for a top-down cut by the government is so obvious that it hardly needs to be stated. If the government or parliament really wanted to destroy the prosecution service, each could afford to do so. Parliament could abolish the courts. The government could withhold funding. Ministers could refuse to reappointing the troubled director who is therefore not immune from destruction."¹³

John Mc Kechnie's statement above shows that the prosecutor's office is an institution that is prone to intervention from the legislature and the executive. If the executive or legislature really wants to destroy the prosecutor's office, it is easy for both institutions to do so. The legislature can play through the formulation of laws, while the executive can play in the administrative area, for example by holding funds or even dismissing the Attorney General.

The Prosecutor's Office is the legal representative of the police because this institution is authorized to explain the results of police investigations in court. In addition, the prosecutor's office can also take on the role of a legal consultant (domestic legal adviser) authorized to provide legal advice to the police regarding law enforcement procedures. On the other hand, the prosecutor's office is also the main party in applying laws to a case through prosecution. His very strategic role gave rise to the dilemma of the existence of the prosecutor's office, whether as a public body to fulfill executive duties or judicial power. The existence of this problem gave birth to the idea of releasing the prosecutor's office from the executive power and placing it under the jurisdiction of the judiciary.

Regarding Judges, that judicial power must be separated from other powers (executive and legislative) in order to maintain its independence. The separation of judicial power from other powers is based on four main points. First, the holder of judicial power must be neutral in handling disputes between the holder of power and the people. Second, judicial power is a weak force compared to other powers, so that when faced with a lot of defeats. Therefore, there must be normative reinforcement, for example the prohibition of interference with the judicial power. Third, the judicial power will ensure that the principle of "every power is subject to the law" is not violated. Fourth, in the context of democracy, to ensure the

¹³Nicholas Cowdery, "Independence The Prosecution." Makalah Disampaikan Pada (Conference Of Rule Of Law: The Challenges Of A Changing World, 2007), In Brisbane On 31 August 2007, p. 6

implementation of the law as a manifestation of the will of the people, a neutral body is needed,¹⁴

Constitutionally, the composition and organization of the judicial power can be seen in the provisions of Article 24 of the 1945 Constitution of the Republic of Indonesia and the organic law that regulates judicial power.¹⁵ Article 24 paragraph (2) states that "judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment and by a Constitutional Court".

According to Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the Supreme Court is the culmination of the judiciary. Further confirmation is contained in Article 20 paragraph (1) of Act No. 48 of 2009 concerning Judicial Power (UUKK) that the Supreme Court is the highest state court of the four judicial circles. The Supreme Court as the culmination of the judiciary has the consequence of having a one-roof system in the administration of the justice system in Indonesia. So that the judicial development and organizational structure, personnel administration and financial problems of the judicial bodies under it are in the Supreme Court. (Article 13 paragraph (1) of the CoW Law).

If interpreted as the power to enforce the law, judicial power should include all powers or authorities involved in the criminal justice system which includes investigative power (police), prosecution power (prosecutor), judicial power (court), and the power to implement court decisions (penal institutions).). Thus, all agencies involved in law enforcement should be under the jurisdiction of the judiciary so that an independent criminal justice system can be realized. If the prosecutor's office as one of the most important elements in law enforcement is still under the executive, then it is difficult to be completely independent or free from conflict of interest even though Article 2 paragraph (2) of the Prosecutor's Law states that the prosecutor's office is carried out independently.

Regarding the independence of the prosecutor's office, Marwan Effendy gave the following ideas. First, the prosecutor's office must be established as an independent and independent legal entity with the task of exercising state power in prosecution and other powers granted by law. Second, the Attorney General should be appointed by the President in his position as head of state based on the approval of the DPR. Third, the Prosecutor's Office should be accountable for its duties and authorities in law enforcement to the public, and report it to the DPR. Fourth, The Attorney General can be responsible to the President in his position as head of state when representing the state in certain cases both in the realm of public and civil law because by law the prosecutor can become a state representative or public representative in court if given power of attorney. Fifth, the accountability of the

¹⁴Bagir Manan, cited by Sri Hastuti Puspitasari. "Urgensi Independensi Dan Restrukturisasi Kekuasaan Kehakiman Di Indonesia." *Jurnal Hukum Ius Quia Iustum*, Vol. 14 No. 1 January 2007, Yogyakarta: Fakultas Hukum Universitas Islam Indonesia, 2007, p. 43

¹⁵Waskito, Achmad Budi. (2018). Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi in *Jurnal Daulat Hukum Vol. 1. No. 1.* url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2648/1992>

prosecutor's office in technical justice will lead to the Supreme Court as "the last corner stone" of law enforcement.¹⁶

To guarantee the independence of the prosecutor's office, it is also necessary to create strong legitimacy to ensure the independence of the prosecutor's office. Such legitimacy must be stated expressly in the constitution and revealed in the relevant laws and regulations. Thus, if certain parties, especially the executive, intervene in the implementation of the prosecutor's duties and powers, the prosecutor's office has a strong juridical basis to refuse.

In the Reconstruction of the Independence of the Criminal Justice System, the legal substance aspect is important. Legal substance is reconstruction related to legal substance that regulates the function, position and authority of criminal law enforcement agencies. This study finds the reality that overlapping regulations are not synchronized both vertically and horizontally. These asynchronous regulatory conditions can be grouped into:

- The rules governing the partial/sectoral sub-systems do not show any cohesiveness.
- The existence of overlapping rules, this situation arises in connection with several rules providing the same authority arrangements for several law enforcement agencies.
- Rules that negate (negate) the authority of other institutions.
- Rules that are not in sync with the spirit and spirit of reform.
- Rules that have the nature of "subordinating" law enforcement agencies to one another.

In terms of legal institutions, as a whole, seeing the absence of institutional independence of the sub-system in criminal justice, it is necessary to have a systematic and comprehensive (integral) arrangement, in a new construction order which refers to the notion of judicial power in a broad sense, sub-system in the implementation of law enforcement on criminal law (SPP integrated) supporting institutions need to be reconstructed under one roof of judicial power (judicial power) which culminates in the Supreme Court. The Supreme Court acts as "the top law officer" in criminal law enforcement. So that a building that is focused on the judicial domain will be formed, automatically the sub-systems will be integrally independent, as the bearer of judicial power in the implementation of criminal law enforcement.

4. Conclusion

The independence of the National Police mainly lies in the implementation of "police discretion", which unfortunately has not been adequately accommodated in the provisions of the applicable laws and regulations. This resulted in the face of the Police solely as an organization whose main task is to protect and serve the community. Meanwhile, the performance of the National Police as an effective, efficient, fast and measurable crime eradication organization has not been accommodated in the existing police regulations. On the other hand, if the

¹⁶Marwan Effendy, (2005), *Kejaksaan Ri : Posisi Dan Fungsinya Dari Perspektif Hukum*, Jakarta : Gramedia Pustaka Utama, p. 159-160

prosecutor's office is still under the executive branch, it is difficult to be completely independent or free from conflicts of interest. The Prosecutor's Office needs constitutional protection in order to maintain its integrity and independence. While the judge has a very large role or influence in imposing a sentence and it is expected to provide justice in the criminal justice process. In the enforcement of criminal law in Indonesia, judges have independence or independence, in the sense of full freedom and no intervention in judicial power.

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