

An Independent and Authoritative Criminal Justice System



Uut Rahayuningsih, S.H.¹, Prof. Dr. Pujiyono, S.H., M. Hum.²

^{1,2}Magister Law, Faculty of Law, Diponegoro University

ABSTRACT: Law enforcement is a must carried out by the state in accordance with the aim of protecting and justice for its citizens, as stated in the 5th precept "Social justice for all Indonesian people". Efforts to implement crime prevention do not necessarily only use penal efforts, there are also non-penal efforts. This penal effort will be closely related to the criminal justice system. As for this study, the method used is normative juridical. With the data collection method using literature studies. The analysis used is qualitative descriptive. The implementation of an independent and integrated criminal justice system is currently not running optimally because currently its structural institutions have not been integrated in the concept of functions and supervision of criminal justice system management because there are still institutions under the executive power of the government. So, in certain contexts it is feared that the influence of executive power shakes the integrity of the institution. So, there is still no firmness between the differences between legislative, executive, and judicial functions. The criminal justice system has also not been systemically realized, and is still fragmentary and compartmentalized, which creates rivalry between sub-systems which leads to an independent and integrated criminal justice system. Synchronization in the fields of substance, structural and legal culture is also a support for the success of an independent and integrated criminal justice system. As for building a good and authoritative criminal law enforcement system, law enforcement human resources who are reliable and mentally tough and have a complete understanding of the law are needed. For this reason, it is necessary to strive to increase education and knowledge for law enforcers, namely knowledge of legal science and the science of the Supreme Godhead.

A. BACKGROUND

In accordance with the mandate of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia, that Indonesia is a State of law. Based on the opinion of Prof. Mochtar Kusumaatmaja contained in Umar Said Sugiarto's book that law is all principles of rules that aim to regulate the correlation between humans in community life.¹

The logical consequence of the rule of law is that every order of life of the nation and state is governed by law. Miriam Budiardjo quoted from

A.V. Dicey in his book *Introduction to the Law of the Constitution* explains three characteristics of the rule of law, namely: (1) the rules of law become the supreme power (supremacy of the law) there is no arbitrary power (absence of arbitrary power), that a person can be punished when breaking the law, in which case the law becomes the highest guideline. (2) the existence of equality before the law, this applies without exception to both ordinary people and officials. (3) Human rights are guaranteed in law (human rights).²

In an effort to implement laws that must be in accordance with the legal system. The legal system has a purpose for people who are against the law or against the law itself, and in the form of tools or state officials as law enforcers. This legal system guarantees that the rules in it can be implemented fairly, surely, firmly, and beneficially to establish order in society.

Law enforcement is a necessity implemented by the State with the aim of protecting its citizens. As stated in the Preamble to the 1945 Constitution, the objectives of national development are to protect the entire Indonesian nation, promote general welfare, educate the nation's life and participate in implementing world order based on independence, peace enduring and social justice.

Criminal law enforcement is one form of crime prevention efforts. The use of criminal law as a tool for crime suppression is part of criminal policy. Criminal policy, which when interpreted by Marc Ancel that criminal policy is a rational effort of society.

in tackling crime.³ Crime prevention policies or efforts are essentially an integral part of community protection efforts (Social

¹ Umar Said Sugiarto, *Pengantar Hukum Indonesia*, (Malang: Sinar Grafika, 2015), hal.6.

² Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia Pustaka Utama, 2016), hal. 68.

³ Sudarto, *Hukum dan Hukum Pidana*, (1981), hal. 38.

An Independent and Authoritative Criminal Justice System

Defence) and efforts to achieve community welfare (Social Welfare).⁴

Law enforcement is a must carried out by the state in accordance with the aim of protecting and justice for its citizens, as stated in the 5th precept "Social justice for all Indonesian rakyat".

As we all know, efforts to implement crime reduction do not necessarily only use penal efforts, there are also non-penal efforts. This penal effort will be closely related to the criminal justice system.

Speaking of the criminal justice system, there are several expert opinions on the definition of the criminal justice system. Prof. Muladi argues that the Criminal Justice System is a judicial network that uses criminal law as its main means, both material criminal law, formal criminal law, and criminal implementation law.⁵

Another opinion according to Prof. Romli Atmasasmita, was conveyed that the Criminal Justice System as a form of law enforcement, it contains legal aspects that focus on the operationalization of laws and regulations in an effort to tackling crime and aiming to achieve legal certainty. On the other hand, the understanding of the criminal justice system is seen as part of the implementation of social defense related to the goal of realizing community welfare, so the criminal justice system contains social aspects that Emphasize usability.⁶

The ultimate goal of the Criminal Justice System in the long term is to realize the welfare of society which is the goal of social policy and in the short term which is to reduce the occurrence of crime and recidivism if the goals are not achieved then it can be ascertained that the system does not work reasonably.⁷

According to Barda Nawawi Arief, the Criminal Justice System is essentially a "system of power to enforce criminal law and is identical to the judicial power system" which is embodied in four sub-systems, that is:

1. Investigative powers by investigating agencies.
2. Prosecution power by the prosecution agency;
3. The power to judge/render decisions by the judiciary.
4. The power of execution of criminal law by the executing apparatus.

Based on the few explanations described above, this paper will discuss the problems that exist in criminal justice within the framework of criminal policy/politics, namely How the criminal justice system is independent and integrated with criminal politics in Indonesia and How to Realize an Authoritative Law.

B. RESEARCH METHODS

The research method used in this study is normative legal research. Normative legal research is research based on legal materials, doctrine, principles, jurisprudence and laws and regulations related to the title that the author raises.

C. DISCUSSION

1. An Independent and Integrated Criminal Justice System with Criminal Politics

The Criminal Justice System, when viewed from the perspective of the legal system consists of three aspects, namely legal substance, legal structure and legal culture. According to Prof. Barda Nawawi, seen from the aspect of legal substance, the justice system is essentially a system of enforcement of legal substance (in the field of criminal law including material criminal law, formal criminal law, and criminal implementation law); Viewed from the structural aspect (legal structure), the justice system is basically a the system of work/functioning of law enforcement agencies/institutions/officials in carrying out their respective functions/authorities in the field of law enforcement; viewed from the aspect of legal culture, the judicial system (SPH) is basically the embodiment of the system of "legal cultural values" (which can include legal philosophy, legal principles, legal theory, legal science and awareness/attitudes of legal behavior).

Thus, judging from the legal substance, the criminal justice system is essentially an "integrated legal system" or "integrated legal substance". Then viewed from the legal structure (structural), the criminal justice system is also an "administrative / administrative system" or "functional / operational system" of various structures / professions of law enforcement. Viewed from the point of this structure, in the field of criminal justice system the term "integrated criminal justice system" or "the administration of criminal justice" emerged. Finally, legal culture, from this point of view the criminal justice system can be said to be an "integrated legal culture" or "integrated cultural system" although there is an opinion that it is not easy to make boundaries about legal culture.

From the description above, it means that there is a relationship between the criminal justice system and the legal system. When we talk about the criminal justice system from the point of view of the legal system, it consists of three important aspects,

⁴ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Ed. 2, (Jakarta: Prenadamedia Group, 2008), hal. 4.

⁵ Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro, 1995), hal. 8.

⁶ Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*, (Jakarta: Kencana PrenadaMedia Group, 2010), hal. 4.

⁷ Ali Zaidan, *Menuju Pembaruan Hukum Pidana*, (Jakarta: Sinar Grafika, 2015), hal. 116.

An Independent and Authoritative Criminal Justice System

namely legal substance, legal structure, and legal culture where from these three aspects there is synchronization that contains harmony and Harmony in the sense of integration between these aspects. This means that from each of these aspects, there is harmony / harmony in running the criminal justice system. Where according to Marjono Reksodiputro that the criminal justice system is a crime control system consisting of the institutions of the Police, Prosecutor's Office, Courts and Corrections of convicts. These experts conveyed the understanding of the criminal justice system which is described as follows:⁸

1. According to Remington and Ohlin, as quoted by Romli Atmasasmita, the Criminal Justice System can be interpreted as a system approach to the mechanism of criminal justice administration as a system is the result of interactions between laws and regulations, administrative practices and attitudes or behaviors social.
2. Hagan, distinguishes the meaning of "Criminal Justice System" from "Criminal Justice Process". "Criminal Justice System" is the interconnection between the decisions of each agency involved in the criminal justice process while "Criminal Justice Process" is any stage of a decision that confronts suspects into the process that led him to the determination of *pidana* for him.
3. According to Marjono Reksodiputro, the criminal justice system is a crime control system consisting of police, prosecutors, courts and prisoners of convicts.
4. According to Prof. Muladi, the criminal justice system should be seen as "the network of Courts and tribunals which deal with criminal law and its enforcement". The criminal justice system contains a systemic movement of its supporting subsystems are the police, prosecutors, courts and prisons which as a whole are a unit that seeks transform inputs into outputs that are the objectives of the criminal justice system consisting of : Short-term goals in the form of resocialization of offenders criminal, medium-term goals in the form of crime prevention, and long-term goals in the form of social welfare.

The term criminal justice system is very familiar to legal scholars, because the criminal justice system as a mechanism for how justice works with the intention of tackling crime using a well-structured approach. systematic and neat. This system approach is an approach that involves various elements in it and is mutually sustainable with each other. The elements mentioned consist of elements of the police, prosecutors, courts, and prisons.

The criminal justice system itself is an open system. The purpose of this Open System is a way to achieve a goal that is divided into 3, namely: short-term (resocialization), medium-term (crime prevention), and long-term (social welfare).

The criminal justice system, if applied consistently, consequently and integrated between subsystems, then the benefits of the criminal justice system in addition to being able to realize the goals of the criminal justice system, are also useful in thing:⁹

1. Generate crime statistics centrally through one door, namely the police. The criminal statistics data can be used as a means of formulating an integrated criminal policy for crime reduction.
2. Knowing the success and failure of integrated subsystems in crime reduction.
3. The two points number 1 and number 2 can be used as input for the government in social policy as outlined in short-, medium- and long-term development plans to realize national goals;
4. Provide legal certainty guarantees to both individuals and communities.

Criminal Justice System or Criminal Justice System as a real form of justice enforcement. In the criminal justice system there is something that robs freedom, stigmatizes, robs property and can also take away human lives.

The criminal justice system is essentially an enforcement effort of the criminal law itself. It is closely related to criminal law as it is known, namely the Criminal Code. Criminal law enforcement "in abstracto" is embodied in law enforcement "in concreto". The Criminal Code plays an important role in the criminal justice system, in addition to being the basis of the Criminal Code has also given decision-making power or punished people who are considered to have committed criminal acts.

The criminal justice system can be declared successful if all forms of public reports and complaints can be handled by submitting the perpetrator before the green table and getting criminal punishment. However, the reality says otherwise that success can not only be achieved that easily. There are supporting components for the success of an independent criminal justice system integrated with criminal politics.

Barda Nawawi Arief quoted Prof. Sudarto's explanation of three meanings regarding criminal policy/politics, namely:¹⁰

1. In a narrow sense, it is the whole of the principles and methods on which criminal violations of the law are based;
2. In a broad sense, it is the entire function of the law enforcement apparatus, including the workings of the courts and police;
3. In its broadest sense, it is the whole policy, carried out through legislation and official bodies, aimed at enforcing the central norms of society.

Criminal policy/politics is part of law enforcement policy which includes policies in the fields of criminal law, civil law, and administrative law which are integrally part of social politics, which is an effort from A society to increase its social

⁸ Nyoman Serikat Putra Jaya, *Sistem Peradilan Pidana (Criminal Justice System)*, (Semarang: Universitas Diponegoro, 2006), hal. 3-5.

⁹ H.R. Abdussalam dan DPM Sitompul, *Sistem Peradilan Pidana*, (Jakarta: Restu Agung, 2007), hal. 5-6.

¹⁰ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana....*, hal. 3.

An Independent and Authoritative Criminal Justice System

resilience which includes the welfare and security of its citizens.¹¹

Understand an independent criminal justice system and integrated with legal politics related to synchronization, namely substance, structural, and cultural synchronization. These three things must go hand in hand to be able to run an independent criminal justice system and integrated with legal politics.

The concept of synchronization is the meaning of an integrated criminal justice system, which is expected to be intertwined in the framework of law enforcement in Indonesia which in its implementation often receives intervention and influence of extrajudicial power and there are differences in perception between one sub-system and another sub-system in solving cases.¹² Further explanation of the three concepts of synchronization will be described, namely:

1. Synchronization on the substance plane

The criminal justice system as outlined in the Criminal Procedure Code is expected to be able to oversee material criminal law enforcement. Synchronization of substance goes within legislation. A government that supports the interests of the people will not arbitrarily make regulations or laws if the people do not need them or the laws do not have a significant impact.

The Criminal Code as a law that applies to regulate every individual in Indonesia. Which in the sense that in the future if the National Criminal Code as a taste of Indonesian criminal law comes into force, then all Indonesian people must obey and obey the law because of the nature of the law that binds every citizen.

Regarding synchronization, the National Criminal Code must later be in accordance with the needs of the community which at this time has not been implemented optimally.

2. Synchronization in the structural plane

Synchronization of the structural field as one of the sub-systems of criminal justice still has the next sub-sub-system. This structural field sub-system is a sub-system in which there are institutions / agencies that become tools and implementers for violations of regulations and actions that violate the rules applicable legislation.

The agencies/institutions as referred to in the previous paragraph are the police, prosecutors, courts, and prisons.

The four agencies are institutions that stand independently in administration. The police are subordinate to the Ministry of Defense and Security, the prosecutor's office is located at the end of the Attorney General's Office under executive power, the courts are functionally independent but within the corridors of judicial power of the Supreme Court, and institutions Penitentiary is under the authority of the Ministry of Law and Human Rights.

Synchronization in the field of substance with synchronization in the structural field must really run and be well established. With the intention that the regulations that have been created must be able to synergize with what is applied by law enforcers who are in the structural field.

Even in conditions of implementation that often do not run smoothly as expected and seem difficult, synchronization of these four institutions is a must for the realization of an independent and integrated criminal justice system.

If the synchronization is not carried out, there will be losses that have a major impact, including:¹³ 1) difficulty in assessing the success or failure of each agency, in connection with their respective tasks; 2) difficulty in solving the main problems in each agency yourself; and 3) because the responsibilities of each agency are often less clearly divided, each agency does not need to pay attention to the overall effectiveness of the criminal justice system.

3. Synchronization in the cultural sphere

The last sub-system that cannot be separated and complements the previous sub-system is in the cultural field. In this sub-system we observe whether or not justice has been achieved. This cultural field is based on society, because it alludes to culture or culture that lives in society.

Today, as is well known, Indonesia is a country that is high in the plurality of its people. Consists of various tribes, religions, races, languages, cultures, and others. In addition, there are customary rules that remain alive in the local community.

This is what makes the various forms and forms of laws created must be in sync with the culture and customs that exist in society so that in the future the laws created are not in vain.

The synchronization of the three fields above is the goal of an independent criminal justice system and integrated with criminal politics. At the same time, criminal policy/politics becomes a guideline for the professionalization of justice system personnel to integrate with each other. As long as the three fields have one goal and do not compartmentalize their respective goals, then one goal will be achieved together for the realization of an independent criminal justice system and integrated with criminal politics.

¹¹ Muladi dan Diah Sulistiyani, *Catatan Empat Dekade Perjuangan Turut Mengawal Terwujudnya KUHP Nasional (Bagian I, 1980-2020)*, (Semarang: Universitas Semarang Press, 2020), hal. 9.

¹² Achmad Budi Waskito, "Implementasi Sistem Peradilan Pidana dalam Perspektif Integrasi", *Jurnal Daulat Hukum*, Vol. 1 No. 1, Maret 2018, Unissula Semarang, hal. 288.

¹³ Mardjono Reksodiputro, *Sistem Peradilan Pidana*, (Depok: PT. Raja Grafindo Persada, 2020), hal. 241-242.

An Independent and Authoritative Criminal Justice System

Although in fact it is difficult to achieve an independent and integrated criminal justice system, various forms of approaches such as normative approaches, institutional and administrative approaches, and social approaches make law enforcement practice institutions inseparable from the criminal justice system and society also has a responsible role for the success or failure of the four The law enforcement apparatus carries out law enforcement work.

2. Enforcing Authoritative Laws

According to Sudikno Mertokusumo, every provision of the law is not simply applied directly to the event. Because in order to be able to apply the provisions of laws that are generally accepted and abstract in nature to concrete and special events, the provisions of the law must be meaningful, explained or interpreted and directed to be adjusted to the event. Then applied to the event. Thus the legal event must be sought first from the concrete event, after which the law is interpreted to be applied in the midst of society.¹⁴

The public really expects the judiciary to play an optimal role in upholding the authority of law and justice for the implementation of the law. For the sake of upholding the authority of the law and freedom of judicial process, law enforcers appointed to handle cases so as not to hesitate to carry out their mission of justice by refusing interference from other parties.

In our law-based country and not on power alone, the law must stand with all its majesty and authority. People increasingly yearn for the establishment of laws that are authoritative, fulfill a sense of justice and cool the heart. Justice is a fundamental principle for all legal systems, as the ultimate goal of the rule of law is to uphold and restore justice and to correct and punish injustice. Efforts to equalize opportunities to obtain justice and legal protection that protect the community must receive major attention. Of course, this can be achieved if law enforcers are not rigid in searching or finding laws outside the existing rules. Law enforcement must dare to make legal breakthroughs in order to maintain the authority of the law itself.

When law enforcement cannot implement the purpose of the law itself, namely justice, the supremacy of law that characterizes every legal country, including Indonesia, will later become wishful thinking. Barda Nawawi Arief believes that improving the quality of law enforcement human resources will create law enforcers who are clean and authoritative, who are honest and moral, not corrupt and can be trusted to uphold the values of truth and justice, improving the quality of education will create law enforcers who are al-amin (trustworthy), because they not only understand the law (homo juridicus) but also have ethics / morals or what is called (homo etichus).¹⁵ Therefore, upholding the authority of the law essentially upholds the value of trust in society.

In the previous sub-chapter, it has been explained that there is a relationship between the four sub-systems in the criminal justice system (police, prosecutors, courts and corrections). So that any problem in one sub-system will have an impact on the other sub-system. The reaction arising as a result of this will have an impact back on the initial sub-system and so on. Until finally it is difficult to trace what is cause and which is effect. The estuary of public trust in law enforcement is declining.¹⁶

To build a good and authoritative criminal law enforcement system, law enforcement human resources who are reliable and mentally tough and have a complete understanding of the law are needed. For this reason, it is necessary to strive to increase education and knowledge for law enforcers, namely knowledge of legal science and the science of the Supreme Godhead By having such integral knowledge of the enforcer

The law not only understands the law as a collection of texts in laws and regulations, but understands well the meaning of law more broadly and in detail that criminal law enforcement is not only at the level of legal certainty but at the level of justice and benefits for the wider community.

D. CONCLUSION

The implementation of an independent and integrated criminal justice system is currently not running optimally because currently its structural institutions have not been integrated in the concept of functions and supervision of criminal justice system management because there are still institutions under the executive power of the government. So in certain contexts it is feared that the influence of executive power shakes the integrity of the institution. So there is still no firmness between the differences between legislative, executive, and judicial functions. The criminal justice system has also not been systemically realized, and is still fragmentary and compartmentalized, which creates rivalry between sub-systems which leads to an independent and integrated criminal justice system. Synchronization in the fields of substance, structural and legal culture is also a support for the success of an independent and integrated criminal justice system.

Furthermore, to build a good and authoritative criminal law enforcement system, law enforcement human resources who are reliable and mentally tough and have a complete understanding of the law are needed. For this reason, it is necessary to strive

¹⁴ Sudikno Mertokusumo, *Mengenal Hukum, Suatu Pengantar*, Yogyakarta, Liberty, 1999, hal. 154.

¹⁵ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta, Kencana, 2008, hal. 24.

¹⁶ Mardjono Reksodiputro, *Op. Cit.*, hal. 348.

An Independent and Authoritative Criminal Justice System

to increase education and knowledge for law enforcers, namely knowledge of legal science and the science of the Supreme Godhead.

BIBLIOGRAPHY

1. BOOKS

- 1) Abdussalam, H.R. dan DPM Sitompul. 2007, Sistem Peradilan Pidana, Restu Agung, Jakarta.
- 2) Agustina, Shinta. 2014, Asas Lex Specialis Derogat Legi Generali dalam Penegakan Hukum Pidana, Themis Books, Jakarta.
- 3) Arief, Barda Nawawi. 2007, Kapita Selekta Hukum pidana tentang Sistem Peradilan Pidana Terpadu, Badan Penerbit Universitas Diponegoro, Semarang.
- 4) 2008, Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru, Ed. 2, Prenadamedia Group, Jakarta.
- 5) 2008, Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan. Kencana, Jakarta.
- 6) Atmasasmita, Romli. 2010, Sistem Peradilan Pidana Kontemporer, Kencana Prenada Media Group, Jakarta.
- 7) Budihardjo, Miriam. 2016, Dasar-Dasar Ilmu Politik, Gramedia Pustaka Utama, Jakarta.
- 8) Jaya, Nyoman Serikat Putra. 2006, Sistem Peradilan Pidana (Criminal Justice System), Universitas Diponegoro, Semarang.
- 9) Mertokusumo, Sudikno. 1999, Mengenal Hukum, Suatu Pengantar, Liberty, Yogyakarta.
- 10) Muladi. 1995, Kapita Selekta Sistem Peradilan Pidana, Badan Penerbit Universitas Diponegoro, Semarang.
- 11) Muladi dan Diah Sulistiyani. 2020, Catatan Empat Dekade Perjuangan Turut Mengawal Terwujudnya KUHP Nasional (Bagian I, 1980-2020), Universitas Semarang Press, Semarang.
- 12) Reksodiputro, Mardjono. 2020, Sistem Peradilan Pidana, PT. Raja Grafindo Persada, Depok.
- 13) Soekanto, Soerjono. 2001, Penelitian Hukum Normatif (Suatu Tinjauan Singkat), Rajawali Pers, Jakarta.
- 14) Sudarto. 1981, Hukum dan Hukum Pidana.
- 15) Sugiarto, Umar Said. 2015, Pengantar Hukum Indonesia, Sinar Grafika, Malang.
- 16) Wibowo, Eddi. dkk, 2004, Hukum dan Kebijakan Publik, YPAPI, Yogyakarta. Zaidan, Ali. 2015, Menuju Pembaruan Hukum Pidana, Sinar Grafika, Jakarta.

2. JOURNAL

- 1) Hanqin, XUE. January 2014, "A Point to Meet: Justice and International Criminal Law", Cambridge University Press, Asian Journal of International Law, Vol. 4 Issue. 1.
- 2) Waskito Achmad Budi. Maret 2018, "Implementasi Sistem Peradilan Pidana dalam Perspektif Integrasi", Unissula Semarang, Jurnal DaulatHukum, Vol. 1 No. 1, Maret 2018.



There is an Open Access article, distributed under the term of the Creative Commons Attribution–Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.