

Law Enforcement of Habib Rizieq Shihab in the Criminal Justice System between Certainty of Law and Justice



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ABSTRACT: Law enforcement against Habib Rizieq Shihab is law enforcement that's too forceful it's a criminal offense. Whereas the rules that are broken by the accused are not a crime but merely a violation. This study aims to impose a convicted criminal against the accused Habib Rizieq Shihab based on a substantiated criminal justice system. The methodology used was normative juridical. Research has found that Habib Rizieq Shihab's deed which was acclaimed as a violation by general counsel, should not need to end with idling, sufficient by a humanistic approach to restoring justice. For it is not a work personified as a crime. Law enforcement merely approaches a legal certainty, without substantiating justice.

KEYWORDS: Law enforcement; Restorative justice: certainty; justice

INTRODUCTION

Indonesia is a legal state. This is reflected in chapter 1 verse 3 of the constitution of the republic of Indonesia in 1945 that expressly states that the state of Indonesia is a legal state. As a consequence of the law state, all aspects of public, national and state, including government must be based on law. Criminal law as part of public law is a pillar of force in the effort to counter crime. Development of crime requires that criminal law adjust and follow development so that it can be expected early on with the existing legal device. One side places criminal law as a means to address crime, but on the other hand it must also be acknowledged that the capacity of criminal law is not forever a primary force but is a weak point in law enforcement when faced with the change and development of life in society. Especially if criminal law enforcement is dealt with with the certainty of public law and justice.¹ Especially if criminal law enforcement is dealt with with the certainty of public law and justice.

Aristotle thought the state should stand above the law that guarantees justice to its citizens. Justice is a prerequisite for the achieving of happiness in life for a citizen, and the basis of that justice requires that every human be sure that he or she be a good citizen.² According to Gustav Radbruch the law should contain three basic values, which is a principle of legal certainty (*rechmatigheid*) this principle covers from a standpoint of jurisdiction, a law enforcement principle (*zweckmatigheid* or *doelmatigheid* or utility) and a philosophical point of justice (*ecclesiastical gheit*) that this principle is a philosophical point where justice is equal rights to all people in front of the court.³

The normative certainty of the law is when a rule of legislation is made and enforced without due order and logic, hence it raises no doubt as a multiplexer therefore does not collide or incite a conflict of norms. Conflict norms spawned by uncertainty of regulatory rules can be seen as containers for norms, reductions or Norma distortions. Down Hans Kelsen, the law is a system of norms. Norms are statements that emphasize aspects of what should be "should" or *das sollen*, incorporating some rules on what to do. Norms are the deliberative product and action of human beings. Laws containing general rules provide guidance for individuals in social behavior, both in relationships with others and in their relationships with society. These rules set the limits for society in burdening or acting upon individuals. The existence of that rule and the implementation of that rule resulted in legal certainty.⁴

Justice according to L.J. van Apeldoorn should not be viewed as equal with equalizing, justice does not mean that each person gets the same portion.⁵ It means that justice requires that each matter be weighed in its own scales, that being fair to one person is not just to the other. The objective of the law is to arrange peaceful association of life if it leads to a just rule, which means a rule where there is a balance between protected interests, and each person receives as much as he can. In another sense, satjipto rahardjo's

¹ Muhammad Rusli, *Pembaharuan Hukum Pidana Indonesia*, UII Pres, Yogyakarta 2019. Hlm.1.

² Moh Kusnardi, dan Harmaly Ibrahim, *Pengantar Hukum Tata Negara*, Jakarta: [SHTN FH UI dan Sinar Bakti, 1988. Hlm.153.

³ Julyano, M., & Sulistyawan, A. Y. (2019). *Pemahaman terhadap asas kepastian hukum melalui konstruksi penalaran positivisme hukum. Crepido*, 1(1), 13-22.

⁴ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana, Jakarta, 2008. Hlm. 158

⁵ L.J. Van Apeldoorn, *Pengantar Ilmu Hukum (Terjemah)*. Oetarid Sadino, Jakarta: Pradnya Paramita, 1993. Hlm. 11.

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idea of justice "formulates how justice can create justice based on balance values for equality and duty." But it must also be observed to fit the mechanism used by the law, by making and instituting the rule of the law and then by applying the sanction on the members of society according to the established regulations, what substantiating works could and could not do. But it would also have to be passed through regulations governing ordinances and orders to implement the substantive rule, such as criminal law (substantive) in pairs with the law of criminal events (procedural). In measuring a justice, according to wantu says, it is fair to put things in their place and give to whoever is entitled, based on a principle that all are equal before the law.⁶

But even so, when legal certainty is brought before justice in society in criminal law enforcement, sometimes there is a rather complex struggle. On one side of the certainty of the law is the thing to do for the sake of keeping a law and keeping a law's dignity, but on the other hand justice is the most desired instrument of society in law enforcement. In a criminal justice system that still reverses to certainty of the law from the process of inquiry, prosecution, and criminal prosecutions there is still frequent injustice and only a presumption of legal certainty. It implicates justice produced only a procedural justice rather than a substantiating justice. And so there's a criminality of justice against perpetrators. As in the case of Habib Muhammad Rizieq Shihab who was the victim of a crime of legal certainty.

Habib Muhammad Rizieq Shihab is suspected of violating the health quarantine act, the health protocol to prevent the transmission of the covid virus 19. The crowd carried out on Maulid's program in central Jakarta and Bogor's mines. In the verdict read by the chairman of the justice council Suparman Nyompa, Habib Muhammad Rizieq Shihab was sentenced to eight months and a fine of 20 million deaddressed in the case of the crowd at Maulid the prophet saw and his daughter's marriage in central Jakarta.⁷

The criminal justice system includes three components of law enforcement, judicial process (judge, public prosecutor and lawyer) and correctional (correctional officer, parole officer and probation officer). The criminal justice system, the institutions that operate collectively where a suspect is processed until he can be judged innocent or guilty. In other words this method is a method in which a society handles those who are thought to be involved in a crime⁸

In the criminal justice system known as the open justice system. The open system is a system in which to achieve both a short-term (resocialization) goal, a medium-term (prevention of crime) and a long-term (social welfare) are influenced by people's environment and areas of human life, and the criminal justice system in its motion will always interface (interaction, interconnection and interconnected) with its environment in community, economic, political, The education and technology and the subsystems of the criminal justice system itself.⁹

Leaving an integral system of justice the criminal justice system covers several aspects of legal substance (legal substance), legal structure (legal structure) and legal culture (legal culture). The subsystem is an integral unit. So need to synchronize between legal structures, legal substance and legal culture in law enforcement. In the case of Habib Muhammad Rizieq Shihab from the process of inquiry, prosecution, inquiry and criminal enforcement, law enforcement should be completed through the restoration of justice. Furthermore what Habib Muhammad Rizieq Shihab did was not an ordinary crime or crime (extra ordinary crime) but a violation. MTS as processes carried out by the state against people who break criminal law. The process starts normally with the police as investigators can stop the prosecution from coming forward. As a normative rule in Polri no. 8 of 2021 on restorative treatment of crimes. It is now proper for an investigator to pursue the restoration of justice as in the policy of Polri, much less that Habib Muhammad Rizieq Shihab

was not an ordinary crime or ordinary crime. Let alone speak of the law in a context of a country of Indonesia that has the basis of a Pancasila state on demand.¹⁰

The justice system of the animal must therefore fit the values of the Pancasila balance in enforcing criminal law.

However, the result of the investigation continued from prosecution even to the trial and judicial decision of the accused in order to uphold the certainty of the law without regard for a sense of substantive justice.

So based on the above description the writer would like to take the matter as follows:

1. How does the criminal justice system function as an open justice system enforcing certainty of public law and justice?
2. How law enforcement of abuses committed by Habib Muhammad Rizieq Shihab in the exact perspective of public law and justice?

RESEARCH METHODS

The method used in this research is to use a normative research method by taking a normative juridical approach which is of course qualitative and also supported by secondary data in the form of primary and secondary legal materials. In this case the normative

⁶ Zaenuddin Ali, *Hukum Islam*, Bandung: Sinar Grafika, 2017. Hlm. 46.

⁷ <https://www.voaindonesia.com/a/rizieq-shihab-divonis-8-bulan-penjara-dalam-dua-kasuskerumunan/5907058.html>

⁸ Febry Mutiara Nelson, *Sistem Peradilan Pidana dan Penanggulangan Korupsi di Indonesia*, Rajawali Press, Depok, 2020. Hlm. 7.

⁹ Muladi, *Kapita Selekta Sistem Peradilan Pidana*, Badan Penerbit Universitas Diponegoro, Semarang, 1995. Hlm. 2.

¹⁰ Barda Nawawi Arief, *Pembangunan Sistem Hukum Nasional*, Pustaka Megister, Semarang, 2012. Hlm.10.

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research used certainly leads to legal norms in both national and international laws and regulations. In addition, it is also bound by applicable norms. of course it binds the community and the customs that apply in the community.

DISCUSSION

The certainty of public law and justice when found in law enforcement is not an easy matter, but it is also true that justice must come first, for mere certainty of law alone cannot answer the legal question. When enforcing the law is only formal, it can result in a procedural justice rather than a substantiating justice. As in Habib Muhammad Rizieq's case which was in violation of the health quarantine act.

The defendant, Rizieq Shihab told of how early a crowd occurred at the Maulid of the prophet (Mohammed) and his daughter's wedding in Summarelay, central Jakarta, November 14, 2020. This is revealed by Rizieq at the trial in the state court (pn) east Jakarta, Monday (3/5/2021).

Rizieq said, the early days of the crowd occurred at Mahalul Qiyam. A large crowd of sympathizers stood up. "On its feet, the committee can't control. Turns out the one from behind had started to come forward. That is the case," Rizieq said before the panel of judges. Whereas before Mahalul Qiyam, call Rizieq, the investigator's mass was orderly, remote, and had a mask on. "All according to planned health protocols with the committee," Rizieq relates. "After Mahalul Qiyam, they sat down again. Once seated, then the distance could no longer be maintained," he continued, Rizieq had time to reprove the committee to organize the masses of investigators not to crowd." Even me

It was held and thousands of people were in attendance. The prosecutor mentioned that the crowd at the docks aggravated the COVID-19 case in the capital. "The impact of the gathering of thousands at the event has been a surge in the spread of COVID-19 in and around the surface, as shown by samples in the landmass of the big brother, which is the data from the center of the PM2 district in November 2020," the prosecutor said.

According to the PCR test results on people attending the crowdsourcing events, 33 tested positive for COVID-19. "With the number of samples sent back from 259 samples and the results of laboratory tests, it was confirmed positive by 33 samples and negative by 226 samples," said the prosecutor.

His Pleidoi (20/5/2021), Rizieq believes in cases that lead to a glut of political interest. According to Rizieq, in this case the law was merely a legal tool to settle a political grudge against him. "I am increasingly convinced and convinced that this was a political case wrapped in a legal case, and that the law simply became a tool of legalization and justification to satisfy the oligarchs political vendetta against me and my friends," Rizieq says. Rizieq assumed that a series of political events had made him and FPI officials targets. He feels that he and FPI stewards and sympathizers have been the target of criminalization since the religious corruption case that dragged the former governor of DKI Jakarta¹¹

As is known, FPI is one of the motors in action 411 and 212 that requires legal proceedings against Ahok. Rizieq said that his various criminal efforts with the FPI continued, even as he moved to Mecca, Saudi Arabia. So too when he returns to the fatherland in November 2020. "This provides evidence that the violation of my health protocols was part of a large-scale intelligence operation funded by the oligarchs, so that all three legal cases are simply part of justification by riding the police and the public prosecutor on political retaliation," Rizieq says.

Therefore, according to Judge Habib Muhammad Rizieq Shihab's ruling guilty of violating article 93 of the 2018 Law on Juncto Quarantine section 55 of clause 1 of the law. The crowd carried out on Maulid's program in central Jakarta and Bogor's mines. In a sentence read by the chairman of the Justice Council Suparman Nyompa, Habib Muhammad Rizieq Shihab was sentenced to eight months and a fine of 20 million deaddressed in the case of the crowd at Maulid the prophet saw and his daughter's marriage in central Jakarta.

The criminal justice system is basically an open system. The open system is a system in which to achieve both a short-term goal (resocialization), a menial (prevention of crime) and a long-term (social welfare) are affected by people's environment and areas of human life, and the criminal host system in its movement will always interface (interconnection, interdependent, interdependent) with its environment in rank, society, economics, politics, Education and technology, and the subsystems of the criminal justice system itself.

Hence law enforcement in the criminal justice system was not simply the enforcing of laws, but it was also more substantiating. In other words not only is the legal certainty of formal law enforcement but also the legal substance of justice.

The violation of prokes committed by Habib Muhammad Rizieq Shihab should not have been necessary to lead to a prison investigation. Because the case is not a crime but a violation, which allows for the restorative of justice. In the criminal law, restorative justice has been adopted in a number of reductions such as the 8 year 2021 Polri ordinance on the basis of restorative

¹¹ https://nasional.kompas.com/read/2021/05/27/06304051/perjalanan-sidang-kasus-kerumunan-rizieqshihab-menolak-sidang-online-hingga?amp=1&page=3&jxconn=1*2rw99b*other_jxampid*WW5aVzVVeGtTWw9UT280aFphbFhoQnFrNIFBYUF3d2ROMIFTQURmMFB2WXBHblpHTDFvSC15aSl0Y1Q3eU80MQ

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justice. The police shouldn't have raised the case to the d.a. It is enough to pay fines and warn criminals not to repeat any more transgressions, for modern criminal laws are, in effect, not subject to justice retribution (recompense) but restorative justice. When the case reaches the prosecutor's office, the prosecutor will also have authority to prosecute or not as in the 2020 prosecutor's rule no. 15 year clock clock clock clock the prosecution rests based on restorative justice.

However, the matter remains until the trial. In this case law enforcement against Habib Muhammad Rizieq Shihab is no longer based on legal certainty (legal substance) but law enforcement shows how determined law enforcement is. The problem with the judge's ruling was that the judge chose a prison term for the case. As normatively as the application of a fine of 100 million as contained in the quarantine act, this fine should be applied because it has a *gera* effect. Some pandemic affected countries also imposed the same penalties as high enough penalties and were effective.

And a number of cases of public relations violations were committed by Rachel Venal. The ruling of the offense committed by Rachel Venic who fled the COVID-19 Karekro Hatta Airport. In the matter the judge found Rachel Venus and her partner guilty of escape from quarantine. They were sentenced to four months each. Sentenced to 4 months under sentence of the sentence need not be carried out, except in future court the judge is given another order on the grounds of the convicted before the 8 month trial time ends up being guilty of a criminal act and \$1 million in subsidiary fines. The judge said that Rachel's frankly nature acknowledges her preconceived and convoluted examination makes it a comforting thing to do. And there are many other cases of good cases of prostate violations from government, business, artists and so on. But in the case of violation imposed by Habib Muhammad Rizieq Shihab the judge rendered a different verdict and did not reflect justice.

Equality equality is shared in the criminal justice system (equality under the law). Meaning towards Habib Muhammad Rizieq Shihab the judge must also treat the same thing - criminal probation and penalties. But even so it seems dried up the justice of the country against the righteous seeking it. Whereas in criminal law it is *ultimum remedium*, the final act or remedy given in enforcing the law. Habib Muhammad Rizieq Shihab's case is proof that unenforcing substantive justice, formaldehyde justice was pre-enforced and always sought a criminal offense in a way that treats even more crime.

While in continental and Anglo Saxon European systems, prison idling systems are no longer the main option. Especially in pink crimes or ringgan crimes. In the Netherlands, for example, how many questions of misconduct or crimes are solved outside the court by the principle of restorative justice by compensating the perpetrator for the crime. This left the prison in the Netherlands quiet, so that in time the Netherlands rented its prison to the state of Belgium.

If a country in the Netherlands is individualistic, liberal and secular, could do so. Should a country with a Pancasila ideology that is oriented by equanimity (religious morals), humanistic and civic (nationalistic, democratic and social justice) be more relevant and admissible in doing so.

Hence its integrated criminal justice system, consisting of legal substance (legal structure), legal structure and legal culture (legal culture), in this case the cultural aspects of law enforcement must see the value of Pancasila justice (Pancasila justice) in enforcing laws let alone criminal law. From the legal aspect of substance in law enforcement if there is a norm against justice then choose justice. Because the highest peak in law enforcement is justice. Even Immanuel Kant states in his postulates *summum ius, summa ius, summa ius, summa ius* and *summa ius, summa ius, summa ius* that supreme justice will always conflict with the certainty of the law. Even that was repeated by Gustav Radbruch when he saw how Hitler's cruelty against the Jews with anti-racial legislation made him a positive, first of all, divide the law into the three basic values of justice, certainty and martyrdom.

Indonesia was also promoted by Satjipto Raharjo in a progressive law that declared that the law was for people and not for the law. So progressive laws look at laws not only into rules and logic but also into behavior. For mere certainty of law when enforced by unjust enforcers would be weapons of boomerang against those who seek justice in justice. Thus in the open criminal justice system, the need for syndication between legal substance, legal structure and legal culture *sehingga* in law enforcement will be balanced between certainty of law and justice of society. Hence, even prevailing justice was generated not only prevailing justice but substantiated justice.

CONCLUSION

The criminal justice system is basically an open system, which aims both in the short term (resocialiation), the medium (prevention of crime) and the long term (social welfare) are affected by people's environment and areas of human life, and the criminal justice system in its movement will always interface (interaction, interconnection and interdependency) with its environment in rank, society, economics, Political education and technology, as well as criminal justice systems subs-sub. So the SPP is an integral entity that cannot be separated from either aspects of legal substance, legal structure and legal culture.

In the case of a prose committed by Habib Muhammad Rizieq Shihab should be viewed from the SPP as an open system between certainty of law and justice, it would not need to be a court case, let alone a trial. The normative nature of the violation is certainly not the same as that of the restoration of justice, as in the rule of the law of justice no. 8 of 2021 on handling of criminal ACTS based on justice restorative justice, and in the 2020 prosecutor's rule no. 15 of the year 2020, the termination of prosecution based on restorative justice. Normative or (legal substance) obviously legislation dictates not only of legal certainty but also of

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justice. That means here it must be known that the culture of legal culture (recompense) is still thickening the culture of retribution (retribution) against criminals by law-enforcement enforcement, so that any effort to establish legal certainty and justice of society legal substance and legal structure will not affect well. While in Pancasila explains the virtues of equanimity (religious morals), humanistic and civic (nationalistic, democratic and social justice), law enforcement must enforce the law on the basis of Pancasila justice. Hence an integrated criminal justice system not only a blend of legal substance and legal structure but also a legal culture in recognizing certainty of public law and justice. To prevent further criminality of justice from the arrogance of law-enforcement officers who habitually commit prison crimes against offenses or miscrimes that could still use alternative jail time.

To law enforcement, from the process of investigation, prosecution, criminal prosecutions and enforcement, must enforce the law in addition to the certainty of the law and must be based on conscience and faith in the pursuit of substantiated justice in society, according to the values found in Pancasila. Because an integrated criminal justice system basically characterizes not only between legal substance and legal structure but also legal culture.

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