

Indonesian Criminal Justice System and Human Rights Protection



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ABSTRACT: The criminal justice system in Indonesia has several components, including the Police, Prosecutor's Office, Court, Corrections, and advocates. In running the justice system in Indonesia, several components must comply with human rights, including the protection of human rights for perpetrators and human rights for victims.

KEYWORDS: System; Justice; Criminal; Protection; Human rights

I. BACKGROUND

The Criminal Justice System in Indonesia really needs integral institutions in carrying out criminal justice. Integral institutions in the criminal justice system include Advocates, Prosecutors, Police and Judges.

Internal security is the main requirement to support the realization of a just, prosperous and civilized civil society based on Pancasila and the 1945 Constitution. Maintaining domestic security through efforts to carry out police functions which include maintaining security and public order, law enforcement, protection, protection and service to community, which is carried out by the National Police of the Republic of Indonesia as a state instrument assisted by the community by upholding human rights.

The Unitary State of the Republic of Indonesia is a legal state that guarantees independent judicial power to carry out justice to uphold law and justice based on Pancasila and the 1945 Constitution. The Prosecutor's Office is one of the bodies whose functions are related to judicial power according to the 1945 Constitution.

II. INDONESIAN JUDICIAL SYSTEM

As a legal system, this shows the meaning of in action, namely the law in its mechanism or in the process of involving legal elements in addition to the law in substantive terms, both written and unwritten. Furthermore, law is also involved in the sense of structure, namely processes or institutions or legal actors. Lastly, the meaning of law in terms of culture is also involved, namely in the form of legal culture.¹Friedmen²states that the legal system currently in force contains 3 (three) components, including the following:

1. Structural components, namely the moving parts in a mechanism, for example the court as a clear and simple example. It has a court of judges who convene in a certain place, with determined jurisdictional boundaries (processes), as well as the prosecutor's office and the police (as institutions) are examples of this structural component.
2. Substantial components, namely provisions, legal reasons, or legal rules (including unwritten ones), which are the actual results formed by the legal system.
3. The third component is public attitudes and values or legal culture which have a positive or negative influence on behavior related to law or legal institutions. In its form, this legal culture, with its relationship to the legal system, determines whether people will utilize the courts, police or prosecutors in dealing with a case. Here, legal culture determines whether the structural components and substantive components in the legal system have a logical place, so that they become the property of society.

The criminal justice system in Indonesia has the following components:

1. Police

Police regulations have been regulated in Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia.

¹Kadri Husin, Budi Rizki Husin, Criminal Justice System in Indonesia, (Jakarta: Sinar Grafa), 2016, p. 4

²Lawrence M. Friedmen, On Legal Development, Rutgers; Law Review, 1969, p. 20-30

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Police are all matters relating to police functions and institutions in accordance with statutory regulations. The function of the police is one of the functions of state government in the areas of maintaining security and public order, law enforcement, protection, protection and service to the community. The police function is carried out by the Republic of Indonesia State Police which is assisted by:

- a. special police;
- b. Civil servant investigators; and/or
- c. Independent forms of security.³

According to the above, they carry out their functions in accordance with the laws and regulations which form the basis of their respective laws.

The police have the aim of realizing domestic security which includes: maintaining security and public order, orderly and upholding the law, providing protection, protection and service to the community, as well as maintaining public peace by upholding human rights.

The police is a state unit and instrument that plays a role in maintaining security and public order, enforcing the law, and providing protection, guidance and services to the community in order to maintain internal security.

2. attorney

Prosecutor's Law (Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia).

The Prosecutor's Office is a government institution whose functions are related to judicial power which exercises state power in the field of prosecution and other authorities based on law. Within the Prosecutor's Office there are prosecutors and public prosecutors. Prosecutors are civil servants with functional positions who have specificities and carry out their duties, functions and authority based on law. The public prosecutor is a prosecutor who is authorized by this law to carry out prosecutions and carry out the judge's decisions and other authorities. Meanwhile, prosecution is the action of the public prosecutor to delegate the case to the competent District Court in matters and according to the method regulated in the criminal procedural law with a request to be examined and decided by a judge at a court hearing.

The organizational structure and work procedures of the Prosecutor's Office are regulated by Presidential Regulation. The formation of the High Prosecutor's Office and District Prosecutor's Office is determined by Presidential Regulation. The District Prosecutor's Branch can be formed in the jurisdiction of the District Attorney and is formed by the Attorney General after receiving consideration from the minister who administers government affairs in the field of state apparatus. Prosecutor's staff consists of prosecutors and non-prosecutor civil servants.

Article 8 paragraph 3 For the sake of justice and truth based on belief in Almighty God, prosecutors carry out prosecutions with confidence based on valid evidence. Article 30 paragraph 1 In the criminal field, the prosecutor has the following duties and authorities:

- a. carry out prosecution;
- b. carry out judge's determinations and court decisions that have obtained permanent legal force;
- c. supervising the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions;
- d. carry out investigations into certain criminal acts based on law;
- e. Complete certain case files and for this reason can carry out additional examinations before being submitted to court, the implementation of which is coordinated with investigators.

3. Court

Trial is one of the processes in the criminal justice system that cannot proceed without other processes that precede it, namely investigation and prosecution, because at this stage a case will be assessed from the results collected at the investigation and prosecution stage, whether the case violates the law. or not and whether the perpetrator of the act can be held criminally responsible. It is also said that at this stage the community will receive justice as a result of actions that have caused harm to society, both physical and mental harm.⁴

4. Correctional

Correctional Institutions Law (Law Number 12 of 1995 amended by Law Number 22 of 2022) Article 1 number 1 Corrections is a criminal justice subsystem that carries out law enforcement in the field of treatment of prisoners, children and inmates. Section 2

³Law of the Republic of Indonesia Number 2 of 2002 concerning the State Police of the Republic of Indonesia (2, 2002)

⁴Tolib Efendi, Criminal Justice System: Comparison of Components and Processes of the Criminal Justice System in Several Countries, (Yogyakarta: Pustaka Yustisia 2013) p. 158 (Efendi, 2013)

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The correctional system is organized for a purpose

- a. provide guarantees for the protection of the rights of prisoners and children
- b. improve the quality of personality and independence of inmates so that they realize their mistakes, improve themselves and not repeat criminal acts, so that they can be accepted again by the community, can live normally as good, law-abiding, responsible citizens and can play an active role in development, And
- c. Provide protection to the community from repetition of criminal acts. Article 4 Correctional functions include:
 - a. Service
 - b. Coaching
 - c. Community Guidance
 - d. Maintenance
 - e. Security
 - f. Observation

Article 5

(1) The Correctional System and functions as intended in Article 2 and Article 4 are administered by the ministry/institution.

(2) Further provisions regarding ministries/institutions as intended in paragraph (1) are regulated by Government Regulations.

5. Advocate

The rules for advocates are regulated in Law Number 18 of 2003 concerning Advocates. An advocate is a person whose profession is to provide legal services both inside and outside the court who meet the requirements under the provisions of this Law. To be appointed as an advocate you must meet the following requirements:

- a. Citizen of the Republic of Indonesia;
 - b. Residing in Indonesia;
 - c. Not having status as a civil servant or state official;
 - d. At least 25 (twenty five) years of age;
 - e. Diploma with a higher education background in law;
 - f. Pass the exam held by the Advocate Organization;
 - g. Internship for at least 2 (two) years continuously at an Advocate's office;
 - h. Never been convicted of committing a criminal offense punishable by imprisonment for 5 (five) years or more;
- Behave well, be honest, be responsible, be fair, and have high integrity.

III. PROTECTION OF HUMAN RIGHTS AGAINST CRIMINAL OFFENDERS

The very fundamental principles of human rights protection in material criminal law are the principle of legality and the principle of culpability. These two fundamental principles are confirmed (formulated explicitly) in the concept of the new 1993 edition of the Criminal Code, namely in Article 1 (for the principle of legality) and Article 35 (for the principle of culpability). The 1993 concept policy was still continued until the final concept in the 2008 edition.

In the concept of the New Criminal Code, the formulation of the principle of formal legality as stated in Article 1 (1) of the Criminal Code which is currently in force is maintained. However, apart from that, the concept expands the formulation materially by also giving place to "living law" as a source/basis for unwritten law in determining the appropriateness of punishment for an act. The formulation of the material expansion of the principle of legality can be based on four basic justifications, namely:

1. The basis of national legislative policy that emerged after independence;
2. The basis for scientific agreement in national seminars;
3. Sociological foundations;
4. International platform.

Human rights protection is not only seen in the principle of legality in Article 1 (1) of the Criminal Code, but also in the provisions of Article 1 (2) of the Criminal Code which relates to the issue of retroactivity due to changes in legislation. The principle stated as beneficial in Article 1 (2) is "the application of lighter/beneficial rules to the defendant if there is a change in legislation".

Another principle of protecting human rights is the principle of "no crime without guilt" (principle of culpability). This principle is confirmed in Article 35 of the 1993 Concept (Article 37 of the 2008 Concept).⁵

⁵Prof. Dr. Barda Nawawi Arief, Law Enforcement Issues and Criminal Law Policy in Combating Crime, (Jakarta: Prenada Group, 2018), p. 56-60

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IV. PROTECTION OF HUMAN RIGHTS AGAINST VICTIMS OF CRIME

The meaning of protection for victims can be seen, namely:

1. Can be interpreted as "legal protection against becoming a victim of criminal acts" (meaning the protection of a person's human rights or legal interests);
2. It can be interpreted as "protection to obtain legal guarantees/compensation for the suffering/losses of people who have been victims of criminal acts" (so it is synonymous with "victim compensation"). The form of compensation can be in the form of restoring a good name (rehabilitation), restoring inner balance (including forgiveness), providing compensation (restitution, compensation, social welfare guarantees/compensation), and so on.

The current Criminal Code (WvS) does not or does not pay enough attention to victims. There is no criminal compensation in the Criminal Code, either as a main crime or as an additional crime. The possibility of compensation only exists in Article 14c of the Criminal Code, namely as one of the conditions in a "conditional sentence". So compensation is not a form of punishment, but is only a condition for the convict not to undergo the main sentence.

Based on the basic idea of being oriented towards victims, the concept of giving a separate place/status to criminal compensation is as a type of additional punishment. Even though it has the status of an additional crime, this conceptual policy is an effort to increase the status of criminal compensation as a general punishment policy for all offenses.

One other aspect of victim protection according to the Criminal Code concept is the existence of additional punishment in the form of "fulfillment of customary obligations". Basically, this type of crime can also be seen as a form of providing compensation to the victim. It's just that the "victims" here are indigenous peoples."⁶

V. CONCLUSION

Indonesia is a state of law, therefore, as a state of law, Indonesia has components as a legal system, this shows in the sense of in action, namely the law in its mechanism or in the process of being involved in legal elements in addition to the law in substantive terms, both written and unwritten. Furthermore, law is also involved in the sense of structure, namely processes or institutions or legal actors. Lastly, the meaning of law in the sense of culture is also involved, namely in the form of legal culture in the criminal justice system including the police, prosecutors, courts, correctional institutions and advocates. Human Rights Protection in Indonesia regulates the protection of perpetrators of criminal acts and protection of victims of criminal acts.

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⁶Ibid. Pg. 62-64