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Implementation of Indonesian Criminal Procedure

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ABSTRACT
Law is a set of life instructions-orders and prohibitions that regulate order in a society, and should be obeyed by all members of the community concerned, therefore violations of these life guidelines can lead to action by the government or authorities. The legal awareness of the people that we want to achieve by enforcing the law, there are many factors that influence these efforts. What is meant by criminal procedural law is the entire legal regulation that regulates how law enforcement agencies implement and maintain criminal law.What is meant by criminal procedural law is the entire legal regulation that regulates how law enforcement agencies implement and maintain criminal law. In the Guidelines for the Implementation of the Criminal Law Procedure, the objectives of the Criminal Law Procedure have been formulated. The purpose of criminal procedural law has been specified in the Criminal Law Procedure which has been explained.

Keywords: Law, Criminal Law, Criminal Law Procedure.

1. INTRODUCTION

The republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution. The meaning of a constitutional state is that the law in this country is placed in a strategic position within the constitutional constellation.(Indonesian Constitution, 2015) The Latin expression "Quid sine leges moribus" which means what does it mean a law if it is not supported by the good behavior of the people. Therefore, it is necessary to increase public awareness of the law by consistently and consistently enforcing the law.

Law is a set of life instructions-orders and prohibitions that regulate order in a society, and should be obeyed by all members of the community concerned, therefore violations of these life guidelines can lead to action by the government or authorities.(Utrecht & Mohammad, 1966) The goal is to create peace in society. Law as a basic instrument that is very important in the formation of a country, influences all aspects of people's lives, because law is a tool of social control, so as to create a safe, peaceful and peaceful atmosphere.

The legal awareness of the people that we want to achieve by enforcing the law, there are many factors that influence these efforts. These efforts will relate to aspects of development in the field of law, aspects of law enforcement and interactions between community legal awareness and development.

What is meant by criminal procedural law is the entire legal regulation that regulates how law enforcement agencies implement and maintain criminal law.(Luhut M.P. Pangaribuan, 2013) Procedural law or formal law is a legal regulation that regulates how to maintain and implement material law. Its function is to resolve problems that meet the norms

of material law prohibition through a process based on the regulations contained in the procedural law.(Abdoel Djamali, 2016)

Material Criminal Law is the law that regulates the formulation of crimes and violations as well as the conditions when a person can be punished. Material Criminal Law distinguishes the existence of:(Kansil, 2010)

1. General Criminal Law
2. Special Criminal Law, for example Tax Criminal Law (a person who cannot pay motor vehicle tax, the penalty is not contained in the General Criminal Law, but is regulated separately in the Law (Tax Crime).

Meanwhile, formal criminal law is a law that regulates ways to punish someone who violates criminal regulations (which is the implementation of material criminal law). It can also be said that the Formal Criminal Law or the Criminal Law Procedure contains regulations on how to maintain or defend the Material Criminal Law, and because it contains ways to punish someone who violates criminal regulations, this law is also called the Criminal Law Procedure.(Kansil, 2010)

2. RESEARCH METHOD

The research method used in This writing is research on juridical law normative namely legal research conducted by examining library materials consists of primary legal materials, legal materials secondary, and tertiary legal materials.(Prof. Dr. Soerjono Soekanto, S.H., M.A., Sri Mamudji, S.H., 2015)

Research normative is carried out with a problem approach in the form of a statutory approach (statute approach), conceptual approach (conceptual approach) and case approach (case approach). Legal research methods focus more on library based, focusing on reading and analysis of the primary and secondary materials.(Ibrahim, 2005)

The statutory approach (statute aprroach) is done by reviewing all related laws and regulations with the legal issues being studied,(Marzuki, 2019) especially Indonesian Criminal Procedure Code concerning Prevention and Eradication of Money Laundering Crimes. In addition, research was also carried out with see how deep empirical practice implementation of legalization in the Ministry Law and Human Rights and Ministry of Foreign Affairs.

3. RESULTS AND DISCUSSION

Law enforcement in general can be interpreted as the application of law in various aspects of national and state life in order to create order and legal certainty oriented to justice. In particular, law enforcement can be interpreted as a series of activities within the (criminal)

justice system that are preventive, repressive, and educative. Law enforcement is part of legal development which is an integral component of national development.

In Dutch, Criminal Law Procedure or formal criminal law is called "Strafvordering".(Andi Hamzah, 1983) Simon argues that the Criminal Law Procedure is also called formal criminal law, which regulates how the state through the intermediaries of its power tools exercises its right to convict and sentence, and thus includes the criminal procedure (Het formele strafrecht regelt hoe de Staat door middel van zijne organen zijn recht tot straffen en strafoolegging doet gelden, en omvat dus het strafproces).(Simons, 1937) Sentenced, and rules regarding sentencing; regulates to whom and how the punishment can be imposed. According to Van Bemmelen, the science of criminal procedural law means studying regulations created by the state due to allegations of violations of criminal law.(Muhammad Taufik, 2004) Meanwhile, according to Van Hattum, formal criminal law is a regulation that regulates how abstract criminal law must be applied in a formal way. real (Het formele strafrecht bevat de voorshriften volges welke het abstracte strafrech in concretis tot gelding moet worden gebracht).(Van Hattum, 1954) an in concreto.(Kartanegara, 2001) Criminal Law Procedure in the opinion of Andi Hamzah.(Andi Hamzah, 1983) has a narrower scope, namely starting from seeking the truth, investigation, investigation, and ending with the implementation of a crime (execution) by the prosecutor.

The criminal justice system is closely related to the legal system in force in a country. This is because the criminal justice system is one of the subsystems of the national legal system as a whole adopted by a country. Therefore, every country in the world has a criminal justice system which, although in general is almost the same, has its own character which is adapted to the social, cultural, and political conditions adopted.(Eddy, 2005) In simple terms, the criminal justice system is a process carried out by state against people who violate criminal law.

What is meant by criminal procedural law is the entire legal regulation that regulates how law enforcement agencies implement and maintain criminal law. If we examine some of the considerations that became the reason for the formulation of the Criminal Law Procedure, in short, the Criminal Law Procedure has the following five objectives:(Atmasasmita, 2010)

1. Protection of human dignity (suspects or defendants).
2. Protection of legal and government interests.
3. Codification and unification of Criminal Law Procedure.
4. Achieve unity of attitudes and actions of law enforcement officers.
5. Realizing a Criminal Law Procedure that is in accordance with Pancasila and the 1945 Constitution.

In the Guidelines for the Implementation of the Criminal Law Procedure, the objectives of the Criminal Law Procedure have been formulated, namely "To seek and obtain or at least approach the material truth, namely the complete truth of a criminal case by applying the provisions of the Criminal Law Procedure honestly and precisely, with the aim of seeking who are the perpetrators who can be charged with committing a violation of the law, and then request an examination and a decision from the court to determine whether it is proven that a crime has been committed and whether the accused person can be blamed."

If you view the formulation above, the objectives of the Criminal Law Procedure can be specified as follows:

1. A material truth, namely the essential and complete truth of a criminal case through the proper and honest application of the provisions of the Criminal Law Procedure.
2. Determine the legal subject based on valid evidence, so that you can be charged with committing a crime.
3. Outline an examination and court decision, so that it can be determined whether a criminal act has been proven to have been committed by the person charged with it.

The purpose of criminal procedural law has been specified in the Criminal Law Procedure which has been explained as follows: "The purpose of criminal procedural law is to seek and obtain or at least approach the complete truth of a criminal case by applying the provisions of criminal procedural law in an honest and appropriate manner. with the aim of finding out who is the perpetrator who can be charged with committing a violation of the law, and then requesting an examination and decision from the court to find out whether it is proven that a crime has been committed and whether the person charged can be blamed."

According to Van Bemmelen put forward three objectives of criminal procedural law, namely:

1. Seeking and presenting the truth.
2. Giving a decision by a judge.
3. Implementation of decisions.

Of the three objectives, the most important one because it is the foundation for the next two functions is to seek the truth. The function of seeking and finding the truth is in line with the provisions of Article 183 KUHAP, and the purpose of the Criminal Law Procedure is to find out the nature of real material truth and it is not appropriate if it is "close to material truth" or even more so not "at least close to material truth". After finding the truth obtained through evidence and evidence, the judge will arrive at a (fair and proper) decision which is then carried out by the prosecutor. So as to achieve an order, tranquility, peace, justice, and prosperity in society.

In the description above, it has been explained that criminal law is divided into two types, namely material criminal law and formal criminal law. The function of material criminal law or criminal law is to determine what actions can be punished, who can be punished and what punishment can be imposed, while the function of formal criminal law or criminal procedural law is to carry out material criminal law, meaning to provide regulations on how the state using his tools can realize his authority to convict or release criminals. In realizing the authority mentioned above, there are two kinds of interests that demand the state apparatus, namely:

1. It is in the public interest that a person who violates a criminal law regulation must receive a punishment commensurate with his mistakes to maintain public security, and
2. The interests of the person being prosecuted, that the person being prosecuted in the case must be treated honestly and fairly, meaning that care must be taken not to incriminate an innocent person, or if he is indeed guilty, not to receive a sentence that is too severe, disproportionate to the mistake.

Van Bemmelen(Andi Hamzah, 1983) in his book "Leerboek van het Nederlandes Straf-procesrecht", cited Rd. Achmad S. Soema Dipradja(Achmad S. Soemadipradja, 1981), argued that in essence the Criminal Law Procedure regulates matters:

1. Investigate the truth of the alleged prohibition of the Criminal Law, by means of the state, specially made for this purpose.
2. Attempts are made to investigate the perpetrators of the act.
3. Every effort is made so that the perpetrators of the previous act can be arrested, if necessary, detained.
4. The evidence that has been obtained and collected as a result of the investigation into the truth of the allegations was submitted to the judge, as well as efforts to make the suspect appear before the judge.
5. It is up to the judge to make a decision regarding whether or not the act allegedly committed by the suspect is proven and whether the past action or punishment will be taken or imposed.
6. Determining legal remedies that can be used against decisions taken by Judges.
7. The decision that is ultimately taken is in the form of a crime or action to be implemented.

So based on the matters above, it can be concluded that the three main functions of criminal procedural law are:

1. Seek and Find the Truth.
2. The decision is made by the judge.
3. Implementation of decisions that have been taken.

Likewise, according to Rd. Achmad S. Soema Dipradja(Achmad S. Soemadipradja, 1981), that criminal procedural law is "to determine, rules so that investigators and ultimately judges, can try to penetrate towards finding the truth of the actions that people are suspected of having committed".

Meanwhile, according to Bambang Poernomo, the duties and functions of criminal procedural law through its equipment are(Bambang Poernomo, 1993):

1. to seek and find facts according to truth;
2. apply the law with decisions based on justice;
3. make decisions fairly.

Criminal law is the law that regulates violations and crimes against the public interest. Such violations and crimes are punishable by law which constitutes suffering or torture for those concerned, while the criminal procedural law according to Wirjono Prodjodikoro is a regulation that regulates how government equipment carries out demands, obtains court decisions, and by whom the court decisions must be carried out. if there is a person or group of people who commit a criminal act. These principles include:

1. The principle of legality: The definition of the principle of legality is that an act constitutes a crime if it has been predetermined by law. A person can be prosecuted for his actions if the act has previously been determined as a crime by law/law.
2. The principle of culpability: The principle of culpability, namely nulla puena sine culpa which means there is no crime without guilt.
3. The Opportunity Principle: The opportunity principle is that the public prosecutor has the authority not to prosecute on the grounds that it is in the public interest.
4. The principle of presumption of innocence: The principle of presumption of innocence means that a person must be presumed innocent before being declared guilty by a court decision that has permanent legal force.
5. The principle of In Dubio Pro Reo: The principle of in dubio pro reo, which means that in the event of doubt, the rule that is most beneficial to the accused shall be applied.
6. The principle of equality before the law: The principle of equality before the law means that everyone must be treated equally before the law without distinction of ethnicity, religion, rank, position and so on.
7. The Principle of Written Orders from the Authorities: The principle of written orders from the authorities, means that every arrest, search, detention and confiscation must be carried out based on a written order from an official authorized by law and only in cases and ways regulated by law.

8. The principle of a quick, simple and low-cost trial: The principle of a fast, simple and low-cost trial, as well as being honest and impartial. This principle implies that the examination process should not be complicated and the suspect has the right to a quick examination so that legal certainty can be obtained immediately (Articles 24 and 50 of the Criminal Procedure Code).(Andi Hamzah, 1983)
9. The Principle of the Presence of the Defendant: The principle of the presence of the accused means that the court when examining criminal cases must have the presence of the accused.
10. The principle of being open to the public: The principle of being open to the public is that the trial of a criminal case must be open to the public, unless it is regulated by law in certain cases, for example in cases of decency where the trial is closed to the public but the reading of the court decision must still be carried out in an open trial. open to the public.(Bakri, 2011)
11. Principle of Legal Aid: The principle of legal aid means that a person who is involved in a criminal case must be given the opportunity to obtain legal assistance free of charge for the purpose of self-defense (Articles 54, 55 and 56 of the Criminal Procedure Code).(S.j. Fockema Andrea, 1948)
12. The Judge's Decision Must Be Accompanied by Reasons: This principle means that all decisions must contain reasons that serve as the basis for adjudicating. The reason must have an objective value.
13. The principle of nebis in idem: The principle of nebis in idem means that a person cannot be prosecuted again for an act that has already been brought before a court and has received a judge's decision that has permanent legal force.
14. The principle of material truth: The principle of material truth (truth and reality) means that an examination in a criminal case aims to find out whether in fact or in fact there has been a violation or crime.
15. Principle of Compensation and Rehabilitation: The principle of compensation and rehabilitation implies that a suspect/defendant/convict has the right to receive compensation or rehabilitation for actions against him since the process of investigation (Articles 95 and 97 of the Criminal Procedure Code).(Kuffa, 2010)

4. CONCLUSIONS

The process in the Criminal Procedure Code can be broadly divided into actions that precede an examination before a court which consists of the level of investigators/investigators (police) and at the level of the public prosecutor. When in the process of investigation

corroborating evidence has been collected, the investigator will send the BAP (file of examination procedures) to the prosecutor's office to then appoint the public prosecutor who then makes an indictment and then delegates it to the district court. The head of the court forms a panel of judges whose task is to summon the accused, then proceed with examination in court sessions until a court decision is finally made. Each of these will be discussed further and in more detail in subsequent modules. The stage that begins the Criminal Procedure Law process is known to have committed a crime (delict).

A criminal case is said to exist if it is known that a criminal act or criminal event or crime has been committed by a person or several persons. In contrast to civil cases, when the initiative to file a case is taken by people who feel aggrieved, in a criminal case, the initiative to file a criminal case is taken by stete. File a criminal case in court because of a crime or crime. It is known that a crime has occurred from four possibilities, namely:

1. caught red-handed (Article 1 point 19 of the Criminal Procedure Code);
2. because of the report (Article 1 point 24 of the Criminal Procedure Code);
3. because of a complaint (Article 1 point 25 of the Criminal Procedure Code);
4. self-knowledge or notification or other means so that investigators know the occurrence of offenses such as reading in newspapers, hearing on the radio, hearing people tell stories, and so on.

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