



THE OPTIMIZATION OF THE ROLE OF CORRECTIONAL CENTERS IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The purpose of this research is to examine and analyze (1) the role of Correctional Centers in the Criminal Justice System in Indonesia; and (2) the Optimization of the Role of Correctional Centers in the Criminal Justice System in Indonesia. The research method used is a normative juridical approach. The results of the research concluded; (1) Correctional Centers in the juvenile criminal justice system and in the adult criminal justice system both have a role, but the role of Correctional Centers in the adult criminal justice system has not been optimized as in the juvenile criminal justice system, and it tends to be discriminatory. (2) The optimization of the role of Correctional Centers in the Criminal Justice System in Indonesia needs to be carried out, because by optimizing the role of Correctional Centers, especially Correctional Research on adult cases, it will eliminate discrimination in treatment between children and adults and Correctional Research can be used as a reference for law enforcers. As a recommendation, it is suggested that in the Criminal Law Reform in Indonesia, both related to the renewal of the Criminal Procedure Law Code (KUHAP); the Criminal Code (KUHP); as well as the Corrections Law, the discrimination in making Correctional Research on juvenile cases and adult cases should be abolished, because it has no value of justice. The equalization of treatment related to Correctional Research will optimize the role of Correctional Research and also other law enforcers in achieving the value of justice in Indonesia.

Keywords: optimization; correctional center; system; justice; criminal

INTRODUCTION

Indonesia is a rule of law, this has been explained in Article 1 Paragraph (3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia (NKRI) which states “*The State of Indonesia is a rule of law*”. This is based on the explanation of the 1945 Constitution that the state of Indonesia is based on law (*rechtstaat*) and is not based on mere power (*machstaat*). Therefore, the state must not carry out its activities on the basis of mere power, but must be based on law.¹ Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: “*Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law*”². The implementation of the constitutional mandate is realized in the criminal justice system.

Romli Atmasasmita states that the criminal justice system as a law enforcement contains legal aspect that focuses on the operation of laws and regulations in an effort to tackle crimes and aim to achieve legal certainty. On the other hand, if the definition of the criminal justice system is seen as part of the implementation of social defense related to the goal of realizing public welfare, then the criminal justice system contains social aspect that focuses on expediency³. The ultimate goal of the criminal justice system in the long term is to realize the public welfare which is the goal of social policy in the short term, namely reducing the occurrence of crimes and recidivism. If this goal is not achieved then it can be ascertained that the system is not running properly.

The criminal justice system is a place to process every form of crime so that it can be tried. Whatever the form, ranging from ordinary crimes

1 C.S.T. Kansil, *Hukum Tata Negara Republik Indonesia* (Jakarta: Bina Aksara, 1986), 81.

2 Indonesia, *Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945 Setelah Amandemen*, 1945.

3 Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana Prenada Media Group, 2010), 4.

to the level of extraordinary crimes. The approach taken in the criminal justice system requires sub-system organs (Police, Prosecutors, Advocates, Courts and Corrections). This sub-system is the basic pillar and hope for the running of the state so that people can live a decent, just and civilized life. Corrections as a sub-system of criminal justice includes several Technical Executive Units (UPT), namely the State Detention Center and/or Temporary Child Placement Institution (Rutan/LPAS); Correctional Center (Bapas); State Confiscated Assets Storage House (Rupbasan); Correctional Institution and/or Child Special Guidance Institution (Lapas/LPKA).

Correctional Center (Bapas) is a UPT in the field of Corrections which is an institution or work unit within the Ministry of Law and Human Rights of the Republic of Indonesia which is tasked with providing guidance for clients until the client can bear the burden/problem and can create their own pattern in tackling the burden of life's problems. The guidance in question is carried out outside correctional institution or detention center. Correctional center have the duties and functions to provide guidance, supervision, and assistance to correctional clients consisting of conditional convicts (adults and children), convicts who get parole and pre-release discharge, as well as State Children who get parole or are handed over to foster families.

The history of the establishment of correctional center began during the Dutch East Indies government, namely with the establishment of the *Reclassering* Bureau which was founded in 1927 and was located at the head office of prison bureau. This bureau was established to address the problems of Dutch and Indonesian children/youth who required special guidance.⁴ The activities of the *Reclassering* Bureau were to provide further guidance for Correctional Inmates (WBP), guidance for child and adult correctional inmates who were on parole, as well as guidance for children who were decided to be returned to their parents and handle civilian children. *Reclassering* officers were called *Ambtenaar de Reclassering*

(special civil servants in the *Reclassering* agency) which were regulated in the Criminal Code (article 14 Paragraph 2) and were also called special officers or *bijondere ambtenaar*⁵. This institution only worked for 5 years and it was subsequently frozen due to the economic crisis due to the First World War.

After Indonesia's independence, this institution was deemed necessary to be re-established, which was later known as the Correctional Advisory Council (DPP) which became the Correctional Observer Team (TPP) under the auspices of the Minister of Justice. Based on the Decree of the Presidium of the Ampera Cabinet dated November 3, 1966 Number: HY.75/U/11/66 concerning the Organizational Structure and Duties of the Department, it inspired the establishment of the Directorate of Social Guidance and Child Alleviation (Directorate of Bispa) under the Directorate General of Community Development, and since then there have been two directorates, namely the Directorate of Corrections and the Directorate of BISPA. BISPA was established under the Decree of the Minister of Justice of the Republic of Indonesia No. Y.S.I/VI/1970, then based on the letter of the Directorate General of Community Development No. 4.1/X/1943 dated May 14, 1974, Bispa offices were opened for each region and there were 44 Bispa offices.

Based on the Decree of the Minister of Justice of the Republic of Indonesia Number: M.02-PR.07.03 Year 1987 dated May 2, 1987, the Organization and Work Procedure of the Center for Correctional Guidance and Child Alleviation or Balai Bispa (Bispa Center) was established. Furthermore, based on the Decree of the Minister of Justice of the Republic of Indonesia Number: M.01-PR.07.03 Year 1997 dated February 12, 1997 concerning nomenclature (name change), *Balai Bispa* became *Balai Pemasarakatan* (Correctional Center) which was abbreviated as "Bapas" until now.

Along with the history and name of Balai Bispa and with the promulgation of Law Number 3 Year 1997 concerning Juvenile Courts (UUPA)

⁴ Rengganis, "Pengawasan Terhadap Pembebasan Bersyarat Bagi Narapidana Oleh Balai Pemasarakatan" (Jakarta: Universitas Indonesia, 2008), last modified 2008, accessed April 30, 2021, <http://lib.ui.ac.id/file?file=digital/2016-9/20199830-S22361-Rengganis.pdf>.

⁵ Zarima Audina, "Pola Pelaksanaan Pembimbingan Klien Pemasarakatan Kelas II Pekanbaru" (Pekanbaru: Universitas Islam Riau, 2018), last modified 2018, accessed April 30, 2021, <http://library.uir.ac.id/skripsi/pdf/147510863/bab2.pdf>.

which was replaced by Law Number 11 Year 2012 concerning the Juvenile Criminal Justice System (UU-SPPA), Bapas are better known as institution that specifically deals with children's cases, with its Correctional Research (Litmas) and Correctional Mentor (PK) which is used as one of the conditions for the validity of the juvenile court decision.

Article 28D Paragraph (1) of the 1945 Constitution reads “*everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law*”. The constitution has guaranteed that everyone is not discriminated and their human rights are not violated, in accordance with Article 28 I Paragraph (2) which reads “*everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against discriminatory treatment.*” Pancasila as an ideology and the basis of the order of Indonesian society has become a philosophy with the aim of ensuring the survival and personality of the nation, so it must be in accordance with Pancasila. The basic rights of citizens have been regulated in the constitution, so that every citizen has the right to legal protection and protection of human rights (HAM), as well as minors.

The Correctional Research and Correctional Mentor which are only applied in juvenile cases as regulated in UU-SPPA, without being applied to adult cases, are legally discriminatory. With this background, the researchers are interested in conducting this research with the title: The Optimization of Correctional Centers in the Indonesian Criminal Justice System.

The statement of the problems in this research are first, What is the Role of Correctional Centers in the Criminal Justice System in Indonesia?; second, How to Optimize the Role of Correctional Centers in the Criminal Justice System in Indonesia?

RESEARCH METHOD

The approach method used in this research is a normative juridical approach, namely a normative approach, focusing on an inventory of positive law, principles and legal doctrine, legal findings and legal history⁶. The study was carried

⁶ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum, Cetakan I* (Bandung: Citra Aditya Bakti, 2004), 52.

out through a literature study to obtain secondary data related to the Optimization of Correctional Centers in the Indonesian Criminal Justice System.

DISCUSSION AND ANALYSIS

A. The Role of Correctional Centers in the Criminal Justice System in Indonesia

1. The Definition of Role

It means something that is played or carried out⁷. Role is defined as an activity that is executed or played by a person who has a position or social status in an organization. Role according to terminology is a set of behaviors that are expected to be possessed by those who have certain positions in society. In English, “role” definition is “person’s task or duty in undertaking”. It means “a person’s duty or obligation in a business or job”. Role is defined as a set of behaviors that are expected to be possessed by people who have positions in society. Role is also defined as an action taken by a person in an event⁸.

According to sociologists, such as Raph Linton, it is “*the dynamic aspect of status*”. A person carries out a role when he carries out the rights and obligations which constitute status, while a status is a “*collection of rights and duties*”, a collection of rights and obligations⁹.

It is a dynamic aspect of a position (status). If a person carries out the rights and obligations according to his position then he carries out a role. Everyone has various roles to determine what he does for the community and what opportunities are provided by the community in carrying out a role¹⁰.

It is an activity carried out by a person or an institution/organization. The role that must be carried out by an institution/organization is usually regulated in a stipulation which is a function of the institution. There are two kinds of role, namely the

⁷ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia Edisi Keempat* (Jakarta: Gramedia Pustaka Utama, 2014).

⁸ Torang Syamsir, *Organisasi & Manajemen (Perilaku, Struktur, Budaya & Perubahan Organisasi)* (Bandung: Alfabeta, 2013), 86.

⁹ David Berry, *Pokok-Pokok Pikiran Dalam Sosiologi Edisi 1, Cetakan 3*, ed. Paulus Wirutomo (Jakarta: Raja Grafindo Persada, 1995), 99.

¹⁰ Soerjono Soekanto, *Sosiologi: Suatu Pengantar* (Jakarta: PT Raja Grafindo Persada, 2007), 24.

expected role and the actual role. In carrying out roles, there are supporting and inhibiting factors.

2. Universal Paradigm of Criminal Justice System Theory

The word “system” is an expression of the objective complexity of the inter-connection of several existing sub-systems, and their participation is directly related from the beginning to the end. The criminal justice system approach requires various patterns, whether related to sentencing, recovering suspects/defendants to the sector of consideration of the justice process cost¹¹.

In order to create effectiveness, all system components must work integrally in the sense that a working subsystem must also pay attention to other subsystems as a whole, or it can be said that the system will not work systematically if its subsystems do not cooperate harmoniously. The absence of functional relationship among these subsystems will cause vulnerabilities in the system resulting in fragmentation and ineffectiveness¹². Fragmentation and ineffectiveness can simply be measured through the crime rates that do not decrease and also through indicators that lawbreakers commit crimes again and again. A function and subsystem if experiencing fragmentation from other subsystems can cause fragmentation that reduces the effectiveness of the system. Effectiveness is measured by the success of social approach to crime in general.

There are several general theories, specifically concerning the criminal justice model. One of them is the six theories proposed by Michael King¹³, First the Due Process Model of criminal justice. According to King, the Due Process Model is a criminal justice model that prioritizes the equal position of each party in justice, including the Police, Prosecutors, and the Suspect/Defendant. The form of this model is also prominent in the section of regulations concerning justice (Procedure Law) which emphasizes the importance of a successful trial by reducing errors in the process of trying a criminal case

(rules protecting defendants against errors). The parties in this trial must be regarded as not taking sides with mistakes, not recognizing judicial negotiations, and prioritizing justice based on the law. The suspect/Defendant has the right to refute, remain silent or answer and is regarded innocent before a court decision is made.

Second, the criminal justice model Crime Control Model. This model, according to King, prioritizes the aspect of punishment/sanction. The realization of the form of sanctions is the result of the justice. The suspect/defendant can be given legal certainty immediately, for the public interest and the effectiveness of the justice. This model is more supportive and provides guarantees for law enforcers (Police and Prosecutors), so that they can provide punishments/sanctions for suspects/defendants who are considered guilty. The basic reason for the Crime Control Model is that it emphasizes the conduciveness of the community order and is guaranteed from the reduction of criminal acts committed by people/unscrupulous people in the community.

Herbert Packer states that essentially criminal justice only has two alternative models. In addition to the Crime Control Model, which focuses on the application of criminal sanctions to suspects/defendants, which aims at the effectiveness of justice and efficient legal certainty, there is also the Due Process Model, which focuses on the application of a just law, takes into account the rights of the suspect/defendant and emphasizes proper justice¹⁴.

Third, the criminal justice model Medical Model (diagnosis, prediction and choice of services). This model, according to King, prioritizes the justice process in the form of recovering the suspect/defendant (Rehabilitation). The emphasis in this model is on the part of the individual as the perpetrator of a crime, which becomes an in-depth study for law enforcers. The basic goal is that the individual does not repeat the crime again. The services from law enforcement officers are the hallmark of this model. The realization process for criminals (suspects/defendants) is the basic agenda. The elasticity of judicial regulations (procedure law) is prioritized and the imposition of sanctions is more in the form of social work

¹¹ Malcom Davies, Hazel Croall, and Jane; Tyrer, *Criminal Justice: An Introduction to The Criminal Justice System in England and Wales*, 3rd ed. (London: Pearson Education Limited, 2005), 17.

¹² Ibid.

¹³ Michael King, *The Framework of Criminal Justice* (London: Croom Helm, 1981), 13-15.

¹⁴ Herbert L Packer, *The Limits of The Criminal Sanction* (Stanford, Calif.: Stanford University Press, 1968), 9.

sanctions. However, if it is considered that social sanctions will not be beneficial for both the state and the stability of society, then it is possible that imprisonment can also be applied.

Fourth, the Bureaucratic Model of criminal justice. According to King, this justice model is more based on the effectiveness of justice process. The basic objective is to prevent the suspect from hanging around in the preliminary investigation or investigation process and to prevent the trial process from taking too long. Minimum conflict is the main basis of this system and the proving process is more dynamic, not only rigid on the evidence contained in laws and regulations. Justice must be prioritized with efficient court services, by paying attention to costs as well as the interests of a fast and simple trial.

Fifth, namely the criminal justice model Status Passage Model (denunciation and degradation). According to King, this model of criminal justice is seen in the form of basic sanctions, namely what we usually call labeling (it is the community who judge). The influence of labeling in this model becomes the initial part of punishment. The justice process applied to the suspect/defendant is based on community claims. This model is in contrast to the Rehabilitation criminal justice model.

Sixth, the criminal justice model Power Model (Maintenance of Class Domination). According to King, this model of criminal justice is widely considered as a Marxist Model or Conflict Perspective. This model believes that law is created based on interests that have a big influence on government. Criminal justice only serves and is based on the interests of the dominant community, elite, race, and gender. Even in this justice model, advocates and/or legal advisors are selected and determined based on clan class.

In addition to these six models, several criminal law experts add 2 (two) other models¹⁵, namely the Just Deserts Model. This form of justice emphasizes legal certainty, how important it is to provide sanctions (absolutely needed) for perpetrators of criminal acts. The basic purpose is to provide an overview of how wrong the attitude and/or actions of the suspect/defendant are

(Wrongfulness of Their Act). Apart from this, it is to guarantee the interests of society civilization and every sanction must also pay attention to the morality that lives in society.

The next model is the criminal justice model Managing Offender Behavior. This criminal justice model is an innovation from the Rehabilitation model. This model emphasizes the behavioral aspect of the defendant/convict after serving the sanction. Apart from that, this model also pays attention to the effect of criminal acts which is minimized every time (minimizing crime). The influence of every discipline, whether from legal experts, sociologists, criminologists etc., is highly needed. Legal guarantees also do not see the majority or minority parties. This model starts from the point that criminal justice is dynamic not static, changes can be made at any time according to the times in the life of the people of a country.

3. The Criminal Justice System Model in Indonesia

The implementation of criminal justice is a mechanism for the work of criminal law enforcement officers starting from the process of preliminary investigation and investigation, arrest, detention, prosecution to examination in court trials, or in other words the work of police, prosecutors, judges and correctional institution officers, which also means the process or the work of the criminal procedure law.

The criminal justice system starts from the process of arrest, detention, prosecution, and examination before the court, and ends with the punishment in a correctional institution¹⁶. The criminal justice system was first introduced by criminal law experts and experts in the criminal justice system in the United States of America along with dissatisfaction with the work mechanism of law enforcement officers and law enforcement institutions. According to Soebekti, what is meant by system is an orderly arrangement or order, a whole consisting of parts that are related to each other, arranged through a plan or pattern, the result of a thought to achieve a goal¹⁷. System moves

¹⁵ Malcom Davies, Hazel Croall, and Jane; Tyrer, *Criminal Justice: An Introduction to The Criminal Justice System in England an Wales*, 3rd ed. (London: Pearson Education Limited, 2005), 27.

¹⁶ Yesmil Anwar and Adang, *Sistem Peradilan Pidana : (Konsep, Komponen & Pelaksanaannya Dalam Penegakkan Hukum Di Indonesia)* (Bandung: Widya Padjadjaran, 2009), 33.

¹⁷ Muhammad Rusli, *Sistem Peradilan Pidana Indonesia Dilengkapi Dengan 4 Undang-Undang Di Bidang Sistem Peradilan Pidana* (Yogyakarta: UII Press, 2011),

based on pre-existing goals, so that all actions are based on the goals that have been made.

The criminal justice system as a system is basically an open system, in the sense that the criminal justice system in its movement will always experience interference (interaction, interconnection and interdependence) with its environment in ranks, society: economy, politics, education and technology as well as subsystems of the criminal justice system itself. Barda Nawawi Arief defines the criminal justice system as a process of enforcing criminal law¹⁸. Therefore, it is closely related to the criminal legislation itself, both substantive criminal law and criminal procedure law. Basically, criminal law is the enforcement of criminal law *in abstracto* which will be realized into *in concreto* law enforcement.

Mardjono Reksodipoetra explains that the criminal justice system is “a system in a society to overcome crimes. Dealing with efforts to control crime so that it is within the limits of society tolerance. This system is considered successful if most of the reports and complaints of the public who are victims of crime can be resolved by submitting the perpetrators of crimes to court and they are decided guilty and receive a sentence”¹⁹.

According to Romli Atmasasmita, the term criminal justice system has now become a term that indicates a working mechanism in crime prevention using a system approach basis. In criminal justice, the system in question has the following characteristics: 1. Emphasis on coordination and synchronization of criminal justice components (Police, Prosecutor's Office, Courts and Correctional Institutions); 2. Supervision and control of the use of power by the criminal justice components; 3. The effectiveness of the crime prevention system is more important than the efficiency of case settlement; 4. The use of law as an instrument to establish the administration justice²⁰.

In principle, there are two kinds of function of the criminal justice system, namely: First, the preventive function, namely the criminal justice system is used as a social supervision institution in an effort to prevent the occurrence of a crime. This function can be realized in the operation of the criminal justice system and other efforts that support crime prevention efforts; Second, the repressive function, namely the criminal justice system as a prosecution institution to administer a justice against criminals by using the means of criminal law, criminal procedure law and prosecution law²¹.

According to Muladi, the criminal justice system has a dual functional dimension, namely on the one hand it functions as a means of society to contain and control crime at a certain level (crime containment system), while on the other hand criminal justice system also functions as secondary prevention, namely reducing crime among those who have committed a crime and those who intend to commit a crime through the process of detection, prosecution, and sentencing²².

Indonesia as a country based on law upholds human rights and guarantees that all citizens have the same position in law and government and is obliged to make the law the supreme commander without any exceptions²³. In addition to law, justice is the king of all direct and indirect movements, namely the relationship between the Indonesian people and the government.

As a country that is a former Dutch colonial colony, in the field of criminal law, Indonesia still uses the criminal law of the Dutch colonial heritage. The use of criminal law inherited from the Dutch colonial era in Indonesia, whether we like it or not, will tear the sense of justice in society. This is because both philosophically and sociologically the purpose of making criminal law by the Dutch government is certainly not based on the sense of justice that exists in Indonesian society, so of course it is the time for our country

¹³.
¹⁸ Heri Tahir, *Proses Hukum Yang Adil Dalam Sistem Peradilan Pidana Di Indonesia* (Yogyakarta: LaksBang PRESSindo, 2010), 9.
¹⁹ Ibid.
²⁰ Yesmil Anwar and Adang, *Sistem Peradilan Pidana : (Konsep, Komponen & Pelaksanaannya Dalam Penegakkan Hukum Di Indonesia)* (Bandung: Widya Padjadjaran, 2009), 34-35.

²¹ Muhammad Rusli, *Sistem Peradilan Pidana Indonesia Dilengkapi Dengan 4 Undang-Undang Di Bidang Sistem Peradilan Pidana* (Yogyakarta: UII Press, 2011), 10.
²² Heri Tahir, *Proses Hukum Yang Adil Dalam Sistem Peradilan Pidana Di Indonesia* (Yogyakarta: LaksBang PRESSindo, 2010), 10.
²³ Andi Hamzah, *Bunga Rampai Hukum Pidana Dan Acara Pidana*, ed. Andi Hamzah (Jakarta: Ghalia Indonesia, 1986), 13.

to have its own criminal law based on the human values of the Indonesian nation.

As stated by Thomas E. Davitt who states that “Law is an instrument to direct people in things that can meet mutual needs and common to them”²⁴. From this definition, there will be written law and unwritten law. Regarding unwritten law, Thomas E. Davitt states that, “The law made by people who have never learned to write, namely traditional societies that do not have a written tradition, is called unwritten law which is expressed mainly through customs and traditions related to the welfare of each of its member”²⁵. While one form of written law is criminal law.

In the field of formal law, namely criminal procedure law, the Indonesian nation is one of the countries that is able to codify laws and regulations of criminal procedure law, namely with the issuance of Law Number 8 Year 1981 concerning the Criminal Procedure Code (KUHAP).

Andi Hamzah states that, “With the establishment of the Criminal Procedure Code, for the first time in Indonesia a complete codification and unification are held in the sense that they cover the entire criminal process from the beginning (seeking the truth) to the cassation in the Supreme Court and even includes review (*herzeining*)”²⁶.

Furthermore, Andi Hamzah adds that, “Police, prosecutors and judges may not arbitrarily carry out criminal procedures, but must be based on the provisions of the law, namely the Criminal Procedure Code and legislation outside the Criminal Procedure Code which contains provisions for deviant procedures”²⁷. Furthermore, Andi Hamzah says that, “The Criminal Procedure Code does not provide a definition of criminal procedure law, but its parts such as investigation, prosecution, trial, pretrial, court decisions, legal remedies, confiscation, search, arrest, detention and others”²⁸.

Regarding the existence of the Criminal Procedure Code, a stricter warning was conveyed by M. Yahya Harahap, who says that “Indeed the Criminal Procedure Code has appointed and placed suspects or defendants in a position of dignity, which must be treated in accordance with noble human values, but in the implementation of law enforcement against suspects or defendants, their inherent main human rights may not be stripped out”²⁹.

The Criminal Procedure Code has explained in detail the duties of the police as investigators, the prosecutor’s office as public prosecutors and executor of court decisions and judges as decision makers of criminal cases. Therefore, we will discuss one by one the functions of each Law Enforcement Apparatus (APH) as contained in the Criminal Procedure Code. According to M. Yahya Harahap, “The criminal justice system outlined by the Criminal Procedure Code is an integrated criminal justice system. The integrated system is placed on the basis of the principle of functional differentiation among law enforcement apparatus in accordance with the stages of the process of authority given by law to each of them”³⁰.

1) The Police

Tolib Effendi states, “The Indonesian Police have the main tasks: receiving reports and complaints from the public when a crime occurs, conducting preliminary investigations and investigations of crimes, screening cases that meet the requirements to be submitted to the prosecutor’s office, reporting investigations to the prosecutor’s office and ensuring the protection of parties involved in the criminal justice process”³¹. The Indonesian Police, as regulated in Law Number 2 Year 2002 concerning the Indonesian National Police, Law Number 3 Year 2002 concerning National Defense and Law Number 8 Year 1981 concerning the Criminal Procedure Code, in terms of organization, is a non-departmental

²⁴ Thomas. E Davitt, *Nilai-Nilai Dasar Di Dalam Hukum – Menganalisa Implikasi Implikasi Legal-Etik Psikologi & Antropologi Bagi Lahirnya Hukum / Thomas E. Davitt ; Diterjemahkan Oleh Yudi Santoso*, ed. Yudi Santoso (Yogyakarta: Pallmal, 2012), 41.

²⁵ Ibid, 71.

²⁶ Andi Hamzah, *Hukum Acara Pidana Indonesia Edisi Kedua* (Jakarta: Sinar Grafika, 2008), 3.

²⁷ Ibid, 2.

²⁸ Ibid, 4.

²⁹ M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP. Penyidikan Dan Penuntutan. Edisi Kedua* (Jakarta: Sinar Grafika, 2006), 1-2.

³⁰ Ibid, 90.

³¹ Effendi Tolib, *Sistem Peradilan Pidana : Perbandingan Komponen Dan Proses Sistem Peradilan Pidana Di Beberapa Negara* (Yogyakarta: Pustaka Yustisia, 2013), 147-148.

institution that has an equal position with the prosecutor's office and is directly under the coordination line of the President.

In relation to the criminal justice system, the task of the Indonesian police is to carry out preliminary investigations and investigations both on their own initiative and on public reports and be responsible to their own institution. Although the Indonesian police do not have the authority to prosecute, the Indonesian police have the authority to stop investigations or to stop cases³². The organizational structure of the Indonesian police consists of the Regional Police (Polda) and each Polda consists of several Resort Police (Polres) and each Polres consists of several Sector Police (Polsek).

2) The Prosecutor's Office

The prosecutor's office in Indonesia has the main task of screening cases that deserve to be brought to court, preparing prosecution files, carrying out prosecutions and implementing court decisions³³. The prosecutor's office as a subsystem of the criminal justice system is regulated in Law Number 16 Year 2004 concerning the Prosecutor's Office. The prosecutor's office is a non-departmental institution whose leadership is held by the Attorney General who is responsible to the President³⁴.

The prosecutor's office in Indonesia has the main task of carrying out prosecutions, but the prosecutor's office also has the authority to conduct investigations for certain crimes, namely corruption³⁵. In practice, the prosecutor's office also has the authority to terminate prosecutions for certain reasons and to dismiss cases because of the public interest. The structure of the prosecutor's office in Indonesia consists of Provincial Prosecutor's Offices (Kejati) and each Kejati consists of several District Prosecutor's Offices (Kejari).

3) The Court

The court has the task to receive, examine and adjudicate criminal cases submitted

by the Public Prosecutor (Prosecutor) and according to Tolib Effendi, "The court is obliged to uphold law and justice, to protect the rights of defendants, witnesses and victims in the criminal justice process, to conduct examinations of cases efficiently and effectively, to give fair decisions based on law and to prepare the public arena for trials so that the public can participate and evaluate the justice process"³⁶.

The organizational structure of the courts in Indonesia is regulated by Law Number 3 Year 2009 concerning the Second Amendment to Law Number 14 Year 1985 concerning the Supreme Court. Courts in Indonesia are divided into High Courts (PT), each of which consists of several District Courts (PN), which are entirely responsible, in stages, to the Chief Justice of the Supreme Court.

According to Article 5 Paragraph (1) of Law Number 48 Year 2009, "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society", so that judges may not reject a case submitted to court on the grounds that there is no law. And judges in deciding a case in the criminal justice system, in addition to being guided by the applicable laws and regulations, must also be based on a sense of justice that lives in society, so that justice will be achieved for justice seekers.

4) Corrections

As one of the sub-systems in the criminal justice system in Indonesia, corrections is regulated in Law Number 12 Year 1995 and it functions to carry out court decisions such as imprisonment, to ensure the protection of the rights of convicts, and to make efforts to improve and prepare convicts to come back to society.

The use or mention of Correctional Institutions in the Indonesian Criminal Justice System, according to the researchers, is inaccurate and incomplete, because Correctional Institutions (Lapas) are only a sub-system in the Correctional System. This sub-system in the Indonesian Criminal Justice

³² Ibid, 149.

³³ Ibid, 153.

³⁴ Ibid, 153.

³⁵ Ibid, 153-154.

³⁶ Ibid, 158.

System should use the term Corrections, because the term Corrections also includes: State Confiscated Assets Storage House (Rupbasan); Correctional Center (Bapas); and the State Detention Center (Rutan). Therefore, the researchers prefer to use the term “Correctional System”, which includes the “Sub-System of State Confiscated Assets Storage House”; “Sub-System of Detention Center/Sub-System of LPAS”; “Sub-System of Correctional Center”; and “Sub-System of Correctional Institution/Sub-System of LPKA”.

5) Advocates

We need to know that Advocates are a new component of the criminal justice system, which previously were not regulated or even considered as a sub-system in the criminal justice system. Then, advocates are mandated in Law Number 18 Year 2003 concerning Advocates, in terms of representing citizens in their relationship with the government/state through law enforcement instruments.

As regulated in the Criminal Procedure Code, namely in Articles 54-57 (which regulate the rights of suspects or defendants to obtain advocates as legal advisor) and Articles 69-74 (regarding procedures for legal advisor to engage with suspects or defendants)³⁷. According to Abdurrahman, the term legal advisor is inappropriate, because it is more appropriate to use the term legal assistant, because it provides a clearer description of the nature of assistance in the legal field to those who need it³⁸.

According to S.M. Amin as quoted by Abdurrahman, “The real duty of an advocate is to help judges find the truth³⁹.” Meanwhile, Yap Thiam Hien argues that, “That the defender does not only defend the interests of his clients but also defends the public interest⁴⁰.” These two opinions should be a noble goal of every advocate in carrying out their duties as part of the process of the criminal justice system in Indonesia.

³⁷ Andi Hamzah, *Hukum Acara Pidana Indonesia Edisi Kedua* (Jakarta: Sinar Grafika, 2008), 91.

³⁸ Abdurrahman, *Aspek-Aspek Bantuan Hukum Di Indonesia* (Jakarta: Cendana Press, 1983), 206.

³⁹ *Ibid*, 211.

⁴⁰ *Ibid*, 211.

The Indonesian Criminal Justice System consists of Adult Criminal Justice System and Juvenile Criminal Justice System. These two Criminal Justice Systems can be described in the form of a chart as follows:

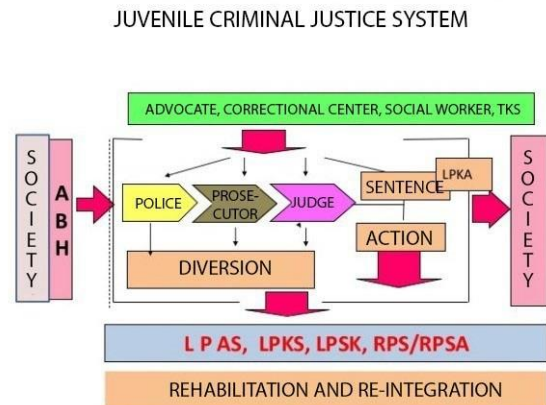


Figure 1 Juvenile Criminal Justice System, source: <https://www.slideshare.net/sayidmuhfaldy/undanguu-sistem-peradilan-pidana-anak>

Based on Figure 1 regarding the Juvenile Criminal Justice System, the role of Correctional Centers in the Juvenile Criminal Justice System has started from the beginning, as regulated in Article 23 Paragraph (1) of the Juvenile Criminal Justice System Law which states that “at every level of examination, children must be given legal assistance and accompanied by Correctional Mentors or other assistants in accordance with the provisions of laws and regulations”. Therefore, the involvement of Correctional Centers which in this matter is represented by the Correctional Mentors must be carried out from the beginning of the process. Article 27 Paragraph (1) further emphasizes that the involvement of Correctional Centers in the Juvenile Criminal Justice System has begun at the level of investigation, namely “in conducting an investigation of a juvenile case, the investigator is obliged to ask for consideration or advice from Correctional Mentors after the crime has been reported or complained about”. Likewise, at the level of prosecution and until serving a sentence, Correctional Centers are still involved in providing protection for children who are perpetrators of crimes.

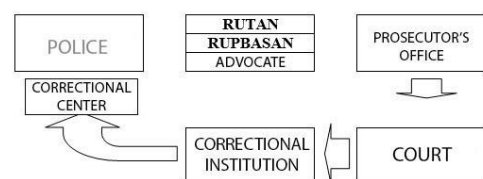


Figure 2 Adult Criminal Justice System

In the Juvenile Criminal Justice System, Correctional Centers are determined by the Juvenile Criminal Justice System Law to be involved and engaged in every level of examination. It is different from the Adult Criminal Justice System, as shown in Figure 2.

According to Article 6 Paragraph (3) of Law Number 12 Year 1995 concerning Corrections (Corrections Law), the role of Correctional Centers in the Criminal Justice System in Indonesia only includes:

Guidance by Correctional Centers is carried out for:

- 1) Conditional convicts;
- 2) Convicts, Child Convicts and State Children who get parole or pre-release discharge;
- 3) State Children whose, based on court decisions, guidance is handed over to foster parents or social agencies;
- 4) State Children whose, based on the Decree of the Minister or appointed officials in the Directorate General of Corrections, guidance is handed over to foster parents or social agencies; and
- 5) Children whose, based on court decisions, guidance is returned to their parents or guardians.

Based on the description of the analysis and discussion, it can be concluded that Correctional Centers both in the juvenile criminal justice system and in the adult criminal justice system have a role, but the role of Correctional Centers in the adult criminal justice system has not been optimized as in the juvenile criminal justice system, and it tends to be discriminatory.

B. The Optimization of the Role of Correctional Centers in the Criminal Justice System in Indonesia

The difference in the role of Correctional Centers in the juvenile criminal justice system and in the adult criminal justice system illustrates the differences and discrimination between the handling of juvenile cases and the handling of adult cases. Discrimination is an act of violation of human rights. Rhona K. Smiths mentions that human rights are rights that humans have solely because they are human. In other words, those

rights are attached to them as human being⁴¹. This definition was further explained by Jack Donnelly who says that mankind has these rights not because they are given to them by society or based on positive law, but solely based on their dignity as a human being⁴².

The idea of human rights is established based on the principle of equality. This principle emphasizes that humans are equal in terms of their worth and dignity. Humans have equality in human rights. The various differences inherent in humans do not cause human positions to become unequal, because even so, they are still human⁴³. For example, this is reflected in the principle of equal pay for equal work, which in the UDHR is considered as equal rights to the same work. This principle is also a human right⁴⁴. Equality requires equal treatment, where at the same situation people must be treated equally, and with debate, where in different situations people are treated differently as well⁴⁵.

The definition of discrimination is proposed by Theodorson as unequal treatment towards individuals or groups based on something, usually categorical, or specific attributes, such as based on race, ethnicity, religion or membership of social classes⁴⁶. This term will usually describe an act of the dominant majority party towards a weak minority party in a relationship, so that it can be said that their action is immoral or undemocratic, in the sense that the act of discrimination is active or is an overt aspect of negative prejudice against an individual or a group⁴⁷.

Discrimination is often preceded by prejudice. With prejudice, we make a differentiation from

⁴¹ Rhona K. M. Smith. at.al, *Hukum Hak Asasi Manusia*, ed. Knut. D Asplund, Suparman Marzuki, and Eko Riyadi (Yogyakarta: PUSHAM UII, 2008), 11.

⁴² Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca and London: Cornell University Press, 2003), 7-21.

⁴³ Andrey Sujatmoko, "Sejarah, Teori, Prinsip Dan Kontroversi HAM," in *Hukum Hak Asasi Manusia*, ed. Knut.D Asplund, Suparman Marzuki, and Eko Riyadi (Yogyakarta: PUSHAM UII, 2008), 9.

⁴⁴ Ibid.

⁴⁵ Rhona K. M. Smith. at.al, *Hukum Hak Asasi Manusia*, ed. Knut. D Asplund, Suparman Marzuki, and Eko Riyadi (Yogyakarta: PUSHAM UII, 2008), 39.

⁴⁶ George A Theodorson and Achilles G Theodorson, *A Modern Dictionary of Sociology* (New York: Barnes & Noble Books, 1979), 115-116.

⁴⁷ Ibid.

other people. This differentiation occurs because we are social beings who naturally want to gather with people who are similar to us. Prejudice is exacerbated by a bad label (stigma or stereotype). This bad label is more based on various facts that lead to similar patterns, so that we generalize a person on the basis of his group. Discrimination occurs when beliefs about bad labels and prejudices turn into action. Discrimination is the act of treating another person unfairly just because he belongs to a certain social group⁴⁸.

The prohibition against discrimination is one of important elements of the principle of equality. If everyone is equal, then there should be no discriminatory treatment (other than affirmative action taken to achieve equality)⁴⁹. This principle is known as the principle of non-discrimination. In the International Bill of Human Rights, namely UDHR, ICCPR and ICESCR, this principle has been explicitly stated. Even earlier, the same thing has also been previously affirmed in the UN Charter⁵⁰.

In the 1945 Constitution Chapter XA on Human Rights, basically the rights that are owned by every person or citizen have been stated. Article 28 I number 2 stipulates that every person has the right to be free from discriminatory treatment on any basis and has right to protection from such discriminatory actions. It is also stated in Article 28 I Number 4 of the 1945 Constitution that the state, especially the government, is responsible for providing protection, promotion, enforcement and fulfillment of human rights. The article clearly states the provisions for citizens to obtain rights and protection of their rights as citizens without any discrimination, so that the value of legal justice can be established.

Satjipto Rahardjo states that talking about law is talking about relationship among humans. To talk about human relations is to talk about justice. Therefore, any discussion of the law, clear or vague, is always a discussion of justice as well. We cannot talk about the law only about its form

as a formal relationship. We also need to see it as an expression of the people's ideals of justice⁵¹.

According to Ahmad Ali, the purpose of law is focused on the aspect of "justice". Meanwhile, Gustav Radbruch conceptualizes one of the goals of law or legal ideals as "justice" in addition to benefits and certainty⁵². Aristotle argues that the purpose of law is solely to realize justice. Justice here is *ius suum quique tribuere*, which means to give to everyone what is his share or right⁵³. Aristotle's formulation of justice rests on three essences of natural law which he considers as the main principle of justice, namely *honeste vivere, alterium non laedere, suum quique tribuere* (live with dignity, do not disturb others, and give to everyone his share)⁵⁴.

In addition to the equality-based model of justice, Aristotle also proposes other justice models, namely distributive justice and corrective justice. Distributive justice is identical with justice on the basis of proportional equality. While corrective or remedial justice focuses on "correcting something wrong". If something is violated, or a mistake is made, corrective justice seeks to provide adequate compensation for the injured party. If a crime is committed then the appropriate punishment should be given to the perpetrator. In short, corrective justice is tasked with rebuilding harmony. Corrective justice is a general standard for correcting every consequence of an act regardless of who the perpetrator is. The principle is that punishment must correct the crime, compensation must repair the loss and recover the illegitimate gain. The concept of Themis, the goddess of justice, underlies this type of justice which is tasked to balance these principles regardless of who the perpetrator is⁵⁵.

The occurrence of discrimination in the juvenile criminal justice system and the adult

⁴⁸ Fulthoni., Muhamad. Yasin, and TheIndonesia Legal Resource Center (ILRC), *Memahami diskriminasi : buku saku kebebasan beragama* (Jakarta: The Indonesian Legal Resource Center (ILRC), 2009), 9-10.

⁴⁹ Ibid.

⁵⁰ Andrey Sujatmoko, "Sejarah, Teori, Prinsip Dan Kontroversi HAM," in *Hukum Hak Asasi Manusia*, ed. Knut.D Asplund, Suparman Marzuki, and Eko Riyadi (Yogyakarta: PUSHAM UII, 2008), 9-10

⁵¹ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, 1st ed. (Jakarta: PT RajaGrafindo Persada, 2008), 159.

⁵² Achmad Ali, *Menguak Tabir Hukum : Suatu Kajian Filosofis Dan Sosiologis*, 2nd ed. (Jakarta: Menguak tabir hukum: (suatu kajian filosofis dan sosiologis, 2002), 72.

⁵³ Dudu Duswara Machmudin, *Pengantar Ilmu Hukum : Sebuah Sketsa*, ed. Aep Gunarsa (Bandung: Refika Aditama, 2001), 23.

⁵⁴ Bernard L. Tanya, Yoan N. Simajuntak, and Markus Y. Hage, *Teori Hukum : Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Surabaya: CV. Kita, 2007), 152.

⁵⁵ Ibid, 53-54.

criminal justice system creates injustice and the role of Correctional Centers in the criminal justice system in Indonesia, especially in adult cases is not optimal. Therefore, in order to optimize the role of Correctional Centers in the overall criminal justice system in Indonesia, the juvenile criminal justice system and the adult criminal justice system must be equalized, especially regarding the Correctional Research (Litmas) by the Correctional Mentors (PK) of Correctional Centers.

The optimization of the role of Correctional Centers in the criminal justice system in Indonesia, especially in adult cases through Correctional Research, needs to be performed, because with Correctional Research, the community's sense of justice will be fulfilled, especially those related to the Background of the Suspect/Defendant can be used as a reference for:

- a. Police investigators in conducting investigations and making Police Investigation Report;
- b. State Detention Centers (Rutan) in providing guidance for detainees and/or placing suspects/defendants while detained in Detention Centers.
- c. Advocates, as a reference in providing legal advice and defense in court.
- d. Public Prosecutors in making indictments and charges;
- e. Judges in deciding cases and imposing a sentence.
- f. Correctional Institutions (Lapas) as a reference in conducting guidance while convicts are serving their sentence in Correctional Institutions, and/or when they are about to undergo parole.
- g. Correctional Centers in providing guidance for convicts, Child Convicts and State Children who receive conditional discharge, parole or pre-release discharge;

Regarding the optimization of the role of Correctional Centers in the criminal justice system in Indonesia, if it is analyzed with the theory of legal system according to Lawrence M. Friedman which consists of three elements, namely elements of legal structure, legal substance, and legal culture⁵⁶, Correctional Centers are part of the

legal structure of the Indonesian Criminal Justice System, but the role of Correctional Centers in this legal structure is only more of a role in the legal structure of juvenile criminal justice, and the role of Correctional Centers in the adult criminal justice system is not as massive as its role in the juvenile criminal justice system.

The role of Correctional Centers which has weaknesses in the adult criminal justice structure compared to its role in the juvenile criminal justice system is related to the legal substance of laws and regulations which are still discriminatory in nature, between adult justice and the juvenile criminal justice system. Therefore, the substance of the law is the root of the problem of the lack of role of Correctional Centers in the adult criminal justice system.

The weakness of the legal structure and legal substance leads to the weakness of the legal culture, especially the values of Pancasila justice, because of the discrimination in the role of Correctional Centers in the adult criminal justice system. Therefore, if the problem is analyzed according to the theory of legal system from Lawrence M. Friedman, then there is no element of the legal system that is fulfilled in relation to the optimization of the role of Correctional Centers in the Justice System in Indonesia.

The law should be pro-justice and pro-people, meaning that in enforcing law, law enforcers are required to prioritize honesty and sincerity in law enforcement. They must have empathy and concern for the suffering experienced by the people and the interest of the people, in this case welfare, must be the orientation and ultimate goal in the law enforcement, presumably the progressive legal theory proposed by Satjipto Rahardjo is to fulfill the community's sense of justice and make the role of Correctional Centers become optimal.

Progressive legal theory is based on two basic assumptions. First, that the law is for humans. This means that humans become the determinant and orientation of the law. The laws that are made must be able to serve humans, not the other way around. Therefore, the law is not an institution that is separated from humans' interests. The function of law is determined by humans in realizing human welfare, therefore if there is a legal problem, it is the law that must be reviewed or corrected, and not humans who are forced to follow the law scheme. Humans are above the law, and the law as a means to

guarantee and protect humans' interests. Second, that the law is not an absolute and final institution, because the law is in the process of the making (law as a process, law in the making), therefore in optimizing the role of Correctional Centers, it is the law that must be reviewed or revised.

Based on the analysis and discussion above, the optimization of the role of Correctional Centers in the criminal justice system in Indonesia needs to be carried out, because the optimization of the role of Correctional Centers, especially Correctional Research in adult cases, will eliminate the occurrence of discrimination of treatment between children and adults and Correctional Research can be used as a reference for law enforcers.

CONCLUSION

The role of Correctional Centers in the criminal justice system in Indonesia is not optimal, even the role of Correctional Centers in the criminal justice system in Indonesia is discriminatory, because there is a significant difference in the role of Correctional Centers in the juvenile criminal justice system which is so optimal but not optimal in adult criminal justice.

The optimization of the role of Correctional Centers in the criminal justice system in Indonesia is carried out by eliminating discrimination or the difference in the role of Correctional Centers in the juvenile criminal justice system which is optimal and in the adult criminal justice system, especially in implementing Correctional Research which is only applied to the juvenile criminal justice system, not applied to adult justice yet.

SUGGESTION

The optimization of the role of Correctional Centers in the criminal justice system in Indonesia needs to be carried out, because by optimizing the role of Correctional Centers, especially Correctional Research in adult cases, it will eliminate discrimination of treatment between children and adults and Correctional Research can be used as a reference for law enforcers.

In order to optimize the role of Correctional Centers, it is recommended that in the Criminal Law Reform in Indonesia, both related to the reform of the Criminal Procedure Code (KUHAP); the Criminal Code (KUHP); as well as the Corrections Law, the discrimination in making Correctional Research in juvenile cases and adult cases should be abolished, because it does not have the value of justice. The equalization of treatment related to Correctional Research will optimize the role of Correctional Research and also optimize the law enforcement in achieving the value of justice in Indonesia.

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