


The Priority Of The Principle Of Justice Over The Principle Of Benefit And The Principle Of Legal Certainty

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Article Info	ABSTRACT
Keywords: The principle of justice	As a state of law, law enforcement officers in Indonesia, including the police, prosecutors and judges, are always trying to solve problems that occur legally. In practice, law enforcement officers, especially judges, when going to make their decisions must be careful and wise in prioritizing the principle of justice or the principle of expediency or the principle of legal certainty. Usually judges choose to prioritize the principle of justice so that a fair decision is produced as stated at the top of a court decision: For the sake of Justice Based on God Almighty. Article 53 paragraph (2) of the Criminal Code provides guidelines for punishment that if in upholding law and justice as referred to in paragraph (1) there is a conflict between legal certainty and justice, the judge must prioritize justice. This study wants to find out which principles are prioritized in law enforcement: the principle of justice, the principle of expediency or the principle of legal certainty and what reasons judges prioritize the principle of justice. The research method used is normative research using primary and secondary legal materials. Legal materials were obtained through literature study and then analyzed qualitatively. After doing research, it is concluded that the principle that needs to be prioritized in law enforcement is the principle of justice. The reason is because the main goal of justice seekers is to obtain justice rather than benefits and legal certainty.
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INTRODUCTION

The Republic of Indonesia as a country of law tries as much as possible so that if a problem occurs it can be resolved legally. In the Criminal Procedure Code (KUHAP) the parties tasked with resolving a case are law enforcement officers, namely the police, prosecutors and judges. A judge is the party who determines whether a defendant after undergoing a series of examinations will be found guilty or not. The judge will certainly make a fair decision. This is evident in the beginning of a court decision where it is written *For the Sake of Justice Based on the One Almighty God*. In this case a judge must pay attention to the principle of *ex aequo et bono* (deciding for the sake of justice).

But in fact, it is not only the principle of justice that is considered by the judge. There are other principles, namely the principle of benefit and the principle of legal certainty. This is certainly not easy for a judge, he must prioritize which principle. For example: the legal case of grandmother Minah who had to serve a sentence of one month and fifteen days plus

three months of probation. The sentence had to be served after grandmother Minah was found guilty of stealing cocoa fruit in the plantation area of PT Rumpun Sari Antan. In terms of legal certainty, it can indeed provide a satisfactory answer, but from the principle of justice, especially the sense of justice of the community, it will be a problem.

In addition to the case of Minah's grandmother, a judge can also, for the sake of justice, defeat the principle of legal certainty where the judge is allowed to sentence a defendant below the minimum limit of the threat of punishment in a regulation. This is called *contra legem*. In the sentencing guidelines regulated in the Criminal Code, namely in Article 53 paragraph (2): If in enforcing the law and justice as referred to in paragraph (1) there is a conflict between legal certainty and justice, the judge is obliged to prioritize justice.

It is hoped that these sentencing guidelines can be a guide for judges when faced with doubts about which principle to prioritize. The fair attitude of a judge is certainly intended for both the victim, the defendant and also the community. This is in accordance with the nature of criminal law which is monodualism. If there is doubt about something, things that benefit the defendant must be decided (*in dubio proreo*).

Attention to justice can also be seen from expressions such as *fiat justitia pereat mundus* (let justice be upheld even if the world must perish) and *fiat justitia ruat caelum* (let justice be upheld even if the sky falls). Based on the matters stated above, the Author conducted further research on this matter with the research title "The priority of the principle of justice over the principle of utility and the principle of legal certainty". The problems studied are: Which principle should be prioritized in law enforcement: the principle of justice, the principle of utility or the principle of legal certainty?. Why is the principle of justice given priority over the principle of expediency and the principle of legal certainty?

To answer the problems in this research, theories are used as analytical tools, namely:

a. The Three Values Theory of Law

According to Gustav Radbruch, we must prioritize the principle of priority where the first priority is always *justice*, then *utility* and finally *certainty*. So the principle of priority offered by Radbruch is a standard principle of priority where the number one priority is always justice, then utility and finally certainty. Based on Radbruch's standard priority teaching, justice must always be prioritized. When a judge must choose between justice and expediency, the choice must be justice, likewise when a judge must choose between expediency and certainty, the choice must be expediency.

b. Theory of Justice

According to Aristotle in the theory of Vindicative Justice: retribution is applied in the field of criminal law with a balanced measure or proportionality between the act committed and the retribution or sanction applied. According to John Rawls: social justice must be fought for to make corrections and improvements to the conditions of inequality suffered by the weak by forming empowering social, economic and political institutions. In addition, every rule must position itself as a guide for develop corrective policies for injustices experienced by the weak.

c. Theory of Law Enforcement

According to Soerjono Soekanto, the main problem of law enforcement actually lies in the factors that may influence it. These factors have a neutral meaning, so that the positive or negative impact lies in the content of these factors. These factors are as follows:

- a. The legal factor itself
- b. Law enforcement factors, namely the parties who form and implement the law
- c. Factors of facilities or infrastructure that support law enforcement
- d. Social factors, namely the environment in which the law applies or is implemented.
- e. Cultural factors, namely as a result of work, creativity and feeling which are based on human will in social life.

These five factors are closely related to each other, therefore they are the essence of law enforcement, and are also a benchmark for the effectiveness of law enforcement.

RESEARCH METHODS

The type of research used is descriptive research. Normative means research that focuses on studying the application of rules or norms in law. Legal materials used:

1. Primary legal materials: Law number 11 of 2012 concerning the Juvenile Criminal Justice System, the Criminal Procedure Code (KUHAP) and the new Criminal Law Book (KUHP).
2. Secondary legal materials: books, journals

Legal materials are obtained through literature studies, namely by searching literature and laws and regulations related to the research title. The legal materials that have been obtained are analyzed qualitatively, namely by using several relevant theories as analytical tools, then the results of the analysis which are the answers or conclusions of the problem are presented in the form of sentences.

FINDINGS AND DISCUSSION

A sas What is needed Priority In Law Enforcement : The Principle of Justice , the Principle of Benefit or Principle of Legal Certainty

The principle of *justice* is an important factor in resolving a case. The scales are a symbol of efforts to uphold justice. For a trader, the weighing stone must weigh the same as the item the buyer is buying.

In deciding a case, the judge must try to make the severity of the punishment commensurate with the defendant's guilt. A judge must be fair. This is reflected in a court decision that begins with the words FOR THE SAKE OF JUSTICE BASED ON THE ONE ALMIGHTY GOD. This is also regulated in Law number 48 of 2009 concerning Judicial Power. This is in line with what was conveyed by Bambang Poernomo that the duties and functions of criminal procedural law through its equipment are:

1. To seek and find facts according to the truth
2. Applying the law with decisions based on justice
3. Implement decisions fairly

In certain circumstances, sometimes law enforcement officers also need to consider the benefits of conducting a legal examination process. For example, in child cases, Law Number 11 of 2012 concerning the Child Criminal Justice System regulates diversion. The definition of diversion is regulated in Article 1 point 7, namely the transfer of the settlement of child cases from the criminal justice process to a process outside the criminal justice system.

As an effort to prevent and overcome criminal acts by children, it is carried out through the implementation of a juvenile criminal justice system. However, the implementation of a juvenile criminal justice system has negative impacts, including causing trauma to children. To avoid this negative impact, law enforcement officers are given the authority to take policy actions in handling or resolving problems of child offenders without taking formal routes, including stopping or not continuing/releasing from the court process or returning or handing over to the community and other forms of social service activities. These actions are called diversion. Here it appears that the principle of utility also needs to be considered.

In law enforcement, especially in resolving a case, law enforcement officers, both police when conducting investigations, prosecutors when prosecuting or judges when conducting trials that end with a verdict must be in accordance with laws and regulations. However, if you only follow the existing regulations, then you will only get legal certainty .

From the description above, it appears that there are three principles that need to be considered in resolving a case as in the theory of three legal values, namely the principle of justice, the principle of utility and the principle of legal certainty. In legal practice, the principle of justice is usually the most important, then it is considered whether there is any benefit in continuing the legal process and finally the factor of legal certainty. Like the case of grandmother Minah which has been presented in the Background section above, for the sake of legal certainty because she has fulfilled the elements of the article charged, she was punished, even though if viewed from the principle of utility, she actually did not need to be punished because of her old age.

Reason for the Principle of Justice Preferred Over Principle of Benefit And the Principle of Legal Certainty

In carrying out their duties, it is not easy for a law enforcement officer, whether a police officer, prosecutor or judge. Starting from an investigator, their thoroughness is expected in determining whether the case can be continued to the next stage, namely prosecution or not. For a public prosecutor, their carefulness is expected in compiling the articles to be charged and in submitting their demands to the judge. For a judge, wisdom and justice from their conscience are needed in determining whether the defendant is guilty or not and in determining his sentence. This is in accordance with the theory of law enforcement put forward by Soerjono Soekanto that law enforcement is one of the factors that influences the success of law enforcement.

In the sentencing guidelines regulated in the new Criminal Code , namely in Article 53 paragraph (2): If in enforcing the law and justice as referred to in paragraph (1) there is a conflict between legal certainty and justice, the judge must prioritize justice. This is in accordance with the principle of *ex aequo et bono* that a judge must decide for the sake of

justice . After conducting a trial with a series of examination processes, the judge with his conscience and conviction will issue the fairest possible verdict.

Based on the theory of three legal values put forward by Gustav Radbruch that the first priority is always justice, then utility and finally legal certainty, then the justice factor must be prioritized. This theory is also known as the standard priority doctrine. According to Gustav Radbrucht, justice, benefit and certainty are the objectives of law but in their application have different priorities. In order, the priorities are: 1. Justice, 2. Benefit 3. Certainty. Justice is the first thing that must be considered in enforcing the law. When a judge must choose between justice, benefit and legal certainty in deciding a case, then his first choice is justice then benefit and finally legal certainty.

A fair attitude from a law enforcer is certainly aimed at both the victim, the accused and also the community. From the victim's side, of course, they hope that the judge will punish the perpetrator according to his/her mistake, like the theory of vindicative justice conveyed by Aristotle. Usually, the law is identical to justice, so that efforts to obtain justice are symbolized by a scale where the seeker of justice hopes that the perpetrator will be punished according to the mistake he/she has made.

This is in line with the theory of justice put forward by John Rawls that justice must be able to protect the weak, in this case the victims. From the defendant's side, there are several principles that need to be considered by the judge, including the principle of *in dubio proreo* that if there is doubt, a decision must be made in favor of the defendant. There is also the principle of *contra legem* where a judge can impose a sentence below the minimum limit of the criminal threat that has been regulated in an article. So even though the minimum limit of the threat of imprisonment and fines has been regulated, the judge with certain considerations can impose a sentence less than that limit. Justice is so important that it can be prioritized over the benefits and certainty of law. The content of justice itself is not easy to determine. In the course of history, the content of justice is determined historically and always changes according to place and time.

CONCLUSION

The principle that needs to be prioritized in law enforcement is the principle of justice. Based on the standard priority teachings of Radbruch, justice must always be prioritized. When a judge must choose between justice and expediency, then the choice must be on justice, likewise when a judge must choose between expediency and certainty, then the choice must be on expediency. So that the criminal guidelines related to the regulation of the priority of the principle of justice can be immediately used by law enforcers.

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