


Position Of Advocate As Law Enforcer In Criminal Trial Process In Indonesia

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Article Info	ABSTRACT
Keywords: Advocate, Justice, Criminal, Systems	The purpose of this study is to examine the position of advocates in the criminal justice system in Indonesia. This research is important to do in order to strengthen the legal position of an advocate in the criminal justice system in Indonesia. This study uses a normative juridical research method. This research has novel value because it discusses specifically the position of advocates in the criminal justice system in Indonesia. The novelty of this research lies in the issues discussed specifically the position of advocates in the criminal justice system in Indonesia. Based on the results of the study, it is known that an advocate is part of law enforcement in the criminal justice subsystem in Indonesia. Juridically, the position of an advocate has been contained in the provisions of the Law on Advocates. However, this has not been fully embraced by advocates as law enforcers. There needs to be a clear formulation of the provisions of advocates in law enforcement, especially regarding which institutions are the roofs of advocates as law enforcers.
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INTRODUCTION

Indonesia has predicate as a country based on law, which has 3 (three) principles that must be adhered to implemented by a state of law according to AV Dicey, namely supremacy law (supremacy of law), equality before law (equality before the law) and the existence of guarantee protection self on rights (due process of law). Enforcement A law is the most intimate thing the relation with society. "Lawrence M Friedman's theory states that culture law (culture law) is atmosphere thinking social and power social determining How law the used, avoided, or misused.

Enforcement law related with implementation agreement For guard order within life society, nation and state. Enforcement law Can walk with Good when There is good rules, there are enforcer good and existing law culture good law. Enforcement law is a complex process Because concerning various aspect life man. In general conceptual, meaning from enforcement law lies in the activity to harmonize connection the values outlined in rules For create, maintain, and maintain peace socializing " life. Different matter if interpreted in a way narrow, enforcement law related with action to every violation regulation legislation, in particular through the process of " trial" crimes involving role from apparatus police, prosecutors, advocates and judicial bodies other.

As " a process that is systematic, then enforcement law criminal show self become implementation law criminal law application involving various subsystem structural in the form of apparatus police, prosecutors, courts and institutions correctional, including advisor law. Muladi revealed that implementation law must be viewed from 3 (three) dimensions : Application of " law" seen as system normative (normative system).

Implementation of " law" seen as system administrative system, and the application of " law" criminal is system social (social system). In juridical and factual, subsystems in the " system justice criminal as developer power the law in Indonesia that does not shelter to one roof of power judiciary.

Related executor enforcement law in Indonesia exists a number of enforcer law, namely Judges, Public Prosecutors, POLRI (investigators, including advocate). Every implementation and administration enforcement law criminal must through procedures that have been loaded inside strict rules about the proof and includes all limitation constitutional until to the examination process "which is in court. The process related to with terms and conditions from fair trial (due process), with through principle presumption No guilty Where someone who is suspected do a act of defiance law through an honest and open judicial process.

Article 1 letter a of Law no. 18 of 2003 concerning advocate explains that " advocates as a professional person give service law, both within or outside court that meets the requirements condition based on Constitution this ". Next explained in Article 1 letter b, "which are categorized as service law is consultation law, help law, run power, representing, accompanying, defending and carrying out action other laws for interest clients. In addition to fulfilling Article 56 of the Criminal Procedure Code, the target present lawyer in the settlement process case is also needed For give help law for the accused and assist the judge to find truth law of the dot to justice. Role and function advocates regulated in the law in Indonesia is still cause disparity perception about position advocate in system justice criminal law in Indonesia.

RESEARCH METHODS

Research methods This is method study law normative (normative law). As has been Marzuki emphasized, regarding study the law that is " researched " is condition law in a way intrinsic, namely law as system value and as social norm system. The desired results achieved by research law No only look for answer on effectiveness a provisions, but influences non- legal factors to regulation law as well as role a institution certain in enforcement law. In this apply type study normative with using secondary data, namely material bibliography. Research This nature descriptive analytical, which is expected can give description in a way detailed, systematic and comprehensive with use types and techniques collection of data in the obtained through studies bibliography. Source study in article This using the data obtained from material primary law consisting of on regulation legislation and materials law secondary which is consists of from literature law and research scientific like article the law that then associated with the position of an advocate in system justice criminal law in Indonesia towards system justice criminal integrated.

RESULTS AND DISCUSSION

Position Advocate as Law Enforcement in System Justice Crime in Indonesia

Article 1 paragraph (1) of the Law about Advocate mention that, " Advocate is a person who works give service law, both within or outside court that meets the requirements condition based on Constitution this ". In firm provisions of Article 5 paragraph (1) of the Law about Advocate state that " Advocate is enforcer law, free and independent guaranteed by law and regulations legislation ". That with thus has firm mentioned that position advocate is parallel with the Police, Prosecutors and Judges as chess dynasty enforcer law.

Need confirmed moreover first in the section This that position the advocate in question in study This special in system justice criminal law in Indonesia, so that different with position advocate who has discussed in researchresearch previously. System law have purpose and objectives certain can shaped as subject the law that does action oppose law, or can be " shaped " action law That alone, and even shaped tool or state apparatus as enforcer law. System law have mechanism certain that can ensure implementation regulations in a way firm, fair, and have certainty, and own benefit For realize order and tranquility that exists within public.

System its working law the is form from enforcement law. System justice criminal law as stated in Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP)" is system justice criminal based on principle differentiation functional between apparatus / institution enforcer law with based on process or the authority regulated in legislation." Activities organization " judicial " system criminal is function combination (collection of function) between " legislator, police, prosecutors, courts, prisons and related bodies, both in the local environment government or what is outside environment government.

Barda Nawawi Arief stated, in essence system justice criminal is system of " power " For to uphold law criminal or " system power judiciary in field law criminal. System the applied through 4 (four) subsystems that is, power investigation by an agency/ institution investigator, power prosecution by an agency/ institution prosecutor general, power to judge and to sentence verdict / criminal by the court, authority implementation decision criminal acts by agencies/ apparatus executor / execution.

There are 7 (seven) system models the judiciary, which is implicit reveals a model of justice that can become judge's choice when to drop decisions. System models justice criminal the outlined as following ; "Due Process Model (DPM), this model describe about How system must operate based on ideas or the properties that are in rule law. This is consists of from various principle about right defendant, principle presumption No guilty, right Defendant For can on trial, equality before law and justice (equality before the law)."Crime Control Model (CCM), a model that reduces or prevent even stop crime with demand as well as punish subject guilty law. This model own principle For guard and serve society. The police must fight to fight crime.

System law own the structure depicted as machine consisting of from framework permanent form from system the law that guards procedure within its limits. Structure the consists of from quantity and scale court, jurisdiction competent court (type cases and procedural law that become basic), including structure legislative. As state apparatus below

President, POLRI carries out part function investigation which is essentially is from POLRI's duties, especially in the field of enforcement law. Legal basis about POLRI's authority to do investigation based on the provisions of Article 6 paragraph (1) of the Criminal Procedure Code which specifically firm States that The Indonesian National Police investigator is the part that is not can separated from function and role of the Indonesian National Police as state apparatus below President.

Enforcement law in system justice criminal involving apparatus enforcer law in accordance with their respective functions. Enforcement law containing principles proportionality related about How implementation law can walking, so that No only to uphold rule normative only (aspect certainty law) but aspect philosophically too (aspects and values) justice), in matter This is to realize implementation law in a way proportionally very much needed facilities and infrastructure, this is what is called with system justice.

Susystem Investigator

Republic of Indonesia Police

Legal basis POLRI's authority to do investigation is provisions of Article 6 paragraph (1) of the Criminal Procedure Code. In addition to being state apparatus below President, POLRI also carries out function specifically in the field enforcement law, such as do investigation. Legal basis POLRI's authority in do investigation based on to provisions of Article 6 paragraph (1) of the Criminal Procedure Code. In its position as investigators, POLRI does not can separated from function and position as a state apparatus below President. In special, can seen that function enforcement the law that becomes The duties and authorities of the Indonesian National Police include: to in branch power executive. Therefore that, it is clear that The Indonesian National Police institution is under power President and everything implementation POLRI's duties are accountable to President. In conceptual, as enforcer law, POLRI must nature independent and free. In implementation function, Police must nature non-partisan and not take sides. However matter the No give guarantee in accordance provisions of Article 8 of Law No. 2 of 2002 concerning The Republic of Indonesia Police, considering that the POLRI is part from instrument government.

Investigator Civil servants

Existence Investigators from from Civil servant officials are recognized in Article 6 paragraph (1) of the Criminal Procedure Code. Investigations carried out by Civil Servant Officials (PPNS) are based on to provision legislation that becomes base its regulation is lex specialis derogate lex generalis. Subsystem prosecution, the authority held by the Prosecutor's Office For do investigation, based on the provisions contained in Article 284 of the Criminal Procedure Code. In particular explicit, Article 30 paragraph (1) letter d of Law no. 16 of 2004 concerning Prosecutor's Office disclose that " authority prosecutor's office For investigate a act criminal is nature while and for act criminal certain ". Prosecution is a actions taken by the prosecutor general For do delegation case criminal to competent district court to judge case based on the process that has been set in Constitution with give request for the case the can examined and decided by the Judge through hearing court. Prosecution is stages included to in the process of enforcement law based on provisions that have been regulated in the Criminal Procedure Code. In particular firmly, Article 13 of the Criminal Procedure Code

states that " the Public Prosecutor is the prosecutor who was given authority by law For do prosecution and execution judge's decision ". In the case of this, the prosecutor in question is appointed prosecutor through institution The Attorney General's Office of the Republic of Indonesia, except prosecutor in the case act criminal corruption that originates from KPK institution.

Subsystem judiciary, the Supreme Court is a judicial body that is in the judiciary contain system one roof system in implementation system justice criminal law in Indonesia. This is in accordance with Article 9 paragraph (4) of Law no. 48 of 2009 concerning Power Justice, that "" coaching judicial and also arrangement organization, administration staffing and issues financial judicial bodies under it is in the Supreme Court ". The Criminal Procedure Code contains provision about the trial that was carried out with based on justice fast, simple and cost effective cheap. However Thus, in fact the settlement process case is a long and unpredictable process There is provision regarding the deadline settlement case. Satjipto Rahardjo stated that " the settlement case through system trial leading to verdict court is a enforcement law (law enforcement) to direction track slow ". This is happen due to the enforcement process law has a long process with involving all layer, start from Police, Prosecutor's Office, District Court, High Court to to Supreme Court. The length of the process that has been gone through the create condition Where pile it up the thing inside court.

Subsystem executor criminal or can also known as executor criminal is the final process from enforcement law criminal. Subsystem implementation criminal This responsible on the implementation criminalization that has been handed down by the court through executor different criminal penalties refers to the type sanctions criminal law. Explanation of " Law No. 12 of 1995 concerning Correctional Institutions " stated that " Correctional Institutions which are agency technical Directorate General Corrections are the spearhead of implementation principle protection with objective For do coaching inhabitant fostered ". Regarding a implementation criminal, " at least There are 3 (three) things that become important, namely implementation the decision that has been inkracht (powerful) law fixed) carried out by the Prosecutor, supervision as well as do observation to implementation decision trial by a judge who is given authority special accompanied by with role institution correctional.

Based on explanation above, then can it is said that subsystems that exist within system justice criminal No sheltered by the same roof. The police and the prosecutor's organs is on 2 (two) pillars, namely as the implementing organ enforcement law at the stage of " investigation and prosecution" beside institution correctional, as executor criminal under the roof of power government. Simultaneously with perspective constitution, based on institutions, 3 (three) institutions that carry out function judiciary the including to in the executive organs." Power the judiciary in Indonesia has power carry out justice in frame to uphold law and justice. When the courts start held, " then power judiciary along with an advocate who is part from power judiciary own power of a nature independent, in meaning free power from mix hand party power other.

System justice criminal is non- independent system (not stand himself), which is likened to as mover machine, where there is components enforcer the law therein. The components contained inside system justice criminal is interrelated components related as

limitation system justice criminal is system countermeasures crimes consisting of from institutions police, prosecutors, courts and corrections convict as well as public as party reporter.

Mardjono " stated that advocate No including to in subsystem in the system justice criminal. Different with with subsystem justice criminal other like police, prosecutors, judges and institutions correctional. Rusli Muhammad explained that,"" position advocate as part or subsystem system justice Indonesian criminal law still debated, thing the happen Because Not yet existence container and structure an organization that unites and controls its working institution advocate in a way clear.

Frans Hendra Winarta in *The Problems of Law and Justice in Indonesia* states that " in general theoretically, an advocate who is one of the profession law that does not known as well as No can interpreted as enforcer law ". Profession known law as advocate or also known as with name of legal counsel or lawyer or attorney, in particular theoretical No can interpreted as enforcer law (law enforcement agency). More clear Again when see instrument international as stated in Commentary (a) Article 1 United Nations Code of Conduct for Law Enforcement Officials, Adopted by General Assembly Resolution 34/169 of 17 December 1979 which states (a) The term law enforcement officials, includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

Based on the " provisions above, it can be taken conclusion that characteristics from law enforcement officials (law enforcement officials) law) is existence the function of police power which has authority For to arrest and authority For to detain (to detain). Profession legal profession owned by an advocate No own the function of the police power. On the other hand, a advocate must try For free, relieve, avoid client from demands law, arrest as well as detention carried out by law enforcement law (law enforcement official). Indeed Correct that advocate No own police power function, will but need remember that advocate is profession that is free and independent which has role main that is, defending client or interest client.

That matter contradictory with provisions of Article 5 of Law 18 of 2003 concerning advocate who stated that " advocate has the status as enforcer law, free and independent guaranteed by law and regulations legislation ". Basically, through provision said, can known in a way clear that position / standing advocate is The same with enforcer law others. However, even though the provisions legislation the has load provision in a way clear and firm about role advocate as enforcer law, still just No can become base Because No explain in a way concrete regarding advocate status as enforcer law in system justice criminal law in Indonesia, especially about receptacle which one is receptacle advocate take shelter. Even though Law 18 of 2003 concerning Advocate born For confirm about position advocates remain just No Can answer institution which one is receptacle or place advocate as enforcer law take shelter.

Article 38 paragraph (1) in " Law no. 48 of 2009 concerning Power The Justice " stated, that " besides The Supreme Court and the judicial bodies under it as well as Court Constitution, there are other bodies whose functions are related with power justice ". Where, in the explanation it is said that other bodies in chapter the consists of from police,

prosecutors, advocates and institutions correctional. More carry on again inside Article (2) states that related functions with power judiciary consists of from :

- a. Investigation and inquiry
- b. Prosecution
- c. Implementation decision
- d. Giving service law ; and
- e. Completion dispute outside court

On the basis of regulation said, in a manner clear known that in every enforcement process law, advocate own share since beginning of enforcement process law started until finished. That is in line with provisions of Article 54 of Law No. 8 of 1981 concerning the Criminal Procedure Code which states, " in order to interest defense, suspect / defendant entitled get help law Good from a or more advisor law during in time and at every level examination, according to the procedures that have been set in Constitution ".

In the enforcement process law in Indonesia, law enforcers often law has operate his job with based on to rules of the game that have been there is, but No Can denied that There is aspect subjectivity in enforcement law. Concept advocates who include to in the organ of enforcer law No only set up in Law no. 18 of 2003 concerning advocate, some provision the law outside Constitution about advocate load in a way clear regarding authority advocate such as, Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP), and Law No. 16 of 2011 concerning Legal Aid. There are 7 (seven) functions and tasks important advocate as defender, namely ; protecting rights public seeker justice so that processed law in a way fair, trying to ensure that the authorities law Work in a way right, mentoring suspect or defendant in the process of completion dispute the law, provides help law, as supervisor function justice, and maintaining balance apparatus enforcer law.

In general, the roles and authorities advocate in position advocate focused on protecting the rights held by the suspect / defendant since follow the completion process matter in advance the judiciary so as not to treated outside humanity. Meaning advocate must functioning For protect rights constitutional every citizens and also obliged give help law for those who are less or No capable in court proceedings Good it 's outside both inside and outside court.

CONCLUSION

Based on results from discussion that has been described above, then can concluded that position advocate in justice criminal that is as enforcer law criminal. Advocate own duties and authorities as enforcer law guaranteed by law. So that role as enforcer law criminal must entered to in system justice criminal law for the sake of creation system justice criminal integrated in Indonesia. Position advocate as enforcer law criminals who are in the roof or external institutions government, obviously just define that advocate Not yet enter to in subsystem justice criminal law in Indonesia. In fact, if seen in a way more Far again, inside every enforcement process law Certain There is role from advocate in protect rights seeker justice.

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