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## ACTUALIZATION OF LEGAL PHILOSOPHY IN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA

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### ABSTRACT

*This study aims to analyze the actualization of legal philosophy in the criminal justice system and review critical theory in efforts to deal with crime in society. Legal philosophy has an important role in shaping the basics of legal thinking and directing the development of an effective criminal justice system. Meanwhile, critical theory provides a critical view of the existing legal system and highlights social, economic, and political aspects that influence crime prevention. This research uses a descriptive-analytical research method by reviewing the relevant literature and literature. The analysis is carried out by studying the concepts of legal philosophy in the context of criminal justice, as well as analyzing critical theoretical reviews of the legal system and efforts to deal with crime in society. The results of the research show that the actualization of legal philosophy in the criminal justice system is important for ensuring justice and protecting individual rights. Principles such as the presumption of innocence, legal certainty and proportionality of punishment form the basis for carrying out the functions of criminal justice. In addition, a critical theory review highlights the importance of understanding the social, economic, and political factors that are at the root of crime problems. Crime prevention efforts need to involve a holistic approach that goes beyond mere criminal proceedings, involving rehabilitation programs, community empowerment, and increasing legal awareness.*

*Keywords: Actualization, Legal Philosophy, Criminal Justice System*

### INTRODUCTION

Land ownership rights are part of the material rights guaranteed by the constitution. In the 1945 Constitution of the Republic of Indonesia as a result of the second amendment, it is regulated as follows: Article 28 g Everyone has the right to personal, family, honor, self-respect

and property protection that is under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a human right. Article 28 h Everyone has the right to own property and that property may not be taken arbitrarily by anyone.

Philosophy of law in relation to the criminal justice system has each of the criminal justice subsystems above which has power in its function divided systematically within the Integrated Criminal Justice System, then it is implemented in 4 (four) subsystems, namely first, the investigative authority is carried out by the police agency, second, prosecution authority is carried out by the prosecutor's office), third, authority to try and convict by the court and fourth, namely the authority to enforce decisions/penalties is carried out by institutions/executors/executors). The four actualization subsystems in the criminal justice system as mentioned above constitute a series of investigation subsystems, prosecution subsystems, judicial subsystems and systems for implementing decisions as referred to above, constituting an integral part of the criminal law enforcement system which are inseparable or often referred to as the Integrated Criminal Justice System. So that the concept of an integrated mandatory criminal justice system is reflected in the implementation of each justice subsystem.<sup>1</sup>

The criminal justice system is a system in society to address crime problems and can differentiate understanding between the criminal justice process and the criminal justice system. The criminal justice process is every stage of a decision that confronts the suspect in a process that leads to a criminal determination, while the criminal justice system is an interconnection between decisions from every agency involved in the criminal justice process. So Thus. In line with the above, the actualization of the criminal justice system according to Romli is as follows: namely, Emphasis on coordination and synchronization of components of criminal justice (police, prosecutors, courts and prisons), Supervision of control over the use of power by criminal justice components, Effectiveness of the prevention system crime is more important than the efficiency of case resolution and the use of law as an instrument to strengthen the administration of justice.<sup>2</sup> coordination and synchronization of components of criminal justice (police, prosecutors, courts and correctional institutions) in terms of monitoring and controlling the use of power by subsystem components in criminal justice.

Based on the description of the background above, a problem arises where the author is very interested in discussing more deeply about the problem, namely how the actualization of legal philosophy in the criminal justice system and how to review critical theory in efforts to deal with crime in society.

## RESEARCH METHOD

The research method is a method used by researchers who have a scientific nature to get the real truth about the research object under study related to criminal responsibility for the practice of land mafia criminals against the existence of multiple certificates carried out by the National Land Agency. the research object uses a type of normative research related to legal principles in order to get answers in answering these problems. the method of collecting legal materials used is a library study technique by focusing on primary legal studies as the main reference in answering research problems.

<sup>1</sup> Atmasasmita, Romli in Setiadi, Edi & Kristian. 201. *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum Di Indonesia*. Jakarta: Prenadamedia Group. h. 18.

<sup>2</sup> Atmasasmita, Romli. 1996. *Sistem Peradilan Pidana, Perspektif Eksistensialisme dan Abolisionalisme*. Bandung: Binacipta. h. 19-20

## DISCUSSIONS

### 1. Actualization of Legal Philosophy in the Criminal Justice System

Whereas the actualization of legal philosophy in the criminal justice system is in the area of emphasis on coordination and synchronization of components of criminal justice (the Police, the Prosecutor's Office, the Courts and Prisons). The four law enforcement agencies mutually have their respective authorities granted by law to take legal action in accordance with the scope of their duties and the police must be independent in carrying out their duties as law enforcers in the criminal justice system. In carrying out their duties in carrying out legal actions, namely the authority of investigations and investigations carried out by investigators and investigators.<sup>3</sup>

If it is related to the legal philosophy that the existence of the prosecutor's office has the authority to prosecute on the basis of the actions of the suspect with at least two sufficient pieces of evidence.<sup>4</sup> In this prosecution stage as a follow-up to the investigative and investigative process, this is what is called coordination and a sub-system that cannot be separated between the police and the prosecutor's office because the prosecutor's office will not be able to carry out prosecutions when investigations and investigations are not carried out so that the follow-up of the action in the police institution is the prosecutor's office which will prosecute the suspect in court with the evidence that has been collected in the investigation process. so that through the Public Prosecutor register the case with the district court regarding the case being handled.

Based on the aspect of legal axiology in the study of legal philosophy, the existence of a court institution is a forum for determining whether the defendant is guilty.<sup>5</sup> The mechanism is when the case is transferred from the prosecutor's office and then received by the court clerk to then hold deliberations with the judge who will determine the trial schedule and the head of the court determines the panel of judges in the trial. Therefore, the court cannot conduct a trial without delegating cases by the public prosecutor so that later in the trial the public prosecutor will prove through his indictment to the panel of judges to be decided by the judge whether the decision is acquitted, free from all lawsuits or punishment. Axiologically, Correctional Institutions as part of the criminal justice system are places for convicts who have obtained binding legal force to be guilty of criminal law through court decisions. The status of the accused has become a convict because he is already in a penitentiary as a follow-up to the execution of a decision if the defendant is proven to have committed a crime so that the judge decides on criminal sanctions against the defendant. this is an interconnected unit where there are no institutions that dominate each other because in fact the four institutions have become an inseparable component and have the authority and duties in each law enforcement agency to provide a sense of justice and legal certainty. .

In philosophy, the relationship between one sub-system and another in the actualization of the criminal justice system is related to the supervision of control over the use of power by the criminal justice component. So this is one of the keys to the implementation of a system of supervision and mutual control in every law enforcement agency in criminal justice from the investigative process carried out by the police, then carrying out prosecution by the prosecutor and the court to determine whether the defendant is guilty or not and finally the penitentiary as a forum for criminal convicts who have been convicted criminally through a court decision that

<sup>3</sup> Hiariej, E. O. S. 2013, "Pengembalian Aset Kejahatan". *Jurnal Opinio Juris*, 5(13), h. 98

<sup>4</sup> Sinaga, C. 2017, "Kajian Terhadap Pidana Penjara Sebagai Subsider Pidana Tambahan Uang Pengganti Dalam Tindak Pidana Korupsi". *Jurnal Wawasan Yuridika*, .1(2), h. 194

<sup>5</sup> Abd. Shomad Prawitra Thib, 2020, *Pengantar Filsafat Hukum*, Surabaya: Airlangga University Press., h. 11

has obtained binding legal force. Supervision and control have become an inseparable part like one side of a coin so that it has become an obligation in each judicial process in implementing the duties and authority to carry out these legal actions. because in the criminal justice system there is no one institution that is super power in carrying out legal actions in the context of law enforcement so that the process or flow of resolution must go through the procedure for reporting or complaints to the police so that they cannot be tried directly by judges who are given the authority to adjudicate in an open court, this is proof that the importance of supervision and control is because law enforcement officers do not go outside the law corridor in carrying out legal actions.

In general, the duties of the police are in the criminal justice subsystem so that legal cases that reach the police are based on 3 (three) things, namely based on reports, complaints (in violation complaints) and the occurrence of crimes in the form of being caught red-handed. If legal cases are received by the Police in the form of reports and complaints, then the ability to know criminal law in addition to other knowledge that supports the disclosure of legal cases owned by the Police will be very significant, including but not limited to human rights issues on the other hand that must be considered by the Police.<sup>6</sup> In this context, the police's understanding of a case in it is as if "forced" to reach the judge's area in deciding a case. The Police Subsystem must also play another role in fighting crime, namely dealing with crimes that have not yet occurred. Here, the Police subsystem works

as a crime prevention agent. It is hoped that the function of the police subsystem as crime prevention can be played more broadly, prevention is feasible because the main goal of police officers is crime prevention; furthermore that detectives and offenders punish if a crime is committed. The police are the guardians of the criminal justice system. The role of the Police as a crime investigator places the police in the most ordinary or general criminal relations, directly related to the complainant, witness or perpetrator of the crime (suspect). Most police work reactive rather than proactive, relying heavily on members of the public to complain or report suspected criminal activity. With sufficient evidence based on the Criminal Procedure Code, the National Police as investigators delegate the case to the Attorney General's Office for prosecution.

Fourth, namely actualization in the criminal justice system related to the use of law as an instrument to strengthen the administration of justice. So the emphasis on law enforcement is administrative matters that are carried out in accordance with procedures in cases in the criminal justice system because this is an important aspect to pay attention to. As an example from the author that in carrying out an investigation it is mandatory to include a letter of assignment to carry out an investigation to the investigator so that there is legalization in carrying out legal actions. This is indeed very procedural in nature, but this cannot be separated from a series of actions carried out by each law enforcement agency such as the police, prosecutors, courts and correctional institutions where these institutions are required to implement all administrative procedures in carrying out their duties and authorities. each.

As a result of administrative disobedience, it is often an aspect of the problem that is often ignored by law enforcers for reasons that are too administrative, but this has become part of the guidelines that must be implemented so that the suspect/defendant knows whether the actions taken by law enforcement officials there is formal legalization or not in order to provide a sense of justice and legal certainty.

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<sup>6</sup> Pujiyono, 2013, "Rekonstruksi Sistem Peradilan Pidana Indonesia Dalam Perspektif Kemandirian Kekuasaan Kehakiman", *Jurnal MMH*, 41(1), h. 123

## 2. Critical Review in Efforts to Overcome Crime in Society

Genealogically, the roots of critical theory originate from the dialectical thoughts of Hegel and Marx which were systematically mixed up by Horkheimer and his colleagues at the Frankfurt Institute of Social Research. The logic of Hegelian dialectical thinking is the main foundation and means for analyzing the historical development of human civilization.<sup>7</sup> Teori kritis semakin berkembang seiring dengan tumbuhnya kapitalisme Barat dan betul-betul menjadi bahan diskusi di kalangan filsafat dan sosiologi pada tahun 1960-an. Critical theory developed along with the growth of Western capitalism and actually became a subject of discussion in philosophical and sociological circles in the 1960s. Critical theory becomes an analytical knife that is sharp and influential enough to criticize socio-economic realities in Europe and America which are experiencing industrialization progress which is supported and perpetuated by the flow of positivism which Horkheimer calls traditional theory.<sup>8</sup>

This critical theory can be used as a concept of tackling crime which is important for preventing crime and reducing crime because it can see socio-economic developments in society. The countermeasures which are the driving organs are in the hands of the government, in this case law enforcement officers. Law enforcement officials as figures who must be made ambassadors of law in the context of upholding a just law. Because after all, the duties and authorities attribution carry out the mandate for the sake of creating social order. In conditions in the field, actually the circles of criminals are increasingly rampant due to aspects of social and economic influences that suppress them. So it can be concluded that the patterns of law enforcement officials in overseeing the law are actually efforts to change the public's understanding that law enforcement officials are not a legal subject who is often labeled as an intellectual actor in the degradation of public trust. These revitalization efforts are carried out by attracting public sympathy and providing protection for the community so that law enforcement officers' presence makes society cool and lasting.

The concept goes on to say that the effect of distrust from society due to the mechanism of actualization of society has an effect and impact on the economy and their existence. Even become a figure of threat to society. Triggers with the construction of such mindsets are triggers for the continued modernization of committing crimes.<sup>9</sup> This pattern of modernization of crime is the path for the emergence of the seeds of crime. It can be said that the individual pattern, in this case law enforcement actors, must be serious in applying the law, not to be serious in applying the law, where the hope lies with law enforcement officials. provide legal understanding, provide maturity in responding. Crime prevention in Freeman's theory of crime actually in understanding the context of crime we do not only focus on the name of the crime but how later the crime can be prevented. Departing from the theory of crime, that at least when we understand crime, we sometimes get caught up in the romanticism of the crime issue when it is confronted with legal issues. So, what is mandatory for law enforcement officials, in particular, must be capable of and can possibly what will happen in the context of crime, so do not wait for any problem first then solve it but before a problem occurs it is able to predict what will happen.

## CONCLUSION

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<sup>7</sup> K. Bertens. 2014, *Sejarah Filsafat Kontemporer Jerman dan Inggris*, PT. Gramedia, Jakarta., h. 44

<sup>8</sup> Ben Angger, 2013, *Teori Sosial Kritis; Kritik, Penerapan, dan Implikasinya, cetakan Kedepan*, Yogyakarta: Kreasi Wacana, h. 40

<sup>9</sup> Goerge, Ritzer. 2014. *Teori Sosiologi Modern*, Jakarta, : PT. Kencana Prenada Media Group, h. 61

The actualization concept of legal philosophy related to the criminal justice system in the realm of emphasis on coordination and synchronization of components of criminal justice (the Police, Prosecutors' Office, Courts and Prisons). Axiologically, the purpose of these law enforcement agencies is to have each other's authority granted by law to take legal action in accordance with the scope of duties and the police must be independent in carrying out their duties as law enforcers in the criminal justice system.

The legal review in this critical theory can be used as a concept of tackling crime which is important to prevent crime and reduce crime. In this critical theory one can see social and economic development factors which are the background for committing a crime with the actualization of philosophy based on aspects of critical theory. This can then be judged that critical theory can actually be used as a medium for actualization by using law enforcement officials.

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