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RESEARCH ARTICLE

CRIMINAL JUSTICE SYSTEM (CJS) IN ACCORDANCE WITH THE PERSPEKTIVE OF THE DIGNIFIED JUSTICE THEORY.

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Abstract

In the understanding of the concept of the criminal justice system (CJS) that has been referred to for centuries particularly in Indonesia, there has been no mentioned, among other things, of the role of the Advocate or attorneys at law as the law enforcement agency which being the element of the meaning of CJS. The attorney at law in the Indonesian System (the Pancasila Legal System). It has however been stipulated explicitly, and that is in accordance with the spirit of the Indonesian People (the Indonesian *Volkgeist*) as manifested through the Act Number 8 of 1981 on the Criminal Due Process Act and other related regulations that Advocate is one of the law enforcement element in the CJS. This has been made strong with the promulgation of the Act on Advocate (the Attorney at Law) that the attorney at law is a law enforcement agency. Therefore a critique could be registered in this place that from the perspective of the Dignified Justice Theory, the giving of the meaning to the concept of criminal justice system must be reconstructed or reformulated to mention among other things lawyers as the significant element in the meaning of the Indonesian concept of CJS. This reformulation of the concept of CJS according to the dignified justice perspective is in order to match with the name "system" as part of the phrase "criminal justice system". As system, it demands a whole, all elements must not be neglected in the understanding of the CJS. Apart from Advokat or attorney at law as the most significant element in the meaning of CJS that must not be neglected, there has also been institutions such as special criminal investigators and prosecutors in the Indonesia Commission for Eradicating Corruption (KPK), and also other specialised criminal investigators within the public services agencies; all of these institutions must be considered as essential parts in the CJS. This article would argue that neglecting all of these elements in the understanding of the concept of CJS would lead to the wrong results of the praxis of the CJS, and as a result injustices will certainly occurring. It is therefore the dignified justice referred to in this article must be used to understand the meaning of CJS. The theory of dignified justice is aim at achieving justice within the law. It takes the concept of justice as a system and to mean not simply proportionality or fairness or other things; but justice has also to be given the meaning as the Law perceiving human as human being (*nguwongke wong*).

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Introduction:-

This article discusses the results of a research and offer improvements over the meaning of the concept of criminal justice system (CJS) and examined it from the standpoint of the theories of dignified justice instead of the same issue had been dealt with from the perspective of other theories of justice and fairness. In other word, the meaning of the criminal justice system that has been explained so far from the perspective of many theories of justice will be examined further under the perspective of the dignified justice theory, this is due to the fact that some has felt that the discussion of the meaning of the criminal justice system carried out so far is less depth in the understanding of the legal concept.

Having understood the meaning of the criminal justice system put forward by some prominent Indonesian criminal jurists such as Muladi and Romly Atmasasmita, an assessment of their understanding given to the concepts of criminal justice will later be discussed from the perspective of dignified justice theory¹. In short, the earlier discussion by those prominent experts were cursory expressed understanding of the theory of justice; the dignified justice theory will dissenting with those meaning of the criminal justice system. There will be a new understanding of the criminal justice system based on dignified justice perspective, namely the criminal justice system as a system of law which making human as human being.

The Meaning of CJS from the Dignified Justice Perspective:-

The term criminal justice system that has been very popular with the acronym SPP in Indonesia is used as equivalent with the concept of *criminal justice system* (CJS) as it is in the English legal term. Muladi, when trying to give his understanding on the meaning of CJS has described it as to mean a network. In the idea of network as expressed by Muladi, the criminal justice system has been using the criminal law as its main tool. According to Muladi the substantive criminal law, the formal procedural criminal law or due process law and the law relating to the penitentiary or the criminal law enforcement in prison² are the three main components of the criminal justice system. The three main components were even seem as separate from one another, but all of the three components are actually having an integral and interrelated to each other in order to achieve the purpose of the law, namely justice.

Pay attention to what was stated by Muladi as mentioned above, most people then suggested that the ontology or the understanding about the concept of the criminal justice system has been given more of its emphasis on the functionality of the criminal justice system. From such a perspective there are several components in one system. The components have their own individual functions. However, different functions are implemented or played by each of these components to achieve the common goal of the three components, namely the legal objectives generally defined as justice.

Appart from Muladi, the other thinkers in criminal law in Indonesia had also gave his philosophical explanation on the meaning of the criminal justice system. Romli Atmasasmita is an expert in the law of corruption. According to Romli Atmasasmita, the meaning of the concept of criminal justice system is a system on the mechanism of the administration of criminal justice. Administer is the term using to have the equivalent sense with taking care of, or running the activities that cause something, namely the criminal justice to work. In contrast to Muladi, Romly saw that what were in the system are those components that he called the criminal law of formal, material or substantial criminal law and the implementation of the criminal. Atmasasmita had argued that a system is the result of the interaction between the legislation on the particular area, the practice of administrative and attitudes or social behavior

For Romly, within the meaning of system itself exists a reflexion of the implications of an interaction process in a rational and efficient way to deliver a certain result with all its limitations³. It is seen that the orientation of the system is the result. On that basis then for Romly, the process of law enforcement in the criminal justice

¹Teguh Prasetyo, Keadilan Bermartabat: *Perspektif Teori Hukum*, Cetakan Pertama, Nusamedia, Bandung, 2015.

²Muladi, 1995, *Kapita Selekta Sistem Peradilan Pidana*, Universitas Diponegoro, Semarang, hal., 4.

Romli Atmasasmita, 1996, *SPP, Perspektif Eksistensialisme dan Abolisisme*, Bina Cipta, Bandung, hal., 14.

system (*criminal justice system*) must be seen as covering all criminal law enforcement authorities, their behaviour which must also be in accordance with the provisions of the legislations.

In somewhat more detail Romly argued that the whole authorities contained in the criminal justice system have to be done through some divided branches of power. As for the fields of power referred to, namely investigative power there must be a branch of power under the authority of or controlled by the police. In the second branch of power is the authority to deal with the power to administer the process of prosecution. The third branch is the power on deciding cases, which must be in the power of the judges which generally referred to as the court; and a power to take care of penitentiary system which is prison officers⁴.

Attentively listen to the meaning of criminal justice system given by Romly, it would appear that Romly's idea was only lightly considering about other powers that recently emerged, namely the power to carry out rehabilitation, including the implementation of the chemical castration, as a form or a type a new sentence in the CJS in Indonesia. By a new sentence it meant in this case the power or the authority in the criminal justice system to carry out the tasks set by the judge in their ruling to treat the parties found guilty of committing a crime or sexual crimes against children, for example, and so forth.

Similarly, it should be added that both in the understanding of the criminal justice system by Muladi and Romly, still not too explicitly mentioned the role of advocate or legal counsel, which is clearly recognized as the most concrete manifestation of the soul of the nation (*Volksgeist*) Indonesia⁵, i.e., the Law of the Republic of Indonesia Number 8 Year 1981 on Criminal Procedures Code; as well as the latter known Act, named the Law on Advocates in Indonesia as one of the law enforcement institutions.

So the criticism from the perspective of a dignified justice to be stated in this article giving meaning to both the criminal justice system, whether given by Muladi, or prescribed by Romly is not too systemic in the understanding of the criminal justice system. In order that we can have a meaning of the criminal justice system which compliance with the idea on the word system, then there must be an addition in both meanings of the criminal justice system as expressed by both experts above. The meaning must be added with namely what is understood in the dignified justice theory as to include Advocate, and other new institutions to be a part of law enforcement in criminal justice system.

The nature of the two models of justice in the criminal justice system, both proposed by Muladi seemed not mentioned by Atmasasmita. However, philosophically it contains the characteristics that manifests the nature of a state which recognizes the principle of due process of law. As is known, in general in the criminal law of such state was known as the state which recognising the principle of "rule of Law" or State Laws (*rechtstaat*)⁶.

There are characteristics of power distribution in the criminal justice system, as a typical karakter of state law in both thinking about the criminal justice system, as noted above. Linkages with the meaning of the criminal justice system as proposed by the above criminal law expert, a criminal law expert, namely Mardjono Reksodipoetro had also argued that to understand the criminal justice system, the first step to that to understand in advance the concept of a system used there. According Mardjono Reksodipoetro, the concept of the criminal justice system of proficiency level, said the system is defined as:

Criminal justice systematically works only if each part of the system will remember the goals to be achieved by a whole other part. In other words, the system will not be systematic if the relationship between the police and the public prosecutor, the police with the court, the public prosecutor with an correctional institutions, prisons and law

⁴Muladi, *Op. Cit.*, hal., 31.

⁵It should be mentioned here that a postulate of the theory of dignified justice has in principle the law can only be found in the soul of the nation (*Volksgeist*) and the most concrete manifestation of the soul of the nation, where people can find laws, are the legislations and case laws. In the context of finding the meaning of the criminal justice system more comprehensive, it seems that Muladi and Romly have not been too concerned about the latest developments of the souls of the nation that manifest themselves through the existence of new forms of legislation governing new matters such as those that recognize and regulate advocates as law enforcement agencies.

⁶Oemar Seno AdjidanIndriyanto Seno Adji, 2007, *PeradilanBebaskan Contempt of Court*, Jakarta, Diadit Media, hal., 15.

and so on, are not in harmony. He ignored an functional circuit between parts - the fragmented parts causes of the criminal justice system prone to be ineffective⁷.

Mardjono Reksodipoetro set goals SPP to prevent people becoming victims of crime; resolve cases of crimes so that people are satisfied that justice has been upheld and the guilty shall be punished; see to it that those who have committed crimes are not repeated crimes⁸. Linkages with it Mardjono Reksodipoetro suggests that the four components of the SPP are expected to work together and be able to form an "intergrated criminal justice system". The four components, still the same as those presented by the two experts mentioned above. They are the police, prosecutors, judges and correctional officers.

This view, however, has not paid attention to the criticisms of the theory of dignified justice, namely the existence of other elements in the criminal justice system. In addition to Advocates, as mentioned above, there are still other components, namely in the investigation for example known to some special investigators, including civil servant investigators. It would be argued that, in fact ignoring of these elements in understanding the criminal justice system will affect the praxis, ie the forgetting of the elements of the criminal justice system is run in practice. The dignified justice theory proposed here is reminded of the importance of these elements not forgotten in understanding the criminal justice system.

Apart from the critiques by the dignified justice theory, there are several values has to be upholds in the new idea of CJS. Those values are integrated. In this CJS is characterized by a goal-oriented indicators (purposive behavior). There must also be wholism. Within the the system there is always process of interacting of parts with a larger system (openness); operationalization of the parts creates a certain value system (transformation); between parts of the system must match each other (interrelatedness); their mechanisms has to be maintained in order to do the task of control (control mechanism)⁹.

Another relevan opinion on the idea of criminal justice system is about the purpose of the criminal justice system. That idea is widely quoted in various posts in Indonesia as suggested by Herbert L. Packer that: "A pragmatic approach to the central question of what the criminal process is a high speed or a lows peed instrument of social control and a series of specific assessment of ists fitness for handling particular kinds of antisocial behavior"¹⁰.

According to Packer, a pragmatic approach to the fundamental question about the purpose of the criminal law requires a general inquiry about whether a criminal trial is a social control that has a high or low speed of further investigations and specific nature of her ability to anticipate the anti social behavior. This model has been considered as a normative model.

It has been the premise in which a building model of crime control, which is also not much different from what was built by John Griffiths because it rests on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process¹¹. This model emphasizes the act of represif in the process of criminal proceedings. The criticism presented here is that this model is too far from the goal of criminal law to humanize human beings, because it only focussed its orientation on the repressive actions by the state apparatus.

The model is the original form of adversary model with the characteristics of criminals are seen as enemies of society who must be exterminated or exiled, efficiency, public order is above everything else the purpose of punishment is exile. The second model is due process models. According to Muladi the model was not entirely favorable for though this model is covered by the concept of the primacy of the individual and the complementary concept of limitation on official power andanti outhoritarian values, but remained within the framework of adversary models.

⁷MardjonoReksodipoetro, 1983, BahanBacaanwajib Mata KuliahSistemPeradilanPidana,PusatDokumentasiHukum UI, Jakarta, selanjutnyadisebutMarjonoReksodipoetro II, hal., 82.

⁸*Ibid.*

⁹Muladi,*Op. Cit.*, hal., 119.

¹⁰Herbert L. Packer, 1986, *The Limits of The Criminal Sanction*, Stanford University Press Stanford California, hal., 152.

¹¹*Ibid*, hal., 152.

The concept due process models puts individuals at a special position and limitation of power of the bureaucrats and anti-values of absolute obedience. In view of Muladi, it is certainly not in accordance with the principles of Pancasila that saw perpetrators of criminal acts both as individual beings and as social creatures.

The third model is family models of Griffiths rated also inadequate. Because it is still too offender oriented, whereas on the other hand there is still a victim (the victim of crime) which require serious attention¹².

According Muladi model in accordance with Indonesia's criminal justice system it is a realistic model that takes into account the various interests to be protected by the criminal law, namely the interests of the state, the public interest, the interests of the individual, the interests of the offender and the interests of victims of crime.

The model by Muladi called equilibrium model is a model which is based on the concept *daa- dader* strafrecht that is seen has not been accommodated in criminal procedural law applicable in this time that the Criminal Procedure Code which is based on the concept *dader strafrecht* that more emphasis on the perpetrators of criminal acts.

Conclusion:-

The meaning of criminal justice system (CJS) which has been around for centuries is still given its orientation to the Western ideas, with too little attention to the national wisdom dimensions which has been developed and in the meantime improved in many legal system including the Pancasila Legal System. The over using of the Western theories has caused elements in the CJS has merely been focused on the four elements centred. The four elements in the meaning of the traditional meaning of CJS have been the police, public prosecutors, the judges and courts and also the penitentiary institution. It should be concluded here that the dignified justice theory as an Indonesian developed criminal justice system theory could be referred to as a foundation to reconstruct and mending the existing meaning given to the CJS.

The dignified justice theory on the CJS gives its stressing to the criminal justice system construction which has been adjusted to the spirit of law in the Indonesian system (the Pancasila Legal System). In this system the criminal justice system is aim at pursuing justice. However the concept of justice in the dignified justice perspective must be giving its priority to its purpose of making human as human being (*nguwongke wong*).

Therefore if the system is neglecting the dimension of justice as making human as human being, the criminal justice system could be considered as making progress without paying attention to the spirit of its people, it is an empty legal system, since its orientation has been primarily given to the materialistic and formalistic aspects rather than the substantive and spiritual aspect of justice. Such a system tend to neglect its environmental and at the end of the day it would lead to the feeling of injustice.

Based on the idea in the dignified justice theory that the substance or the core of the idea of justice is to make human as human being (*nguwongke wong*), therefore this writer would suggest that the giving of the meaning to the concept of criminal justice system which is in line with the idea of justice as the spirit of the people in the criminal justice system have to recognize all the additional but important elements such as advocates, and any other institution stated in the legislation which has to be connected with the justice system.

From the perspective of the dignified justice theory, all of these elements which are interrelated in the system must be given proper and fair attention and must be included in the construction of the meaning to the concept of CJS. Without such an ideal the administration of justice will be endangered since it is having a potentially running mad, without the spirit of the people, or the idea of justice according to the dictate of the law.

¹²Muladi, *Op. Cit*, hal., 5.

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