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EXPANDING ACCESS TO JUSTICE THROUGH E-INVESTIGATION: STRENGTHENING THE PROSECUTION AUTHORITY IN INDONESIA

Henry D. P. Sinaga
Law Doctoral Program, Universitas Diponegoro, Semarang, Indonesia.
Email: sinagahenrydp@gmail.com

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Abstract

Handling criminal acts against marginalized communities still injure today's society's justice. The Prosecutor's Office, as a state institution that has prosecution authority, is still constrained by several basic issues, including an inadequate legal system, law enforcement that seems unsystematic, overlapping, and reactive to various violations of existing laws, as well as the orientation of law enforcement that tends to legalism and positivism. One conclusion is generated based on the normative juridical method by examining library materials or secondary data in the form of primary, secondary, and tertiary legal materials. The principle of equality before the law and the principle of checks and balances are the mandates of the 1945 Constitution of the Republic of Indonesia, which underlies the prosecution authority and pre prosecution discretion of the Prosecutor's Office in expanding the scope of access to justice for all people, especially marginalized communities. Expanding access to justice is carried out by maximizing integrated information and communication technology from the investigation and pre-prosecution to prosecution.

1. Introduction

The orientation of law enforcement in Indonesia, including the investigation and prosecution of criminal acts, currently tends to be legalism and positivism, which, consciously or unconsciously, cannot be separated from the civil law system ingrained in law enforcement in Indonesia. At that time, the legal system tended to the cult of statutory certainty, not legal certainty, which in the tradition of Bentham, Austin, Hart, and Dworkin, is known as analytical jurisprudence.-[1] This tradition assumes that the only law accepted as the law is the legal system because only this law can be ascertained in reality, and the law only applies because it gets its positive form from the qualified authority.[2]

[1] Dennis Patterson, "Modern Jurisprudence, Postmodern Jurisprudence, and Truth", *Michigan Law Review*, Vol. 95, No. 6, 1997, p. 1871.
[2] Theo Huijbers, 1982, *Filsafat Hukum dalam Lintasan Sejarah*, Yogyakarta, Kanisius Press, p. 128 and 129.

Even for adherents of legal positivism, this paradigm is considered very useful in developing science because of its logical-empirical, objective, reductionist, deterministic, and value-free characteristics, so to achieve this level of benefit, all legal studies must be freed from elements that are not concrete, irrational, kindness, and other moral teaching values.[3]

Concern over the certainty of the laws and regulations has led to the assumption that the Indonesian legal system is categorized as the bad.,[4] and law enforcement seems unsystematic, overlapping, and only reactive to various violations of existing laws.[5] This can be investigated from several criminal cases which generally touch the small people and who do not have access to justice, the handling of which has led to a national polemic. One of them is the sentence against Grandma M for 1 (one) month and 15 days for stealing 3 (three) Cocoa (chocolate),[6] then the trial of the theft of the remaining harvest of kapok fruit (kapok), which, if cashed no more than Rp. 10,000,- at the Batang District Court, Central Java, and subsequently the trial of Grandma A who was accused of stealing 7 (seven) teak sticks that were originally intended to be used as chairs.[7]

In the handling of cases as described above, there are still concerns about the inadequate Indonesian legal system and law enforcement that seems unsystematic, overlapping, and reactive to various violations of existing laws, as well as the orientation of law enforcement, which tends to be legalism and positivism, at the risk of creating injustice to the underprivileged and marginalized. It is necessary to strengthen the pre-prosecution authority of the Attorney General's Office of the Republic of Indonesia (Kejaksaan) in providing access to justice for the community. Of course, it is necessary to use information and communication technology that is right on target to facilitate and expedite the prosecution's authority, including the prosecutor's pre-prosecution discretion, as the use of such technology has been mandated in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (UU ITE) which mandates that the government supports the development of information technology in its legal infrastructure and regulations to enable the safe use of information technology to prevent its misuse by taking into account the religious and socio-cultural values of the Indonesian nation. Thus, this study seeks to answer the formulation of the problem that asks how to reposition access to justice of investigation by strengthening the prosecutor's prosecution authority.

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[3] FX. Adji Samekto, "Menggugat Relasi Filsafat Positivisme dengan Ajaran Hukum Doktrinal, *Jurnal Dinamika Hukum*, Vol. 12, No. 1, Januari 2012, p. 83.

[4] Satjipto Rahardjo, 2009, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, Yogyakarta, Genta Publishing, p. 3.

[5] Prasetianingsih, Rahayu, "Pengantar Editor", dalam Susi Dwi Harijanti et al (Eds.), 2011, Negara Hukum Yang Berkeadilan: Kumpulan Tulisan Dalam Rangka Purnabakti Prof. Dr. H. Bagir Manan, SH, M.CL, Pusat Studi Kebijakan Negara Fakultas Hukum Universitas Padjajaran, Bandung, p. 554.

[6] Detiknews, https://news.detik.com/berita/1244955/mencuri-3-buah-kakao-nenek-minah-dihukum-1-bulan-15-hari, accessed on 25 March 2018.

[7] Kompasiana, https://www.kompasiana.com/aripimawan/ironi-hukum-di-indonesia-yang-kecil-dipenjara-yang-besar-bebas-berkeliaran_5535a25c6ea834780fda4339, then arranged systematically, and drew a conclusion..

A. Methods

In answering the existing problems, this study uses a normative juridical method starting from an inventory of laws and regulations, law in concreto and legal principles, related to the prosecution function of the attorney general in Indonesia by examining library materials or secondary data in the form of primary, secondary, and secondary legal materials. and tertiary.[8] Bahan hukum primer terdiri dari bahan-bahan hukum yang mengikat berupa peraturan perundang-undangan yang berhubungan dengan hokum acara pidana dan peraturan internal kejaksaan. Primary legal materials consist of binding legal materials in the form of statutory regulations relating to criminal procedural law and the prosecutor's internal regulations. Secondary legal materials include the use of draft laws, textbooks, legal expert opinions, articles, seminar results, and research results in the field of law and taxation. While tertiary legal materials support information on primary and secondary legal materials, such as dictionaries, encyclopedias, and other tertiary legal materials. The secondary data obtained will be read and researched, furthermore[9] analyzed critically in a qualitative juridical manner, namely based on legislation that does not conflict with other legislation, taking into account the hierarchy of legislation, realizing legal certainty, seeking laws that live in society, both written and unwritten,[10] then arranged systematically, and drew a conclusion.

B. Analysis and Discussion

1. The Prosecution Function of the Prosecutor's Office as an Expansion of Access to Justice

The need for reform of law enforcement, both legally and morally for law enforcement in Indonesia, cannot be separated from the civil law system which greatly emphasizes state sovereignty over the law, thus causing law enforcement to act without questioning whether it is fair or unfair because of its relevance is only in its legality the law is juridical. According to Nonet and Selznick, this causes the law to be inadequate as a means of change and to realize substantive justice.[11] Even justification for acting without questioning fair or unfair that is built in the mindset of law enforcers, whether consciously or unconsciously, has been educated through the Austinian model, which is only guided by the reality and enforceability of the legal system which gets its positive form from authorized institutions which at least includes elements of the existence of an order from the ruler that is considered valid, the obligation to obey, and the presence of sanctions for those who do not obey,[12] received strong criticism from the Critical Legal

[8]Soerjono Soekanto *et al*., 2007, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat,* PT. Rajagrafindo Persada, Jakarta, p. 13,14.

[9] Soerjono Soekanto, 2010, *Pengantar Penelitian Hukum*, UI Press, *Jakarta, pp. 9,10*.

[10] *Ibid, hlm. 52,53*.

[11] Philippe Nonet dan Philip Selznick, 2007, *Hukum Responsif*, diterjemahkan oleh Raisul Mutaqqien, Bandung, Nusamedia Press, p. 5.

[12] Bernard L. Tanya, Yoan N. Simanjuntak, dan Markus Y. Hage, 2010, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta, Genta Publishing, pp. 119 and 120.

Studies Movement (CLSM), which voiced a radical renewal movement in two dominant themes in the form of criticism of the contamination of legal institutions because of their primary role as servants of power, and criticism of liberal legalism which suggested that the goal of justice could be achieved through the system of rules and procedures is objective, impartial, and autonomous.[13]

Law enforcement that arises as a consequence of the formation of law should not only be to enforce the law. M. Solly Lubis emphasized that even though a legal regulation has been promulgated, if a "moral" application does not accompany it, the rule will not be fully applicable because its implementation will be influenced by interests that are contrary to the original legal objectives in the form of achieving justice, certainty law and legal benefits.[14] Then, Satjipto Rahardo emphasized that the core of law enforcement in Indonesia is inherent in honesty, empathy, and dedication to carrying out the law.[15] Thus, the existence of moral law enforcement supported by law enforcers who are inherently honest, empathetic, and dedicated in carrying out the law shows that law enforcement should not only speak to the pro-justicia process as a last resort after the enforcement of various regulations in other legal fields is carried out. , but an out-of-court settlement. So, it is appropriate to ensure legal certainty and justice can be conducted through non-pro-justicia law enforcement,[16] because the law should always make continuous adjustments in achieving the purpose [17] based on order and the most significant benefit to society.

Understanding law enforcement cannot be separated from the consequences of law formation, which according to Arief Sidharta's explanation, arises since the formation of legal rules, either through the construction of laws by authorized state institutions or bodies (in a material sense) or through other means, such as through custom, through decisions of adat heads in adat communities, or judges' decisions.[18] The establishment of these legal rules will then affect law enforcement, the urgency of which is carried out by the Prosecutor's Office in its prosecution function, which in carrying out this function, must always adhere to the types and hierarchies of the laws and regulations in force in Indonesia, as in Article 7 of Law No. 12 of 2011 concerning the Establishment of Legislation as last amended by Law no. 13 of 2022, covering the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), Decrees of the People's Consultative Assembly, Laws/Government Regulations in place of Laws, Government Regulations, Presidential

[13] Philippe Nonet dan Philip Selznick, *Loc.cit*.

[14] M. Solly Lubis, "Tinjauan Sekitar Penegakan Hukum di Tengah Kegoncangan Paradigma dan Sistem Hukum", dalam Susi Dwi Harijanti et al (Eds.), 2011, Negara Hukum Yang Berkeadilan: Kumpulan Tulisan Dalam Rangka Purnabakti Prof. Dr. H. Bagir Manan, SH, M.CL, Pusat Studi Kebijakan Negara Fakultas Hukum Universitas Padjajaran, Bandung, pp 32 and 33.

[15] Satjipto Rahardjo, Op.cit., p 4.

[16] Prasetianingsih dalam *Harijanti*, *Op.cit*., p. 553

[17] Satjipto Rahardjo, 2006, *Ilmu Hukum*, Bandung, PT. Citra Aditya Bakti, p.p 358 and 359.

[18] B. Arief Sidharta, "Asas Hukum, Kaidah Hukum, Sistem Hukum dan Penemuan Hukum", dalam Susi Dwi Harijanti et al (Eds.), 2011, Negara Hukum Yang Berkeadilan: Kumpulan Tulisan Dalam Rangka Purnabakti Prof. Dr. H. Bagir Manan, SH, M.CL, Pusat Studi Kebijakan Negara Fakultas Hukum Universitas Padjajaran, Bandung, p. 16.

Regulations, Provincial Regulations, and Regency/Regency Regulations City,[19] and other types of laws and regulations whose existence is recognized and has binding legal force.

The types and hierarchies of laws and regulations in Indonesia have been regulated where the most significant scale is in the 1945 Constitution of the Republic of Indonesia so that all existing laws and regulations in Indonesia must not conflict with the Indonesian constitution. Including the investigation of a criminal act in line with the prosecution, it must not ignore the principle of equality before the law and the focus on checks and balances.[20] The principle of equality before the law is the basis of protection for every citizen so that they are treated equally before the law, and the government, as Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that all citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions. In the UK, this concept describes the concept of equality before the law by not discriminating against people based on class, race, or religion.[21] The implementation is that law enforcers are responsible for the applicable law while still being subject to legal control and jurisdiction in the context of equal protection before the law and in providing equal justice to all citizens.[22] The principle of checks and balances is a system that supervises each other in a balanced way as the primary mode of protection of rights which are constitutional freedoms[23], needed in a constitutional system because humans, as state administrators, tend to expand, extend, and abuse power by ignoring the rights of their citizens. [24]. These two principles must function as basic norms and ideal goals that must be considered by every existing law or regulation, which applies generally and cannot be denied[25] for law enforcement officers who carry out investigations and prosecutions.

The principle of equality before the law and the direction of checks and balances is a common thread to expand the scope of justice that every citizen is entitled to without exception; it is not appropriate to ideologically posit legal positivism, which has been dwelling on the Criminal Code (KUHP) inherited from the Dutch colonial and the Book of The Criminal Procedure Code (KUHAP) which has the potential to be difficult for the small community and or tends to ignore the substantial justice of the community at large. Supposedly, cases such as Grandma Minah theft of 3 (three) Cocoa fruit, the case of theft of the rest of the harvest of kapok fruit (kapok), which, if cashed no more than Rp. 10,000,-, and the case of Grandma A, who stole 7 (seven) sticks of wood to make her chair, should not be forced to settle pro justicia by only relying on the Criminal Code and the

[19] Article 7 paragraph (1) of Law no. 12 of 2011 concerning the Establishment of Legislation.
[20] Andhy Hermawan Bolifaar and Henry Dianto Pardamean Sinaga, Managing Evidence Of Tax Crime In Indonesia: An Artificial Intelligence Approach In Integrated Criminal Justice System. Ayer Journal, Vol. 27, No. 1, 2020, pp. 143 - 158.
[21]Denys C. Holland, Equality Before The Law. *Current Legal Problems*, Vol. 8, Issue 1, 1995, pp.. 74–90.
[22] *Loc.cit*.
[23] Andrew C. Banfield dan Rainer Knopff, Legislative Versus Judicial Checks and Balances: Comparing Rights Policies Across Regimes. Australian Journal of Political Science, Vol. 44, No. 1, 2009, pp. 13-27, DOI: 10.1080/10361140802654968.
[24] Munir Fuady, *Teori Negara Hukum Modern (Rechstaat)*, Bandung: PT. Refika Aditama, 2009.
[25] FX. Adji Samekto, 2015, Pergeseran Pemikiran Hukum dari Era Yunani Menuju Postmodernisme, Jakarta, Konstitusi Pres., p. 69.

Criminal Procedure Code, which do not accommodate the things that happened in these cases. These two principles become a wise basis for solving criminal problems against marginalized communities. For example, a settlement refers to compensation for immaterial losses and the motive of a criminal act (eg, theft), which is not to enrich oneself but to cover rampant poverty. The basic norms in the form of the principle of equality before the law and the direction of checks and balances have given discretion to the Prosecutor's Office through Article 8 paragraph (2) and paragraph (3) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 2021 (Prosecutor Law) which stipulates that prosecutors in carrying out prosecutions must do so for the sake of justice and truth based on the One Godhead, by always heeding religious norms, decency, and politeness. They must explore and uphold human values that live in society and always maintain the honor and dignity of the profession.

C. Technology, Information and Communication in Expanding Access to Justice in the Prosecution Function of the Prosecutor

There is a desire that the prosecution function of the prosecutor's office reflects the expansion of access to justice for every citizen, especially marginalized communities, and can provide human values that the Indonesian people universally accept by shifting toward law enforcement based on the sociology of law, which is more considering non-professional legal settlements. This follows the opinion of Satjito Rahardjo, who asserts that law enforcement that only can only spell rules causes law enforcers to become fixated on reading regulations, so it is hazardous to marginalize justice and practical matters., as the marginalization of justice that occurred in the case of Grandma Minah theft of 3 (three) Cocoa fruit, the case of theft of the remaining harvest of Randu (kapok) fruit, which if cashed no more than Rp. 10,000,-, and the case of Grandma A, who stole 7 (seven) logs to make her chair. The marginalization of justice is very vulnerable to marginalized people who do not have access to justice, as A. Bedner and J. Vel assert that the essence of the theory of the Access to Justice approach is justice that focuses on poor and marginalized justice seekers, whose methodology uses empirical facts. which starts from the problems of people's lives who are at the lowest level.[26]

Indeed, the paradigm of positivism in modern law, characterized by written law, is currently unavoidable because legal rules are formulated explicitly in the form of regulations, made so that they can be implemented concerning trends that exist in a society that does require action in the form of law enforcement.[27] However, it is appropriate that law enforcement actions, in this case, prosecutors who carry out the prosecution function, do not pose a risk of marginalization of justice (substantive justice),

[26] A. Bedner dan J. Vel, "Sebuah Kerangka Analisis untuk Penelitian Empiris dalam Bidang Akses Terhadap Keadilan", dalam Sulistyowati Irianto, dkk (Eds.), Kajian Sosio-Legal, Denpasar: Pustaka Larasan, 2012, p. 81.

[27] Satjipto Rahardjo, 2009, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, Yogyakarta, Genta Publishing, pp. 1, 31.

must be able to apply local wisdom based on Pancasila in every law enforcement to people who do not have access to justice, so that Law enforcement is not only oriented to the enforcement of regulations or law enforcement itself.

This shows that every action of the subject (law enforcers at the prosecutor's office) must be able to deliver a profound understanding of the principle of equality before the law and the principle of checks and balances that underlie every investigation and prosecution. With this understanding, public prosecutors who have a multi and or interdisciplinary perspective in analyzing legal issues only from the standpoint of legal science will have limitations, even if they fail to answer legal issues in the current context. This is because the use of a legal view is still tied to the analysis of legal concepts, doctrines, laws, or regulations, which are purely related to law.[28] It will not produce maximum results in answering contemporary legal issues because, in general, the law is not a vacuum; it is strongly influenced by social values and ethos that are still valid and reflect society's values, attitudes, and behavior,[29] Therefore, it is appropriate for the Prosecutor in his prosecution function to carry out law enforcement which is not only law enforcement but must also include the enforcement of justice, as well as upholding order and benefiting the community.

The necessity for the prosecutor in his prosecution function to expand access to justice for every community is in line with the opinion of Mochtar Kusumaatmadja, who emphasized that in the formation of modern national law, it is better to prioritize principles that are generally accepted by the Indonesian people which do not leave the original legal principles that are still applicable and relevant to the life of the modern world.[30]

The existence of a reposition of wisdom in handling cases for marginalized communities who do not have access to justice is also in line with the opinion of Adrian W. Bedner, who emphasized the need for pro-people legal reform, especially for marginalized and disadvantaged groups, through an approach to access to justice that is indeed real for the scope includes: (a) Individuals or groups, especially the poor and marginalized; (b) Experiencing injustice; (c) Have the ability; (d) To have their complaints heard; (e) and obtain appropriate treatment of their complaints; (f) By state or non-state institutions; (g) Which results in redress of injustices experienced; (h) Based on the principles or rules of state law, religious law or customary law; and (i) Following the rule of law concept.[31]

Furthermore, through the pre-prosecution discretion possessed by the Prosecutor's Office, the prosecution authority can use the ideal indicators of monitoring investigations and case files in a modern way based on integrated information and

[28] Khustal Vibhute and Filipos Aynalem, Legal Research Methods: Teaching Material, Prefered under the Sponsorship of the Justive and Legal System Research Institue, 2009, p. 109.
[29] *Ibid.*, pp. 2-3.
[30] Mochtar Kusumaatmadja, 2006, *Konsep-Konsep Hukum Dalam Pembangunan: Kumpulan Karya Tulis*, Bandung, PT. Alumni, p. 187.
[31] Adrian W. Bedner, "Suatu Pendekatan Elementer Terhadap Negara Hukum", dalam Sulistyowati Irianto, dkk (Eds.), Kajian Sosio-Legal, Denpasar: Pustaka Larasan, 2012, pp. 87 and 88.

communication technology.[32] Furthermore, through the pre-prosecution discretion possessed by the Prosecutor's Office, the prosecution authority can use the ideal indicators for monitoring investigations. Some of the benchmarks are Australia, which has implemented online case settlement or e-Case administration in Australia, E-Sharia in Malaysia, E-Filing in Singapore and India, and Electronic legal services in Canada. Then in 1999, the United States launched Public Access to Electronic Records (PACER), Case Management and Electronic Case Files (CM/ECF) systems, and various uses of information technology to support judicial tasks, and the Supreme Court Regulation No. 2018 concerning Case Administration in Electronic Courtscase files in a modern way based on integrated information and communication technology.[33] It is time for the Prosecutor's Office to expand the provision of access to justice for every Indonesian citizen through information technology to help oversee criminal investigation activities in Indonesia. The use of e-pre-prosecution is a giant leap forward in the overall efforts of the Prosecutor's Office in opening access to justice, which can overcome the slow handling of cases, the difficulty of accessing court information, and the integrity of prosecutors and investigators.[34]

D. Conclusion

Based on the background, method, analysis, and discussion, it is concluded that the principle of equality before the law and the principle of checks and balances are the basic norms in the prosecution function and pre-prosecution discretion of the Prosecutor's Office, which can expand the scope of access to justice for all communities, especially marginalized communities. Regarding the problem of the civil law system, which has not yet realized substantive justice. The expansion of access to justice is carried out by maximizing integrated information and communication technology from the investigation, pre-prosecution to prosecution.

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[32] Kukuh Santiadi, Op.cit., p. 77.
[33] *Loc.cit.*
[34] *Loc.cit.*

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