

HARMONIZATION BETWEEN INVESTIGATORS AND ADVOCATES IN THE LAW ENFORCEMENT PROCESS

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Abstract

Law enforcement containing the proportional principle is how law enforcement runs in such a way, so that it does not only enforce the normative rules (aspects of legal certainty) but also the philosophical aspects (aspects and values of justice). Functional differentiation causes law enforcement practices by law enforcement officers to be fragmented and fragmentary because each component of law enforcement has different perceptions and meanings. This has an impact on the difficulty of realizing an integrated and integrated criminal justice system because there are often conflicts of interest and differences in interpretation between law enforcement components so that the products of the judiciary have not been able to meet the expectations of the people seeking justice. So in this systematic framework, the actions of one body will affect the other bodies. Research purposes namely analyzing the harmonization between investigators and advocates in the law enforcement process and analyzing the harmonization and synchronization between law enforcers. The research method in this case combines elements of normative law which are then supported by additional data or empirical elements. The system in the criminal justice system so that in practice it will have an effect on the implementation of the criminal justice system as a whole.

Keywords: Advocates; Harmonization; Investigators; Law Enforcement

1. INTRODUCTION

To realize Indonesia as a state of law, the state is obliged to carry out the development of national laws that are carried out in a planned manner, integrated, and sustainable in the national legal system that ensures protection of the rights and obligations of all Indonesian people based on the Law 1945 Constitution of the Republic of Indonesia. Explanation of the 1945 Constitution as well states that the Indonesian people in carrying out the government are based on law and not based on mere power. In creating a good and integrated law, of course it will not be achieved just like that, where in this case it is urgently needed a legal system that can indeed answer and become a tool to achieve the ideals of the nation. One of the areas of law that we can look at is the judiciary criminal

justice system itself, has been recognized and has begun to implement a system known as the Integrated Criminal Justice System.¹

Law enforcement that contains the proportional principle is how Law enforcement runs in such a way that it not only enforces the normative rules (aspects of legal certainty) but also the philosophical aspects. (Aspects and values of justice). As for the sub-systems of the criminal justice system, namely the police, prosecutors, courts and correctional institutions, it is hoped that cooperate and can form an “Integrated Criminal Justice System” If the integration in the work of the system is not carried out, it is estimated that there are 3 losses, namely as follows:²

- a. Difficulty in self-assessing the success or failure of each agency in relation to their shared duties;
- b. Difficulty in self-solving the main problems of the institution (as a sub-system of criminal justice);
- c. Because the responsibilities of each agency are often not clearly divided, each agency does not really see the overall effectiveness of the criminal justice system.

Functional differentiation causes law enforcement practices by law enforcement officers to be fragmented and fragmentary because each component of law enforcement has different perceptions and meanings. Thing This has an impact on the difficulty of realizing an integrated and integrated criminal justice system because there are often conflicts of interest and differences in interpretation among the law enforcement components so that the products of the judiciary have not been able to meet the expectations of the justice-seeking community.

“The Criminal Justice System” anywhere in the rule of law around the world, highly respects and upholds the principle of legality. 4 (four) components of the principle of legality which are the most important principles in criminal law and “The Criminal Justice System” namely: *lex scripta*, *lex certa*, non-retroactive and non-analogous. Legislators in the reform era and in the current era of openness have produced legislation that actually contradicts the principle of legality, such as Law Number 26 of 2000 concerning the Human Rights Court, which in its contents includes denying the principle of non-retroactivity and non-retroactivity. know the expiration date.

Each country has its own Criminal Justice System which is not always the same as other countries. In Indonesia, based on the Criminal Procedure Code, what is included in the Criminal Justice System are the Police, Advocates, Prosecutors and Courts culminating in the Supreme Court and ending in Correctional Institutions. However different the Criminal Justice System in various legal countries in the world, all of them have one thing in common, namely that there is no institution or Ad Hoc Special Committee that has or is given judicial authority, let alone intervenes (directly or indirectly) against legal institutions that apply universally (such as the Police), Prosecutors and Courts.

¹ Yesmil Anwar, “Adang, Sistem Peradilan Pidana: Konsep, Komponen, Dan Pelaksanaannya Dalam Penegakan Hukum Di Indonesia,” *Bandung: Widya Padjajaran*, 2009.pg. 62.

² Mardjono Reksodiputro, “Hak Asasi Manusia Dalam Sistem Peradilan Pidana, Jakarta: Pusat Pelayanan Keadilan Dan Pengabdian Hukum,” *Universitas Indonesia*, 1997. pg. 85.

If we examine it related to this, then in this systematic framework the actions of one agency will affect the other bodies, therefore the author has the desire to discuss whether the criminal justice system in Indonesia has been carried out in an integrated manner. Based on the description of the problems above, the authors are interested in conducting legal research with the title Harmonization between Investigators and Advocates in the Enforcement Process Law.

The research method in this case combines elements of normative law which is then supported by the addition of data or empirical elements.³ “In this normative-empirical research method, it is also about the implementation of normative legal provisions (laws) in their actions in every incident. certain laws that occur in a society”.⁴

2. ANALYSIS AND DISCUSSION

2.1. Factors affecting harmonization in process law enforcement

a. The concept of legal harmonization

Etymologically, harmonization refers to a way that begins with an effort, to lead or realize a system of harmony. Harmony also has the meaning of harmony, compatibility, harmony, a happy balance. In a psychological sense, harmonization is defined as a balance and suitability of aspects in the feelings, thoughts and behavior of individuals, so that there are no transgressions of urgency.⁵

According to Stammler “ A just law aims at harmonizing individual purposes with that of society”. The principles of a just law include harmonization between the will, direction and interests of individuals, with the will, direction and interests of the public. The will and direction and interests consist of two parts, namely mutual respect and participation.⁶

According to JM Sinclair, in the Collins Corbulid Dictionary (1991) there are words harmonious and harmonize with the elaboration, namely: A relationship, agreement etc. that is harmonious is friendly and peaceful. Things which are harmonious have parts which make up an attractive whole and which are in proper proportion to each other When people harmonize, they agree about issues or subjects in a friendly, peaceful ways; suitable, reconcile. If you harmonize two or more things, they fit in with each other is part of a system, society etc.⁷

From the above understanding can be drawn elements of harmonization, namely: (i) there are things that are opposite; (ii) harmonize opposites proportionally in order to produce a system; (iii) an attempt to concretize harmony, conformity, concord, congruence, and balance; and (iv) cooperation between various factors in such a way that these factors create a sublime cohesion.

³ Irwan, “Metode Penelitian Hukum,” n.d. Irwan, Metode Penelitian Hukum, <http://irwaaan.blogspot.co.id/2013/11/metodologi-penelitian-hukum.html> accessed on 7 December 2022.

⁴ *Ibid.*

⁵ Kusnu Goesniadhie Slamet, *Harmonisasi Hukum Dalam Perspektif Perundang-Undangan; Lex Specialis Suatu Masalah* (JP Books, Surabaya, 2006). pg. 59.

⁶ *Ibid.*, pg. 65.

⁷ L M Gandhi, “Harmonisasi Hukum Menuju Hukum Yang Responsif,” *Makalah, Yang Disampaikan Pada Pidato Pengukuhan Ru Besar Tetap Fakultas Hukum Universitas Indonesia*, 1995. pg. 95.

In the legal literature in the Netherlands, the concept of legal harmonization was coined by Jan Micheil Otto in his *Implementation of Environmental Law: Harmonization, Environmental Management and Enforcement by The Courts, With References to Indonesia and The Netherland*.

“When unnecessary incongruities between different elements of legal system which pertain to the same subject, an effort for harmonization can be made. This is such adaptation of those elements that the incongruities are removed, that a better result is obtained, while the respective identities of those elements are kept in tach....”

LM Gandhi in “Harmonization of Law Towards Responsive Law” which cites the book *Tussen Eenheid En Verscheidenheid: Opstellen Over Harmonisatie Instaat En Bestuurecht* (1988) explains that harmonization in law covers the alignment of legislation, government decisions, judges’ decisions, legal systems and principles - legal principles with the aim of increasing legal unity, legal certainty, justice (*justice, gerechtigheid*) and equality (*equit, billijkheid*), legal benefits and transparency, without fading and destroying legal pluralism if necessary.⁸

National Law Development Agency in a book written by Moh. Hasan Wargakusumah and colleagues explained that legal harmonization is a scientific activity to lead to a written harmonization process that targets philosophical, sociological, economic and juridical values.⁹ In social life, disorder and feeling of being unprotected. In the Such a perspective regarding legal certainty will be enjoyed like a wish that can only be formed through harmonization of the legal system.¹⁰

In this way, legal harmonization is like a process of harmony in the realization and enforcement of laws and regulations to resolve differences, conflicts and irregularities between legal rules in regulations or between laws and regulations such as subsystems in the form of a legal system. Harmonization of law will form a harmonious legal system. This means that a legal system that is harmonious, harmonious, balanced, integrated and consistent in its formation and enforcement will be formed. Thus, the purpose of law for the benefit of humans will be easily achieved.

b. Antinomic Concept of Law

Antinomies are conditions that contradict each other (a conflict between elements), but cannot be separated because they both need each other. In other words, antinomy is a conflict between two elements, but both of them need each other.¹¹ According to Fockema, antinomy is defined as two or more conflicting rules, so the solution must be sought through interpretation. Antinomies are two different things but complement each other. When facing antinomies, a judge¹² must be able to create balance or harmony.

⁸ *Ibid.*

⁹ *Ibid.* pg. 94.

¹⁰ Kusnu Goesniadhie Slamet, “Harmonisasi Hukum Dalam Perspektif Perundang-Undangan,” *Jurnal Hukum IUS QUIA IUSTUM Universitas Islam Indonesia (Islamic University of Indonesia)* 11, no. 27 (2004): 82–96, <https://doi.org/doi:10.20885/iustum.vol11.iss27.art8>.

¹¹ Fence M Wantu, “Antinomi Dalam Penegakan Hukum Oleh Hakim,” *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 19, no. 3 (2007). pg. 389–90.

¹² Sybandrus Johannes Fockema Andreae, Nikolaas Egbert Algra, and H R W Gokkel, *Kamus Istilah Hukum Fockema Andreae: Belanda-Indonesia* (Binacipta, 1983)..pg. 32.

As a result of reflection on values, legal norms in their implementation are always found to have clashes that cannot be avoided, namely between the principle of justice and the principle of legal certainty. According to Immanuel Kant as quoted by van Apeldoorn,¹³ if the law is applied the same as it sounds, then justice will be more pressing (*summum ius summa in iuria*). On the other hand, if the law is applied to certain events, it is felt that the more uncertainty is denied.

Historically, the antinomy was coined by Immanuel Kant in his *Critique of Pure Reason*, about the fundamental dispute between reason and nature.¹⁴ The dispute then has a strong impact on the method of legal thinking to find a balance between various contradictory things, but must be maintained. From here the concept of antinomy in law was born like a “contradictory concept” to become the foundation of the analytical process on the norms and values in a rule. Such is the nature of antinomy in a rule.

Based on Kant’s thinking, then the antinomy of legal theory also developed, or the antinomy of norms in a rule of law. Continuing the conception carried out by Kant, law is positioned in an essential framework to provide answers to the problem of what is the purpose of life? actually. Humans then try to answer these essential questions, through a dialectical process, which Hegel illustrates complete with rifts, fragmentation, contradictions and aporia, with the aspiration of being able to give birth to an analytic idea that can be a general conclusion.¹⁵ Even so, until now western civilization has never produced an agreement regarding the highest purpose of life, even at the theoretical level.¹⁶

Antinomies in legal theory or the rule of law, according to Friedmann, are contradictions that occur as a result of the natural position of law itself which is between philosophical reasoning and the practical needs of interest-politics. Legal intellectual groups are formed from old and holistic philosophical reasoning, on the other hand the ideals of justice in law are constructed through a political mechanism that tends to be transactional.¹⁷ As a result, law is not something that occurs naturally, but as the resultant of various process of internalization, intrusion and negotiation of various interests among factions and actors in society.¹⁸

W Friedmann said that in the development of legal theory there are at least six antinomies in it, namely: the individual and the universe; volunteerism and objective knowledge; reason and intuition; stability and change; positivism and idealism; collectivism and individualism; democracy and autocracy; internationalism and nationalism.¹⁹

c. Concept Of Legislation

¹³ L.j. Van Apeldoorn, *Pengantar Ilmu Hukum* (PT. Pradnya Paramita, Bandung, 2001). pg. 13.

¹⁴ Immanuel Kant, *Critique Of Pure Reason*, Cambridge University Press, Cambridge. Lihat Juga David Hume, *A Treatise Of Human Nature*, The Floating Press, Auckland, 2009, 2009.Kant..

¹⁵ Alan Norrie, “From Critical to Socio-Legal Studies: Three Dialectics in Search of a Subject,” *Social & Legal Studies* 9, no. 1 (2000): 85–113. <http://sls.sagepub.com/content/9/1/85>.

¹⁶ Wolfgang Friedmann and Muhamad Arifin, “Teori Dan Filsafat Hukum I: Telaah Kritis Atas Teori-Teori Hukum” (-, 1990)., pg. 2.

¹⁷ *Ibid.*

¹⁸ Zainal Arifin Mochtar, “Antinomi Dalam Peraturan Perundang-Undangan Di Indonesia,” *Hasanuddin Law Review* 1, no. 3 (2015): 316–36.

¹⁹ Friedmann and Arifin, “Teori Dan Filsafat Hukum I: Telaah Kritis Atas Teori-Teori Hukum.”, pg. 2.

The term legislation, according to A. Hamid. S Attamimi, is interpreted the same as *wetgeving* and *gesetzgebung*, namely the entire regulation established by state or government institutions and is also interpreted as the process/activity of the formation of the regulation.²⁰ Meanwhile, according to Bagir Manan, legislation is a written positive law made, determined, or formed by an authorized official or agency or based on certain statutory provisions in a written form that contains behavior or is binding (in general).²¹

Legislation is a written regulation that is generally binding and is formed or determined by state institutions or authorized officials with procedures established in accordance with laws and regulations. Forms of statutory regulations such as laws, government regulations in lieu of laws, government regulations, provincial regulations and district regulations.²² In addition, there are regulations set by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, Agency, institution or commission of the same level established by law or by the government by law, the provincial people's representative council, the governor, the representative council people of the district/city, regent/mayor, village head or the equivalent.²³

Meanwhile, the hierarchy of laws and regulations is regulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Regulations. The legislation explains that the types and hierarchy of laws and regulations consist of:

- a. the 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Laws/government regulations in lieu of laws;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial regulations; and
- g. Regency/city regulations.

In making and enforcing laws and regulations, there are also several legal principles, such as the *lex posterior derogate lege priori* principle. (Regulations that act later to abolish previous regulations), the principle of *lex superior derogate legi inferior* (regulations formed by higher authorities have a higher position), the principle of *lex specialist derogate legi generalis* (specific regulations override general regulations).²⁴

2.2. implementation of harmonization between investigators and Advocates in Law Enforcement Process

a. The Role of Investigators in The Law Enforcement Process

In the criminal justice system, there are three approaches, namely:²⁵

²⁰ A Hamid S Attamimi, "Teori Perundang-Undangan Indonesia Suatu Sisi Ilmu Pengetahuan Perundang-Undangan Indonesia Yang Menjelaskan Dan Menjernihkan Pemahaman," 1992. pg. 15.

²¹ Bagir Manan, *Hukum Positif Indonesia: Satu Kajian Teoritik* (FH UII Press, 2004)., pg. 41.

²² Endrik Safudin, "Dasar-Dasar Ilmu Hukum" (Malang: Setara Press, 2017)., pg. 33.

²³ Undang-Undang, "Lihat Pasal 8 Ayat 1 Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," n.d..

²⁴ Endrik Safudin, "Pengantar Ilmu Hukum" (Malang: Setara Press, 2020)., pg. 23.

²⁵ Ikhsan Lubis et al., "Comparison of Civil Law Regarding The Implementation of Cyber Notary in Countries With Common Law and Civil Law Traditions," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 1 (2022). 595-608.

1. The normative approach views the four law enforcement officers (police, prosecutors, courts and correctional institutions) as implementing institutions of the prevailing laws and regulations so that the four apparatuses are an inseparable part of the law enforcement system solely;
2. The administrative approach views the four law enforcement officers as a management organization that has a working mechanism, both horizontal and vertical relationships in accordance with the organizational structure that applies within the organization. The system used is an administrative system.
3. Social approach, views the four law enforcement officers as an inseparable part of a social system so that the community as a whole is responsible for the success or failure of the four law enforcement officers in carrying out their duties.

According to Romli Atmasasmita, the characteristics of the system approach in criminal justice are:

- a. The emphasis is on the coordination and synchronization of criminal justice components (police, prosecutors, courts and correctional institutions);
- b. Supervision and control of the use of power by the criminal justice component;
- c. The effectiveness of the crime prevention system is more important than the efficiency of case resolution;
- d. The use of law as an instrument to strengthen "The administration of justice".

The enactment of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) has led to fundamental changes both conceptually and practically in the procedures for resolving criminal cases in Indonesia. This law is a substitute for the *Het Herziene Inlandsch Regement Staatsblad* of 1941 number 44 which is considered no longer in accordance with the ideals of national law.

When examined carefully the contents of the provisions of Law No. 8 of 1981 concerning the Criminal Procedure Code, in the Integrated criminal justice system Indonesia uses four components of law enforcement officers, namely the police, prosecutors, courts and correctional institutions. Components of the criminal justice system as one of the supporters or instruments of a criminal policy, including legislators. The components in the criminal justice system, both in the perspective of knowledge about criminal policy (Criminal Policy) and in law enforcement practices in criminal law consist of: elements of the Police, Prosecutors, Courts and Correctional Institutions. These agencies each set the law in its field and authority.

This view of administering the criminal law system is called the steering model (*stuur model*). Related in this case are parts of activities in the context of law enforcement, or in a criminological atmosphere called "crime control" a principle in overcoming this crime is that these actions must be in accordance with the values that live in society. These four components are expected to work together to form an "integrated criminal justice system meaning integrated criminal justice system". Is synchronization or synchronization and harmony which can be distinguished in:

- a. Structural synchronization is synchronization and harmony within the framework of relations between law enforcement agencies;

- b. Substantial synchronization is the vertical and horizontal parallelism and harmony in relation to positive law;
- c. Cultural synchronization is the synchronization and harmony in the diversity of views, attitudes and philosophies that underlie the overall operation of the criminal justice system.

Alignment and interrelationship between sub-systems with one another is a link in a single unit. Where in every problem in one of the sub-systems, it will have an impact on the other sub-systems so that in this case it will cause a reaction as a result of an error in one of the sub-systems will have an impact on the other sub-systems. Integration between these subsystems can be obtained if each subsystem makes criminal policy as its working guideline, therefore the components of the criminal justice system cannot work without being directed by criminal policy. On this occasion, if we examine whether this integration has been realized from the perspective of the police sub-system, then we must first look at the role of the police in the criminal justice system, especially in Indonesia. Criminal cases are cases involving crimes or violations committed by citizens against life, body or property, so that the state is obliged to impose sanctions on those who commit crimes or violations in order to maintain public order.

In criminal cases, the investigation is carried out by the police, prosecutors and courts. The police are the first parties to handle the perpetrators of crimes or violations, if a crime occurs the police are obliged to investigate and carry out investigations, then the prosecutor's office take over the case in order to prosecute the perpetrators of crimes before the court. The police have several authorities including: The police are authorized to conduct investigations, where investigation is defined as a series of actions to seek and find a situation or event that is suspected of being a crime or criminal act in order to obtain preliminary evidence needed to decide whether an investigation is needed or not in accordance with Article 1 (5) Criminal Procedure Code.

In this case, the official authorized to conduct an investigation is the police Article 1 point 4 of the Criminal Procedure Code). Preliminary evidence is defined as an initial indication of the involvement of a person or group in a criminal act. According to the Decree of the Head of the Indonesian Police (Kapolri) No. Pol. SKEP/04/1/1982, sufficient preliminary evidence is the information and data contained in two of the following:

- a. Police reports;
- b. Minutes of Police Inspection;
- c. Report on the results of the investigation;
- d. Statements of witnesses/expert witnesses;
- e. Evidence.

While the evidence according to Article 184 of Law No. 8/1981 is witness testimony, expert testimony, letters, instructions and statements of the defendant The police also have the authority to conduct investigations, where investigation is a series of actions taken by investigators to seek and collect evidence in order to uncover criminal acts and find suspects or perpetrators. The official authorized to investigate criminal acts

is the police or civil officials who are given special authority by law, specifically for economic crimes and corruption, the authorized official is the prosecutor's office. The investigation carried out is preceded by a notification to the public prosecutor that an investigation into a criminal event has begun. Investigators referred to in the provisions of the Criminal Procedure Code are Indonesian National Police Officers and certain Civil Servant Officials who are authorized by law. The authorities possessed by investigators, as stated in Article 7 Paragraph (1) letter b to letter j of the Criminal Procedure Code, are:

- a. Receiving a report or complaint from a person regarding the existence of a criminal act;
- b. Take the first action at the scene;
- c. a suspect to stop and checking the suspect's identification;
- d. Make arrests, detentions, searches and confiscations;
- e. Check and confiscate letters;
- f. Taking fingerprints and photographing a person;
- g. Calling people to be heard and examined as suspects or witness;
- h. Bring in the necessary experts in connection with the examination of the case;
- i. To stop the investigation;
- j. Take other legally responsible actions.

Formally the notification is delivered through the Notification of the Commencement of Investigation (SPDP) mechanism. This is regulated in the provisions of Article 109 of the Criminal Procedure Code. However, the shortcoming that is felt to be very hindering is that there is no firmness in this provision when it is time for an investigation to be notified to the Public Prosecutor. The investigation must begin with a notification to the public prosecutor so that the investigation process is an integral part of the prosecution process because it begins with the coordination of the prosecutor in the police investigation process.

If sufficient evidence is not found during the investigation, the investigation can be terminated by law by issuing an Investigation Termination Order (SP3). If the victim does not accept SP3's decision, he can file a pre-trial lawsuit against the investigator. After the investigation is complete, the case file is transferred to the public prosecutor accompanied by an indictment. According to article 1 (7) of the Criminal Procedure Code, prosecution is an action by a public prosecutor to delegate a criminal case to a District Court that is authorized by law with a request that it be examined and decided by a judge in a court session.

If we examine from the perspective of the criminal justice system, then in this case we will be able to examine that the police play a very important role in law enforcement in practice. Where in this case the police are the spearhead of the criminal justice system so that as a result where the police are the starting point for receiving reports that are suspected of having committed a crime, in this case the police as the starting point for the criminal justice system must actually carry out their duties and authorities in accordance with the regulations. legislation without looking at the existence of a

particular interest, but this is related to the criminal justice system whether it can be said to be integrated, then in this case it cannot be separated from synchronization in the sub-system of the criminal justice system itself.

Although institutionally each of these sub-systems is individually responsible for their respective agencies, but in a system that includes the overall concept, to produce a criminal justice system, whether it has been integrated or not, there must be a synchronization and cooperation of the criminal justice process. The earliest is from the police to the end point of the correctional institution.

b. The Position of Advocates in Assisting Clients in Criminal Cases in Indonesia Investigation Level

Legal counsel in providing legal assistance is contained in Law Number 8 of 1981 concerning the Criminal Procedure Code, in particular Article 54 which states that in the interest of defense, a suspect or defendant is entitled to legal assistance from one or more legal advisors during the time and at every level of examination. according to the procedure specified in the law. The process of examining a suspected person has been regulated more fully in the Criminal Procedure Code which has determined the rights of the suspect, legal assistance, restrictions on detention/arrest, the existence of a pretrial institution, the obligations of the investigator, all of which show their position and have the same rights. As human dignity. In the interest of defense, a suspect or defendant is entitled to legal protection from one or more legal advisers during the time and at every level of examination, according to the procedure specified in Article 56 of the Criminal Procedure Code.

*Advocates with the status of law enforcers are one of the legal instruments in the judicial process whose position is equal to other law enforcers, upholding law and justice. even more firmly is one of the pillars of upholding the rule of law and protecting rights human rights in Indonesia.*²⁶

The fulfillment of the right to legal assistance for suspects in the investigation process must be carried out to prevent no more suspects from being deprived of their rights by law enforcement officials. The implementation of legal aid that is not serious is a violation of human rights which means it is contrary to the constitutional rights of its citizens. The purpose of legal aid according to the Law Office “Dr. Erry Meta. SH. MH & Partners that the purpose of legal aid is :²⁷

- a. Guarantee and fulfill the rights of legal aid recipients to get access to justice;
- b. Realizing the constitutional rights of all citizens in accordance with the principle of equality in law. Ensuring certainty of operation;
- c. Legal Aid is implemented evenly throughout the territory of the Republic of Indonesia;
- d. Realizing an effective, efficient and reliable judiciary accounted for.

Providing legal assistance in the advocacy process of legal advisors has an important position in every criminal justice system. Legal advisors (advocates) must be able to

²⁶ Zulaidi, *Manfaat Pelaksanaan Bantuan Hukum Bagi Tersangka/Terdakwa Dalam Usaha Mencari Keadilan* (Refika Aditama, Bandung, 2011)., pg. 91,

²⁷ “Results of Interview with Erry Meta, Law Office “Erry Meta. SH. MH & Partners, Surabaya, Monday, 27 June 2022, Time 10.30 WIB,” n.d.

cooperate with law enforcement officers, namely the police, prosecutors, and courts in achieving their common goals, namely preventing crime, preventing crime recurrence and rehabilitating criminals and returning them to society. The advocate profession as part of legal aid must be able to carry out its role in defending people who are underprivileged and do not understand the law at all. usually become the object of torture, unfair, inhuman and degrading treatment and punishment.

According to Adnan Buyung Nasution, “the obligation of advocates to provide legal assistance to perpetrators of criminal acts is for the sake of creating justice. The provision of legal assistance to perpetrators of criminal acts is a form of advocate’s dedication in carrying out their profession as one of the elements of law enforcement officers”.²⁸

2.3. Legal advisors provide legal assistance

in the investigation stage, it is hoped that the legal process will be fair to suspects, especially those who are classified as underprivileged or those who do not understand the law. In addition, to provide opportunities for the poor to defend themselves accompanied by the defense of professional advocates. Legal counsel in providing advocacy is contained in Law Number 8 of 1981 concerning the Criminal Procedure Code, in particular Article 54 which reads: For the sake of defense, a suspect or defendant has the right to obtain legal assistance from one or more legal advisors during the time and at every level of examination, according to the procedure. the manner specified in this law.

The provisions of Article 54 of the Criminal Procedure Code give the suspect the right to obtain legal assistance from one or more lawyers at the stage of examination of the investigation starting. Legal aid at this stage is still a right, not yet reached the mandatory level. Therefore, legal assistance by a new legal advisor is a right. Getting legal assistance still depends on the suspect’s willingness to be accompanied by legal counsel. The suspect can exercise this right but also can’t use it. Consequently, without being accompanied by a legal advisor, it does not hinder the investigation of the suspect.

The provisions of Article 54 of the Criminal Procedure Code may turn into obligations in its implementation. This can be seen in Article 114 of the Criminal Procedure Code which reads: In the event that a person is suspected of committing a criminal act before the commencement of the examination by the investigator, the investigator is obliged to notify him of his right to obtain legal assistance or that he must be accompanied by a legal advisor in his case as referred to in Article 114 of the Criminal Procedure Code. Article 5656 of the Criminal Procedure Code.

The obligation to be accompanied by legal advisors for people who cannot afford is emphasized in Article 56 of the Criminal Procedure Code which reads:

- a. In the event that a suspect or defendant is suspected or charged with committing a criminal act which is punishable by the death penalty or a sentence of fifteen years or more or for those who are incapacitated who are threatened with a sentence of five years or more who do not have their own legal advisor, the official concerned at all levels of examination in the judicial process are obliged to appoint legal counsel for them.

²⁸ Adnan Buyung Nasution, “Bantuan Hukum Di Indonesia, LP3ES, Jakarta,” 2008.,pg. 74.

- b. Every legal advisor who is appointed to act as referred to in paragraph 1, provides his assistance free of charge.

Before conducting an examination of a person suspected of committing a criminal act, the investigator is obliged to inform him of his right to obtain legal assistance or, in this case, the suspect must be accompanied by a legal advisor.

In accordance with the provisions of Article 56 of the Criminal Procedure Code, the appearance of legal advisors in providing the right to obtain legal assistance has changed its nature to become mandatory. The nature of the obligation to obtain legal assistance for suspects at all levels of examination as regulated in Article 56 of the Criminal Procedure Code with the provisions, if the suspicion or indictment suspected or indicted is threatened with a criminal act:

- a. Death penalty;
- b. Fifteen years or more;
- c. A sentence of five years or more.

Based on the statement above, the mandatory nature attached to investigators providing legal assistance to suspects at the investigation level lies in the threat of punishment in Article 56 of the Criminal Procedure Code and the inability of the suspect to present legal counsel to advocate for criminal cases. Even though the suspect is given the right to get an advocate or legal advisor, some of them do not use this right because perhaps the case is a simple case which in the process of examination is carried out cooperatively between the parties, so that the examination proceeds smoothly in addition to the fact that the suspect admits to his alleged actions, let alone evidence. and witnesses who are quite complete.

Suspects at the level of investigation are given the right to be accompanied by an advocate or legal advisor before the examination is carried out and have the right obtain or be accompanied by an advocate or legal advisor who must be provided by the investigator even though the suspect does not want it. The existence of Article 56 of the Criminal Procedure Code gives rise to confirmation in the decision of the Supreme Court No. 1565 K/Pid/1991 which states: If the requirements of the request are not fulfilled, such as the investigator does not appoint legal counsel accompanied by legal counsel for the suspect from the beginning of the investigation, the public prosecutor's demands cannot be accepted.

The Supreme Court's decision gave a warning to investigators to fulfill the suspect's request in providing legal assistance. If the suspect expressly requests the right to be accompanied by a legal advisor as regulated in Article 56 of the Criminal Procedure Code, appoints a legal advisor and wishes The examination is attended by legal advisors and the investigating officer does not appoint and does not provide legal counsel, then at the trial the public prosecutor's claim cannot be accepted. In carrying out the investigation, legal advisors are still suspected of being people who interfere with the smoothness of the examination. It has not been given and the foundation of equality and position

between legal advisors and investigators has been laid is a problem in providing legal aid. This can be seen in Article 115 of the Criminal Procedure Code:

- a. In the event that an investigator is conducting an examination of a suspect, the legal advisor may follow the course of the examination by seeing and hearing the course of the examination.
- b. In the case of a crime against state security, legal advisors can be present by seeing but not hearing the examination of the suspect.

The provisions of Article 115 of the Criminal Procedure Code have not given full rights to legal advisors in providing legal assistance. The participation of a legal advisor in assisting a suspect in an investigative examination is limited by the word “can” allow legal counsel or allow him to follow the course of the examination. In this case, it means that with the approval of the investigator, the legal advisor can attend and follow the examination being carried out by the investigator, but if the investigator does not agree and does not allow it, the legal advisor cannot impose his will to follow the course of the examination.

Article 115 of the Criminal Procedure Code, the right to obtain legal assistance in an investigative examination is passive, meaning that if the legal advisor is permitted by the investigating officer to participate in the course of the investigation, his position and status his presence is only limited to seeing/witnessing and listening to the course of the examination. The position of a legal advisor who is passive can still be reduced in terms of the investigation process related to criminal acts of crime against state security. Legal advisors can only see and witness the course of the examination and may not listen to the contents and course of the examination. If the implementation of Article 115 of the Criminal Procedure Code is used properly by legal advisors following the course of the investigation, the benefits will be enormous. The presence of legal advisors at every investigative examination, at least prevents investigators from venting emotions during the examination. The presence of legal advisors makes the atmosphere more humane and from a psychological point of view, it encourages suspects to be more courageous in expressing the truth they have and know.

The application of Article 115 of the Criminal Procedure Code which regulates the position of legal advisors in the investigative examination process is fully the authority of the investigator, but to maintain legal certainty the investigator must be able to implement the intent of the law so that it is flexible as long as the rights granted by the legal advisor do not interfere with the course of the examination. The investigation process in providing legal advocacy to suspects is emphasized on protecting the rights of suspects. Legal counsel must be able to protect every right that the suspect needs in the examination. During the examination in front of the investigator, the legal advisor who had previously consulted with the suspect may present witnesses who can benefit him. Investigators are required to ask the suspect whether to present witnesses that are favorable to him.

If there is, the investigator is obliged to examine the witness and his statement is recorded in the official report of the examination. If during examination a suspect is in the process of detaining an investigator, the legal adviser may request a suspension of detention from an authorized official accompanied by reasons for objecting to the detention that are actually capable of supporting the request. In requesting a suspension of detention, it is entirely the investigator's authority based on whether or not the suspect is detained and the threat of the severity of the sentence. The presence of legal advisors in the investigation process is very helpful for suspects. Legal advisors with the given rights, namely seeing and hearing the course of the examination, can arrange things or be strategic in resolving the case based on the derivative of the suspect's official report.²⁹

The provision of legal assistance in the advocacy process by legal advisors is carried out against possible irregularities committed by investigators and investigators. The forms of irregularities carried out by investigators are that the suspect is detained without a detention letter from the investigator, the investigator detains the suspect without sufficient preliminary evidence, the investigator commits acts of violence against the suspect during the examination to obtain instructions and the use of coercive measures in the case of detention, confiscation of searches is not appropriate. with the rules outlined in the Criminal Procedure Code. To provide legal certainty in violations of human rights that have been outlined in the Criminal Procedure Code, legal advisors can take pretrial efforts against the investigation process that is not in accordance with the Criminal Procedure Code.

Based on the foregoing, it is clear that in relation to the investigation of the suspect, the summons of the suspect with clear reasons shall be examined by means of a valid summons with due observance of a reasonable time when the summons is received. The role of advocates at the investigation level in the Criminal Procedure Code in the process of arrests, searches. The role of the advocate in the arrest process is whether the investigator in making the arrest shows a letter of assignment and gives the suspect an arrest warrant that includes the identity of the suspect and states the reason for the arrest as well as a brief description of the alleged crime and the place where he was examined or not. At the search stage, the role of the advocate here is to check whether the search has been carried out with a permit from the local district court or not and every time he enters the house is it witnessed by the village head and two witnesses or not.

Legal advisors in terms of assisting at the investigation level only follow the course of the examination by seeing and hearing the examination only and in accompanying there must be a power of attorney. After the power of attorney is completed, the suspect who is investigated/examined is accompanied by an advocate/legal advisor depending on the power of attorney providing material where the advocate must provide legal advice/services. Advocates at the investigation level provide assistance to clients/suspects that in the examination there should be no coercion, clients are directed properly and if there

²⁹ Syafruddin Syafruddin, "Settlement of Juvenile Offenders Based on Restorative Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 3 (2022): 571–580.

is a violation of the rules, they must be reprimanded, it is feared that the suspect's rights will be violated so that it is detrimental to the suspect because it is not in accordance with the regulations.

The role of the advocate in the investigation of his client in outline is to accompany the examination by the investigator, which is passive, meaning to hear and see the investigation process. Advocates may not answer or notify the answers submitted by investigators, but advocates only straighten things out. What is odd is that if it is not in accordance with the rules, it means that the suspect is protected and treated according to the regulations, so that there is no coercion or the suspect is harmed in the investigation process.

The role of the advocate at the investigation level is by providing assistance to the client/suspect that in the examination there should be no coercion, meaning that in examining a suspect, does the investigator who examines give/do questions to the suspect which is entangling in nature, as if this suspect has been proven to have committed a crime. what he does so that it is the duty of the advocate or legal advisor to always straighten out the investigator in assisting when there is an element of coercion or pressure on the suspect then the suspect's legal advisor must alert the investigator and or provide input to the investigator so as not to put pressure or threats on the suspect.

3. CONCLUSION

Starting from the above, judging from the practice that occurs in Indonesia, there are still many obstacles faced to create a criminal justice system so that it is integrated, where one of the conspicuous obstacles is the lack of maximum cooperation created between sub-systems in the justice system. the criminal justice system so that in practice it will have an effect on the implementation of the criminal justice system as a whole. The role of the police in this system is to collect evidence to assist the prosecutor in the evidentiary process so that the prosecutor can prove his indictment, therefore the role of the police is to act only before the trial occurs and if involved is only limited to testimony in evidence and even then, when necessary. Police action is a very important start in the criminal process because the quality of case filing will determine by the Police.

The position of advocates in assisting clients in criminal cases at the investigation level is very urgent because the provision of legal assistance to suspects is an advocate's obligation to uphold justice and protect human rights, including the rights of perpetrators of criminal acts which are constitutional rights. Advocates give their roles at all levels of examination, namely the role at the investigation level; advocates have begun to provide assistance and follow the investigation so that the rights of suspects can be fulfilled and there is no pressure or coercion from investigators. The provision of legal assistance to perpetrators of criminal acts is important related to the principle of equality before the law (everyone is seen as equal before the law). This principle demands the right to legal assistance, through the provision of legal assistance for the accused/suspected perpetrator of a crime.

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