

Development Of The Criminal Justice System: Initiating LPSK As A Criminal Justice Subsystem In Indonesia

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Abstract. The development of the Criminal Justice System has led to efforts to initiate LPSK as a Criminal Justice Subsystem. The aim is to provide maximum protection to witnesses and victims of crime. The research method used is normative juridical with statutory approach, and descriptive analytical specifications. The results of the study concluded that the victimology study was a challenge for the Criminal Justice System, which had so far not paid attention to the interests of victims. Efforts to initiate LPSK as an Integrated Criminal Justice Subsystem in Indonesia are based on the importance of the institution's position in providing protection and services to victims of crime, so there is good coordination and cooperation between LPSK and other law enforcement institutions.

Keywords: Development; Criminal Justice System; Initiating; LPSK.

1. Introduction

Criminal law is a means of punishment in efforts to tackle crime that leads to the achievement of people's welfare and social protection. The embodiment of an effort to deal with crime makes the criminal law contain rules that determine the act accompanied by threats in the form of a criminal, and determine the criminal conditions imposed.⁴ Acts that are prohibited and threatened by criminal according to their form and nature are contrary to public order in the sense of obstructing the implementation of good and fair social relations.⁵

The essence of the existence of criminal law aims to protect the interests of individuals and human rights, and protect the interests of society and the state as a collectivity from acts that threaten it or even harm it, including protection from the arbitrariness of the authorities.⁶

Satjipto Rahardjo stated that the law cannot be upright by itself, meaning that the law is unable to realize the promises and wishes stated in the law.⁷ Therefore, law enforcement is an effort to realize the ideas contained in the law, including the enforcement of criminal law as a form of protection of life, property and honor.

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⁴ Arief, Barda Nawawi, 2010, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Print. 3rd. Kencana, Jakarta, p.77.

⁵ Moeljatno, 2002, *Asas-Asas Hukum Pidana*. print 7th. Rineka Cipta, Jakarta, p.3.

⁶ Gunadi, Ismu and Jonaedi Efendi, 2014, *Cepat & Mudah Memahami Hukum Pidana*. Kencana, Jakarta, p.11-12.

⁷ Rahardjo, Satjipto, 2009, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, print. 1st.. Genta Publishing, Yogyakarta, p.7.

Criminal law enforcement is carried out with a system approach or what is referred to as the "Criminal Justice System". The system approach is an approach that uses all the elements involved in it as a unit that is interconnected and influencing one another.

The Criminal Justice System is a judicial network that uses criminal law as its main means, both material, formal criminal and criminal conduct.⁸ Mardjono Reksodipoetro stated that the purpose of the Criminal Justice System is to prevent the community from becoming victims; resolve criminal cases so that justice can be upheld; and have those who have committed a crime never repeat their actions.⁹

The Criminal Justice System always faces various challenges in its development. The challenges of the Criminal Justice System appear simultaneously with the massive study of crime victims that has led to the movement of the rights of victims of crime in the Criminal Justice System.

The birth of the Witness and Victim Protection Agency (LPSK) is a form of development of Indonesian law that takes into account victims in the Criminal Justice System. However, there are still doubts from the legislators to place LPSK as a Criminal Justice Subsystem, so that it is not effective in providing protection for victims of crime.

Based on the description above, then this article describes the problem of the development of the Criminal Justice System in an effort to initiate LPSK as a Criminal Justice Subsystem in Indonesia? The aim is to provide maximum protection to witnesses and victims of crime.

Research methods

This article uses a juridical-normative method with a statutory approach. Research specifications, namely descriptive-analytical. Data collection methods through library research. Data analysis was performed using qualitative juridical methods, through: First, secondary and primary data were identified. Second, the data is arranged systematically and analyzed qualitatively.

2. Results and Discussion

2.1. Challenges of the Criminal Justice System in Facing the Development of Criminal Victim Studies

Various forms of criticism are constantly being directed at the judiciary. This can be tolerated because the people really want a criminal justice process that gives a sense of justice. The judiciary is a last resort and hope for justice seekers to be able to see and evaluate, and decide whether the justice component applies to all or only to certain groups.¹⁰ The Criminal Justice System is only concerned with implementing "sound" laws. The criminal justice process is only meant as a form of punishment for violating criminal law norms.

⁸ Muladi, 1995, *Kapita Selekta Sistem Peradilan Pidana*, Diponegoro University Publishing Board, Semarang, p.1-2.

⁹ Resksodipoetro, Mardjono, 1993, *Sistem Peradilan Pidana Indonesia: Melihat Kepada Kejahatan dan Penegakan Hukum dalam Batas-Batas Toleransi*, UI Press, Jakarta p.1.

¹⁰ Anwar, Yesmil and Adang, 2009, *Sistem Peradilan Pidana: Konsep, Komponen, & Pelaksanaannya dalam Penegakan Hukum di Indonesia*. Widya Padjadjaran, Bandung, p.2 & 3.

Criticism of the Criminal Justice System has become increasingly sharp since the understanding of abolitionism began to be developed by Louk Hulsman. The direction of Hulsman's thinking uses a humanitarian and rationalistic approach; through his approach, Hulsman concluded that the Criminal Justice System must be completely abolished because logically this system would not be able to be a humane and sensitive means in dealing with crime.¹¹

Criminal Justice System in Hulsman's perspective, it is seen as a social problem because it has imposed a crime on the perpetrators of crime. This means that there are restrictions on independence of the perpetrators and they are separated or exiled from the community environment. More than that, they and their families have been stigmatized and their dignity has been lowered, so that their position in society is very marginal. The purpose of criminal imprisonment can never be achieved optimally because each goal has a variety of prominent weaknesses and receives a lot of sharp criticism compared to the results that have been achieved.¹²

It is different from Mardjono Reksodipoetro's view which tends to contradict Hulsman's abolitionist position. Mardjono Reksodipoetro does not see the Criminal Justice System as a failure, but rather as an inseparable reality from the history of the legal development of a nation. However, there needs to be tolerance limits in the implementation of the Criminal Justice System in viewing crime and law enforcement. A good Criminal Justice System must be aware of its limitations, where the task of the Criminal Justice System is only to maintain public order (public order maintenance) and not to monitor acts that are very detrimental to the community. Within these limitations, the Criminal Justice System must be more tolerant of the perpetrators of crimes that enter and are processed by this system.¹³

The views of Negel and McGee also expressed by Mardjono Reksodipoetro when discussing the ten minimum principles required by a "due process of law", where the stage of adjudication in the Criminal Justice System must be considered the most "dominant". This is based on the consideration that at this stage the protection of the rights of citizens who become defendants will be clearly revealed and also at this stage all parties (public prosecutors and defendants) obtain the same rights.¹⁴ The Criminal Justice System also accommodates the rights of perpetrators in the context of rehabilitation objectives and socialization.

Efforts to improve the Criminal Justice System, is not enough if it is not balanced with protection of the interests of the rights of victims of crime. This is due to the increasing study of victims of crime who pay attention to the suffering ignored by the judiciary.

The development of the study of victims of crime began in 1941 through a scientific work written by Hans Von Hentig entitled "Remark on the Interaction of Preperator and Victim" as a pioneer describing the relationship between the perpetrators and victims. In 1947, Benjamin Mendelsohn introduced the term "viktimolgi" for the first

¹¹Hulsman, Louk., Niels A Uildriks, John. R Blad, and Hans van Mastrigt, 1987, *The Criminal Justice System as a Social Problem: An Abolitionist Perspective*. Juridisch Instituut Erasmus Universiteit, Rotterdam, p.5.

¹²Atmasmita, Romli, 2010, *Sistem Peradilan Pidana Kontemporer*. Kencana Prenadamedia Group, Jakarta, p.106-107.

¹³Resksodipoetro, Mardjono, 1993, Op. Cit., p.4-8.

¹⁴*Ibid.*, p.12-13.

time. The definition of victimology proposed by Andrew Karmen, namely: "Victimology is the study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system-that is, the police and courts, and corrections officials - and the connections. between victims and other social groups and institutions, such as the media, businesses, and social movements".¹⁵ Based on the understanding of victimology presented by Andrew Karmen above, the scope of the object of study of victimology is one of the interactions between victims and the Criminal Justice System, including the components of the justice subsystem. Studies of crime victims in the 1960s to 1980s have spawned "the crime victims' rights movement through surveys of victims who must get social and political attention in the Criminal Justice System. Efforts to campaign for attention from "penal reformers" not only seek better conditions and treatment for perpetrators, but also improve services to victims.¹⁶

Protection of victims according to Muladi can be justified sociologically that in social life, all citizens must participate because society is seen as a system of trust that must be institutionalized. Without trust, social life might not go well.¹⁷

Models of protection and services that can be provided to victims are as follows:¹⁸

- The Procedural Rights Model

The emphasis of this model is on allowing victims to play an active role in the criminal justice process. This approach is a model approach that views victims as a subject that must be given broad juridical rights to demand and pursue their interests.

- The Service Model

The emphasis of this model is on the need to create standard standards for the coaching of victims of crime, which can be used by the judiciary to protect the interests of victims in the handling of cases. This approach sees crime victims as a specific target to be served within the framework of law enforcement activities.

The service model for victim protection in the form of compensation and restitution is based on the essence of the loss suffered by the victim. According to Muladi¹⁹, victims of crime, both individually and collectively have suffered losses, including physical or mental, emotional, economic damage or substantial interference with their fundamental rights, due to acts that violate criminal law, including the abuse of power. Based on the development of studies on victimization or studies that study the problem of victims, it shows that the importance of the model of protection and services to victims, especially in the Criminal Justice System. This is a challenge for the Criminal Justice System in facing the development of studies on victims of crime. As

¹⁵Karmen, Andrew. 2003, *Crime Victims: An Introduction to Victimology*. Wadsworth Publishing, California, p.35.

¹⁶Dignan, James, 2005, *Understanding Victims and Restorative Justice*, Open University Press, England, p.15.

¹⁷Muladi, 1997, *Hak Asasi Manusia, Politik Dan Sistem Peradilan Pidana*, Diponegoro University Publisher Agency, Semarang, p.172.

¹⁸*Ibid.*, p.178.

¹⁹*Ibid.*, p.108.

stated by Mien Rukmini²⁰, that the orientation of the Criminal Justice System has always been aimed at handling crime to change lawbreakers and not protecting victims, because the victim's problem becomes a trivial and unexplained problem.

The Criminal Justice System will fail in carrying out its functions to realize justice if it is only oriented to the mechanism of punishment and guidance for every citizen who has violated the norms of criminal law (the perpetrators of crime). Therefore, for the Criminal Justice System to function properly, the system must be implemented in an adaptive manner towards the development of studies on the protection and services for victims of crime.

2.2. Efforts to Initiate LPSK as a Criminal Justice Subsystem in Indonesia

Act No. 13 of 2006 as amended by Act No. 31 of 2014 on Amendment to Act No. 13 of 2006 on Protection of Witnesses and Victims (Law on Witness and Victim Protection), is a form of political will forming a law the law pays special attention to victims of crime by providing guarantees of protection and services in the criminal justice process in Indonesia. The Witness and Victim Protection Act is a form of response and solution to various sharp criticisms of the weaknesses of the Criminal Justice System in Indonesia that do not protect the interests of crime victims.

The position of a crime victim in the Criminal Justice System has so far been positioned only as a witness who provides information on the crime he experienced, so that it is only judged to help the justice component (Police, Attorney, and Court) in proving the wrongdoer of crime, without regard to the suffering or loss of the victim. The fact shows that the role of the victim as a witness in the Criminal Justice System, also contributed to the suffering he experienced psychologically.

The birth of the Witness and Victim Protection Act, the current positive law in Indonesia has begun to include victims of crime in determining the success of the ultimate goal of the Criminal Justice System in Indonesia. The formation of the Witness and Victim Protection Act is a manifestation of the commitment of the legislators in issuing legal policies to begin regulating the Criminal Justice System which is not only oriented towards the treatment and protection of suspects or defendants, but also is oriented towards improving services to victims of crime. The Witness and Victim Protection Act provides new hope for victims of crime to play an active role in fighting for their rights that have been harmed by perpetrators of crime.

The fundamental step in the Law on Witness and Victim Protection is an effort to improve protection and services for victims of crime in the Criminal Justice System in Indonesia, namely the establishment of LPSK. LPSK has a very important role in the criminal justice process. Article 1 number 5 jo. Article 12 of the Witness and Victim Protection Law stipulates that the LPSK is an agency that has the duty and authority to provide protection and other rights to witnesses and / or victims. LPSK is responsible for handling the provision of protection and assistance to witnesses and victims based on the duties and authorities stipulated in the Witness and Victim Protection Act. Therefore, in the General Explanation of the Witness and Victim Protection Act it is

²⁰Rukmini, Mien. 2014. *Aspek Hukum Pidana Dan Kriminologi: Sebuah Bunga Rampai*. PT. Alumni, Bandung, p.4.

stated that the LPSK institution must be developed and strengthened so that in carrying out its duties, functions,

The purpose of forming the Witness and Victim Protection Act which strengthens the LPSK institution, in its implementation did not go as expected. LPSK has not been able to optimally provide protection and assistance services to crime victims in the practice of the Criminal Justice System in Indonesia. This is a legal consequence of the doubt of legislators to place LPSK as a subsystem in the Criminal Justice System. The Witness and Victim Protection Act does not state explicitly and specifically that LPSK is one of the law enforcement agencies. Unlike the case with other criminal justice components such as: Community Officers who are stated explicitly and specifically as functional officers of law enforcement who carry out tasks in the field of guidance, security, and guiding Correctional Guidance Citizens as regulated in Article 8 paragraph (1) of Law No.12 of 1995 on Corrections. Likewise other criminal justice components (Police, Prosecutors, and Courts) whose duties are strictly regulated in separate laws and the Criminal Procedure Code.

LPSK is not regulated as one of the subsystems in the Criminal Justice System in Indonesia, so it has implications for the obstacles faced by LPSK in carrying out its duties, functions and authorities. The obstacles faced by LPSK in providing protection and assistance to victims of crime are motivated by several factors including:

First, the victim's access to protection and assistance from LPSK is still very limited. LPSK's position is in the Capital City of the Republic of Indonesia and not every region has a LPSK representative, resulting in not all victims get access to assistance from LPSK. So far, the assistance provided by LPSK is based on the method of application submitted by the victim itself or through the method of "pick up the ball" after the massive news. Therefore, the victim's very limited ability to submit an application to LPSK resulted in the victim having to fight for herself to get the protection of her rights. *Second*, effective coordination and good cooperation between LPSK and other components of criminal justice have not yet been established. In the current criminal justice process practice, there is no obligation for the justice component (Police, Attorney, Court) to include LPSK in each examination process, so it is as if between LPSK and other criminal justice components work separately in the Criminal Justice System. LPSK's involvement in every criminal justice process is very dependent on the request submitted by the victim itself or the active role of the LPSK itself. Unlike the four four components of criminal justice namely the Police, Attorney General's Office, and Correctional Institution which have different duties and authorities according to their fields,

Based on the description above, it is necessary to have an effort to initiate LPSK as a Criminal Justice Subsystem in Indonesia, given the important role of LPSK in providing protection and assistance to victims of crime during the judicial process. This effort is intended as a form of consistency that the Witness and Victim Protection Act has given special attention to service guarantees to crime victims in the criminal justice process. Efforts to initiate LPSK as a Criminal Justice Subsystem in Indonesia, are in line with the development of the Criminal Justice System which is not only oriented towards protecting the rights of perpetrators of crime, but also oriented towards the interests of victims. This effort was realized through the revision of the Witness and Victim

Protection Act by explicitly stating that LPSK is a functional law enforcement officer whose duty and responsibility is in providing protection and assistance to victims of crime including witnesses. Likewise in the Criminal Procedure Bill it must regulate LPSK involvement in every stage of the criminal justice process in order to establish effective coordination and cooperation between LPSK and other law enforcement institutions. Efforts to initiate LPSK as a subsystem in the Criminal Justice System through the law due to the strong formal-legalistic influence in the legal system in Indonesia. The same thing was also stated by Mochtar Kusumaatmadja²¹ that in Indonesia the law is the main way of regulating law. Renewal of society by legal means means legal renewal mainly through laws. Therefore, it is very much needed political will to form a law to place LPSK as a subsystem in the Integrated Criminal Justice System in Indonesia. The idea of placing LPSK as an Indonesian Criminal Justice Subsystem has the consequence that LPSK must have representation in each region, so that victims of crime can easily gain access to protection and assistance from LPSK. In addition, other law enforcement institutions are obliged to include LPSK in accordance with the terms and conditions that have been set in advance.

3. Conclusion

The development of studies on victimization has led to forms of protection and services for victims of crime. This has become a challenge for the Criminal Justice System which has so far only been oriented to the punishment and guidance of perpetrators of crimes. Therefore, efforts are needed to initiate LPSK as one of the Criminal Justice Subsystems in Indonesia given the important role of these institutions in providing protection and services to victims of crime, so good coordination and cooperation can be established between LPSK and other law enforcement institutions.

4. References

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²¹Kusumaatmadja, Mochtar. "Hukum, Masyarakat dan Pembinaan Hukum Nasional", on R. Otje Salman and Eddy Damian (ed). (2013). *Konsep-Konsep Hukum Dalam Pembangunan*. Print. 4th. Alumni, Bandung, p.89.

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Legislation:

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