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EVALUATION OF THE APPLICABILITY OF INDONESIAN CRIMINAL PROCEDURE CODE

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Abstraction

Even though it was promulgated more than 40 years ago, the Criminal Procedure Code (KUHAP) is still the main reference for the operationalization of the criminal justice system in Indonesia. During the same period, the practice of criminal procedural law developed so rapidly and slowly revealed imperfections in the basic building and design of the criminal justice system regulated in the Criminal Procedure Code. The Criminal Procedure Code audit was prepared with the aim of providing a complete portrait of the problematic Indonesian criminal procedural law based on factual evidence in judicial practice. In the first part, the context of the analysis is aimed at regulatory gaps and deviations shown at the implementation level. The basic assumptions built regarding the integrity and integration of the Indonesian criminal justice system are tested by basing them on empirical research and observation, including an in-depth review of court decisions. This research also records the current dynamics of criminal procedural law which are translated, formed, and reinterpreted by the courts, including through cases tried by the Supreme Court and the Constitutional Court.

Introduction

The discrepancies found in the previous section collide with the formulation of amendments to the Criminal Procedure Code Bill to be further analyzed in order to formulate an ideal scheme for reforming the criminal justice system that better guarantees the professionalism of law enforcement as well as the protection, respect and fulfillment of human rights. With such a complex complexity, changes to the Criminal Procedure Code must of course be followed by adjustments to various other legal instruments related to the criminal justice system, such as the Law on Judicial Powers, the Law on the Indonesian National Police, the Law on the Prosecutor's Office, the Law on Corrections, and so forth. In relation to the integration of the criminal justice system, the concept of functional differentiation designed to reinforce independence and resolve overlapping authorities in handling criminal cases actually creates many problems in practice. The loss of the case control function since the early stages of the investigation (dominus litis) which belonged to the prosecutor's office, such as in the 1941 Herzienne Indlansch Reglement (HIR) and Reglement op de Rechterlijke Organisatie en het Beleid de Justitie in Indonesie (RO) 1847 regimes resulted in the non-integration of the strategy for handling criminal cases and leading to a reduction in the

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quality of law enforcement. In addition, pre-prosecution, which is expected to bridge the coordination between investigators and public prosecutors, is not effective and tends to jeopardize the integrity of case handling. Tens of thousands of cases hang in the back and forth process of these cases and in fact create legal uncertainty. The draft KUHAP needs to evaluate the processes that are currently running and identify better coordination models to streamline the integration of law enforcement.

On the other hand, a series of rights of suspects/defendants guaranteed by the Criminal Procedure Code are apparently not optimally accessible at the implementation level. The main problem found by this research relates to the unequal position of the State and suspects/defendants within the framework of Indonesian criminal procedural law. This study reveals the fact that the Criminal Procedure Code does not open the access that should be provided for suspects/defendants to be able to exercise their procedural rights when undergoing legal proceedings. On the other hand, Indonesian criminal procedural law also does not provide for a complaint mechanism if the rights of the suspect/defendant above cannot be accessed by those concerned. Pretrial which is expected to correct mistakes made by law enforcers, especially in the implementation of coercive measures, In fact, they are more concerned with examinations that are purely administrative in nature and seem reluctant to touch on material aspects that can strengthen the protection of the rights of suspects/defendants. Even more ironically, there are no juridical consequences placed on the case handling system if law enforcement violates the rights of the suspect/defendant. As a consequence, such a criminal justice system is proven to be destructive to the dignity of suspects/defendants who should be treated equally and not discriminatory. there are no juridical consequences of any kind placed on the case handling system if law enforcement violates the rights of the suspect/defendant. As a consequence, such a criminal justice system has proven to be destructive to the dignity of suspects/defendants who should be treated equally and not discriminatively. there are no juridical consequences of any kind placed on the case handling system if law enforcement violates the rights of the suspect/defendant. As a consequence, such a criminal justice system is proven to be destructive to the dignity of suspects/defendants who should be treated equally and not discriminatory.

the implementation of coercive measures is proven to cause many problems in practice which lead to the undermining of citizens' human rights and fundamental freedoms. For example, apart from formulating the need for permission from the head of the court, there are practically no conditions imposed by the Criminal Procedure Code on investigators to seek justification for house searches. Without placing the obligation to prove the existence of a probable cause that certain evidence will be obtained somewhere, house searches will continue to be carried out with such a high level of subjectivity of law enforcement. This research also proves that the scope of coercive measures regulated in a limited manner by the Criminal Procedure Code has actually been expanded through the addition of law enforcement authority in various laws. Interestingly, even though it has characteristics similar to coercive measures in terms of limiting individual rights, such law enforcement authority is only positioned as an investigative technique. As a result, efforts to take samples, undercover buy, and controlled delivery for narcotics crimes are not bound by special

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conditions or testing mechanisms as attached to the implementation of coercive measures in the Criminal Procedure Code. at this point,

On the other hand, Indonesia's criminal procedural law is also faced with weak accountability mechanisms for the implementation of coercive measures. The pretrial, which is expected to become a forum for testing, has fundamental weaknesses and has a significant effect on the erosion of the protection of individual rights and freedoms in the criminal justice system. The design of the post-factum test makes this forum unable to prevent arbitrariness that might be carried out by investigators at the pre-trial stage. In addition, examinations that only focus on administrative aspects actually distance the function of control over the implementation of coercive measures that should be carried out by pretrial. Judges tend to only check the fulfillment of formal requirements,

In addition to these matters, the ambiguity of pretrial procedural law arrangements also affects the affordability and technical breadth of case examinations handled. Even if it's formed

In the criminal justice system, pretrial is carried out using civil procedural law considering that the basis of the examination is in the form of a request submitted by the suspect/defendant. As a consequence, the pretrial judge takes a passive position similar to an examination in a civil case and does not take the initiative to carry out further investigations even if there is an allegation of a procedural violation. Furthermore, the principle of actori incumbit probatio is also applied in pretrial examinations. By the judge, the applicant is burdened with the obligation to prove the mistake of the investigator and the public prosecutor in carrying out coercive measures, not the other way around. Such a situation seems to shift the responsibility of law enforcers to provide rationalization for the implementation of coercive measures to suspects/defendants.

KUHAP proof scheme

Arrangements regarding the evidentiary system are also inseparable from imperfections. With a design that relies on an inquisitorial approach, the Criminal Procedure Code seems to give more trust to law enforcers to obtain evidence in ways deemed appropriate in the circumstances at hand. Similar to the issue of coercive measures, the standards and control mechanisms formulated by the Criminal Procedure Code relating to the collection and testing of the relevance of evidence are not fully regulated.

In one section, the Criminal Procedure Code does not provide limitations regarding the definitions of 'sufficient initial evidence' and 'sufficient evidence' which are used as a basis for carrying out other pro justitia actions. As a result, the discretionary space created by this rule is too large to exercise authority which is closely related to the violation of the rights and freedoms of the individuals involved in the process. On the other hand, the opportunity provided by the Criminal Procedure Code for suspects/defendants and their legal advisers to examine the acquisition and relevance of evidence is still very limited. By submitting an assessment regarding this matter to the judge's conviction when trying the main case and not

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before examining the main case, Such a pattern once again emphasizes the imbalanced position of citizens and the state and the low accountability of the Indonesian criminal justice system. Improvements can be made by introducing a mechanism for examining evidence at the pre-trial stage so that the court only tries cases that have good evidentiary value.

On the other hand, the presence of the Suspect's Investigation Report (BAP) during the verification process also raises further problems. The BAP, which should have been used in a limited way as the basis for preparing indictments, was instead used as the main information to dig up information on cases being handled by judges. The interpretation developed in practice to position the BAP as documentary evidence as referred to in Article 187 of the Criminal Procedure Code actually opens up opportunities for torture to be carried out at the investigative stage in order to obtain a suspect's confession. In addition, the impartiality of the court and respect for the principle of the presumption of innocence are also reduced by this condition, considering that judges are directed to follow the facts revealed at the investigation stage. To maintain the balance of the positions of the two parties,

The unequal position of the state and citizens in the criminal justice system can also be seen from the fact that the Criminal Procedure Code regulates the rights of defense owned by suspects/defendants. Even though he is not given the obligation to prove the things he is accused of, the perpetrators should be given the same opportunity to defend their interests. However, in reality, it is the judge who will determine whether or not the evidence submitted by the defendant and/or his legal adviser is accepted.

Because it is not specifically regulated, the defense allocation given to the accused is often far less than the opportunity given to the public prosecutor to prove his charges. In addition, there is no obligation placed on the public prosecutor to summon witnesses to be presented by the defendant. In practice, it is the defendant's legal counsel who must seek and convince a de charge witness to appear and give testimony at trial. Even so, the defendant and/or legal counsel must still ask the panel of judges to be allowed to hear the testimony of these parties.

The same condition was also found in the defendant's availability of access to examine the evidence used in the case being tried. Until now, investigators have monopolized control and testing of evidence through examinations conducted by experts and certain agencies. Even though the perpetrator or his legal adviser requests a counter examination of the evidence controlled by the investigator, the Criminal Procedure Code does not place an obligation on the investigator to process the request. As a result, the right of the suspect/defendant to defend himself does not run optimally.

Conclusion

The KUHAP proof scheme has also not clarified the existence of parties who are permitted to give statements at trial. At the implementation level, investigators, public prosecutors, legal advisers, and panels of judges often present (criminal) legal experts to strengthen the evidence carried out at each stage of the examination. Such practice is contrary to the

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principle of ius curia novit which indicates a judge as a party who understands the law in every case he handles. In addition, the presence of verbal witnesses in the verification process is also another finding in this study. With such an obscure mechanism, the Criminal Procedure Code does not expressly prohibit investigators from giving testimony at trial. Furthermore, public prosecutors often present verbal witnesses as the only witnesses who can strengthen prosecution, especially in narcotics cases. Even though there is jurisprudence that prohibits this practice because it doubts the independence and neutrality of the information provided, not a few judges use this testimony in their deliberations. The government and the DPR must respond to the above conditions in preparing the draft Criminal Procedure Code in the future. With regard to legal remedies, there have been many developments in practice that need to be responded to by criminal procedural law. First, the availability of legal remedies against court decisions testing the implementation of coercive measures must be guaranteed in the reform of the criminal procedural law in the future. In its current state,

Bibliography

Arief, Barda Nawawi and Muladi. 1992. Theories and Policies *Criminal*.Alumni, Bandung.

Arief, Barda Nawawi. 2001. Problems *Law enforcement andCrime Control Policy*. Bandung :PT. Image Aditya Bakti.

Arief, Barda Nawawi Arief. 2005. Some *AspectLaw Enforcement and Development Policy Criminal.*Bandung: Citra Aditya Bakti.

Asis, Abd and Andi Sofyan. 2014. Criminal Procedure Code *Introduction*. Jakarta: Prenadamedia Group.

Wardiono. 2004. Research Methods *Law*.Surakarta :Muhammadiyah UniversityPress.

Third". Jakarta: Balai Pustaka