

Bureaucracy in Criminal Justice

by Agus Raharjo

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Bureaucracy in Criminal Justice

A Study of Criminogen Factors in Law Enforcement on Narcotics Crime Settlement

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Agus Raharjo
Faculty of Law
Jenderal Soedirman University
13
Purwokerto, Indonesia
agus.raharjo007@gmail.com

Yusuf Saefudin
Indonesian Teachers' Association of Victimization
Purwokerto, Indonesia
yusuf.saefudin12@gmail.com

Abstract The criminal justice system is conducted through bureaucracy, with hope that law enforcement can proceed smoothly, efficiently and responsibly. However, this does not apply in the settlement of narcotics cases. The research method used to solve the problem is the approach toward law as law in action. The determination of a user as an addict, a suspect/convicted person is carried out by court based result assessment from Integrated Assessment Team. The Team works through a bureaucracy and procedures. Regulation as the legal basis for the work of assessment teams which are unclear, overlapping, and bad behavior of law enforcement apparatus. It resulted in the assessments that oftentimes are being formally defective, so that the result cannot be used by the court as evidence. This fact indicates that the workings of the law through the bureaucracy cannot be separated from bureaucratic failure.

Keywords: bureaucracy; criminal justice; legal behavior; integrated assessment; law enforcement

I. INTRODUCTION

Since the country has chosen to make modern as the basis of the nation's life, it actually also invites crimes for the country legal behavior. Modern law which emphasizes on certainty, regularity and order, in practice or the implementation of law in society, there are found various contradictions. Rahardjo [1] identifies that the law which carries the banners of regularity and order can in fact lead to the opposite. It is not only *ordegenic* but also *criminogenic*.

Referring to Muladi's statement that the Criminal Justice System (CJS) has *criminogenic* properties [2], it can actually be broken down into three factors. *First*, legal factors underlying the operation of criminal justice. *Second*, law enforcement behavior. *Third*, criminal justice bureaucracy that allows law enforcement "to play" its role and duty for personal, group, and group interests. All three factors are actually related since they cannot be separated one by one, but for this discussion, the focus will be on the second and third factors.

The *criminogenic* nature of criminal justice can be identified from the first time the case goes to court, then to the penitentiary, with its peak in court proceedings. In the judicial process, the involvement of actors (human/law enforcement) and bureaucracy/procedure is very high. The instance is police. On duty, police are required to have integrity, loyalty, and expertise, or in simpler terms, it is called professionalism. Unprofessional police on duty have become parasites of

Corresponding author: Agus Raharjo

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justice that create The Criminal Justice System (CJS) as a vicious circle or judicial mafia. This situation become even worse because the crimes which they committed are left alone. People are reluctant to get in touch with police and police agencies because both have become horror machines and this is a phenomenon presented before. Here is a clear example that the CJS is *criminogenic* [3][4][5][6].

Each institution in criminal justice has its own criminality, but which one has the widest and longest range to commit a crime is an advocate. Due to the wide scope of the advocate's work, he/she can engage in sustainable deviance. Based on that, it is not surprising that Rajagukguk [7] believed that advocates can be a channel that gives birth to corruption, and can also be channel that eradicates corruption.

The embodiment of *criminogen* in criminal justice appears in cases of narcotics, where the provisions concerning the determination of status for suspects and process are often used as commodities for self-benefit as well as institutions through a process of dishonest assessment. The placement of status for the suspect which has been caught by the police and National Narcotics Board is done through the assessment. The assessment is conducted by an Integrated Assessment Team consisting of Team of Doctors and Legal Team. A tortuous and time-consuming bureaucracy causes the assessment process to be quick, and the behavior of the Assessment Team is sometimes unprofessional which causes the outcome to be inconsistent.

Narcotics abuse has a broad and complex dimension from medical, psychiatric, and psychosocial sides. Narcotics abusers are sick people, who should be cured through placing them in medical and social rehabilitation institutions. Furthermore, it is found that in order to avoid the law, the assessment process is made in such a way; therefore, a person who should be categorized as a narcotics abuser is changed his status to an addict to obtain rehabilitation facilities.

II. RESEARCH METHOD

The approach of the research is law in action approach; it is a study of social science which is non-doctrinal and empirical. The primary data sources of the research are utterances and action. Moreover, the supporting data are documents and stuffs. The research is taken in Central Java. The objectives of this study are legal norms, and community behavior. The research informants are determined purposively

including advocates, judges, police, prosecutors, prison officials, narcotics addicts and service users or recipients of legal aid from advocates. The data are collected by interactive and non-interactive methods. The data obtained were analyzed by interactive analysis model.

III. RESULT AND DISCUSSION

There are two important points as the subject in this section; those are law as behavior and bureaucracy in law enforcement. There are two approaches in judicial review: traditional and non-traditional approaches. The traditional approach is a study of law and justice from a purely normative point of view. The traditional approach has its weaknesses: *first*, it is unable to express the reality of law and court more perfectly because it ignores the social dimension of law and judgment; *second*, it ignores the human element and judge as human beings. With regard to this human element, there are various dimensions of human life which helps in shaping and influencing judges in decision making [8].

The non-traditional approach is a legal and judicial study from a multi-disciplinary perspective to gain a comprehensive understanding about the breadth and depth of the workings of positive law in society. This approach does not see the law as text, because the law as text is silent and it is only through human that it becomes "alive" [8]. This approach emphasizes the consideration of social facts in the making, interpreting and application of law.

Both approaches have weaknesses. It is emphasizing the disclosure of legal facts; it will not only analyze the inter-relationships between expectations and the needs of society with consideration of judge's decision. The study of followers for both approaches is still limited to social facts that have juridical meaning, it is fact that is considered legally relevant, and is considered to be important in the framework of the establishment of law.

Compared with doing law by text, the law through behavior can be called blind law. The rules arise immediately from the interaction between people of society. This is the way of doing law through optima prima behavior. It is because doing law with actual text ultimately leads to behavior. Nonetheless, the behavior is projected on the text of the law [9].

Non-traditional studies emphasize more about the reality of law and justice (sociological jurisprudence and legal realism). The legal science that point out the behavior of law enforcement is behavioral jurisprudence. Behavioral jurisprudence was born as a reaction to the weaknesses of sociological jurisprudence and legal realism. Behavioral jurisprudence or behavioral law is a study that studies the actual behavior of law enforcement in the judicial process. These behaviors are studied in their interactions and transactions between the people involved in decision-making steps. The focus is on law enforcement personnel and the people involved in certain social roles in judge decisions [10].

The human behavior or action may add or alter the text. Law enforcement is a normative concept, in which people

only apply what is in the legislation. Such praxis is equated to the workings of the automaton. Legal sociology finds that the role of human behavior is much more varied and not merely as an automated machine [9]. With a little variation, Holmes also said, "do not believe the law as a logical building, because it has been diverted and broken by the human behavior in doing law" [1].

Law enforcement is implemented through criminal justice bureaucracy that must be done through several steps. Bureaucracy in a more limited sense; is similar to governmental organizations, public administration (public administration). This limited understanding is in accordance with the term government bureaucracy as used by Almond and Powell: government bureaucracy is a set of officially organized positions and duties related to complex levels obey to formal role-makers [11].

Bureaucracy is the ideal type of relationships in rational organization to deal with the tendency of human nature in organizing. Weber once introduced the ideal type of bureaucracy, but the bureaucracy is often connoted negatively, implied by the inefficiency of administration, such as the portrayal in the United States and France. The bureaucracy is described as an organization that cannot correct its behavior by learning from the mistake; the government becomes the master and not the servant of society so that people are afraid to take the initiative, the pile of reports, the waste of time and the depletion of government funds [11].

Bureaucracy is a very powerful institution because bureaucracy is a neutral means of rational administration in large scale. The bureaucracy is also an effective tool to help powerful groups dominate other groups [12]. Another concept to be addressed is the concept of bureaucratic law. This concept is proposed by Roberto Mangabeira Unger which he calls the regulatory law. This Regulatory Law consists of explicit provisions which are run by a particular government.

Bureaucratic law is a law consciously made by the government rather than the law that comes immediately from the society. Bureaucratic law marks the presence of the state to actively determine the power relations between groups in the form of a centralized power and its special staff. The presence of a ruler or a state with its power within the judiciary makes the bureaucracy a tool of authority. Bureaucracy in law enforcement is needed because the achievement of justice in society requires the management of the institution to realize its objectives.

Some of research results which are done by Raharjo et.al [13] [14] [15] [16] shows that criminal justice bureaucracy is often violated by law enforcer to get benefits in settling down a case, such as neglected the rights of suspect in law assistance, violation, until freedom of limitation in choosing advocate. Moreover, the performance of advocate which refuse to provide law assistance for poor people and the tortuous bureaucracy to get them, make justice acquisition in Indonesia is worse [17] [18] [19] [20] [21] [22].

Drugs abuse has a large and complex dimension, either from medical, psychiatric, mental health, or psychosocial aspect [23]. Drug addict and abuser are "sick people". Drug

addict and/or drug abuser are obliged to attend medical treatment by placing them in either medical or social rehabilitation (Article 54, Law No. 35 Year 2009 about Narcotic). For narcotics addicts and drug abuse victims who are designated as suspects or defendants in narcotic narcotics and narcotics precursor cases need special handling by placing in rehabilitation institutions in order to obtain treatment and care in the framework of recovery. This is in accordance with several provisions including Article 54, Article 55, Article 103, and Article 127 of the Narcotics Law; Circular Letter of the Supreme Court Number 4 Year 2010 concerning Placement of Abuse, Abuse and Narcotics Addicts into Medical Rehabilitation and Rehabilitation Institution (SEMA Narcotics); and Article 13 paragraph (3) of Government Regulation Number 25 Year 2011 concerning the Implementation of Reporting Nation Drug Addict, Narcotics Addict who are undergoing judicial process can be placed in Rehabilitation Institution [24].

In addition, there is a Regulation of the Head of National Narcotics Agency no. 11 Year 2014 on Procedures for Handling Suspects and/or Accused Narcotics Addicts and Narcotics Abuse Victims into Rehabilitation Institution (*Perka BNN*). Narcotics Addicting and/or Narcotics Abuse Victims who are designated as Suspects or Defendants in Narcotics Crime cases during the judicial process need special handling through their placement into the Rehabilitation Agency to obtain treatment and care for recovery [24]. Defendants who are dependent on drug abuse, the judge may order the accused to undergo treatment and/or treatment. The word "can"; can be interpreted that the judge is not obligated or always orders the defendant to undergo treatment and/or treatment [25].

Many of law enforcement officials argue that narcotics cases are complex cases; their disclosure requires extra works and analysis. If successfully uncovered the case, the investigator needs to be careful in analyzing the case; therefore, it will not cause errors in the process of its implementation. It should be seen and explored more about the proprietary motive of the narcotics and how the suspect relates to the existing narcotics network, or vice versa. An arrested suspect or caught with evidence under the SEMA Narcotics provision should get the opportunity to undergo treatment [24]. SEMA Narcotics mentions five conditions for obtaining a rehabilitation decision, namely: 1) The defendant is arrested in a state of caught red-handed; 2) At the time of being caught, one day's evidence is found; 3) Laboratory test letter shows positive using narcotics; 4) the defendant gets certificate from a psychiatrist/ physician; 5) The defendant is not proven to be involved in illicit trafficking of narcotics.

Rehabilitation is carried out on the basis of the assessment results. Article 7 Paragraph (4) of the Joint Regulation states that the implementation of medical rehabilitation and / or social rehabilitation as referred to in paragraph (1) and paragraph (2) shall be conducted based on the assessment result from the Integrated Assessment Team and in accordance with the provisions of applicable laws and regulations. The Integrated Assessment Team in Purbalingga has been formed since 2015 ago. The change of leadership in the National Narcotics Agency (BNN) of Purbalingga Regency has implications for the change of SK TAT Team.

Based on Decree Number: Skep / 18 / I / Ka / Bu.02.03 / 2017 / BNNP-JTG on Integrated Assessment Team (*Tim Asesmen Terpadu*) Purbalingga District Year 2017 Date 30 January 2017 [24].

According to data obtained from Purbalingga Regency Police and Purbalingga District Court, narcotics cases that there were 14 cases of narcotics cases occurred in 2016, and 1 case handled by National Anti-Narcotics Agency of Central Java Province; therefore, the total were 15 narcotics cases. According to Senentyo (Head of Narcotics and Drugs Unit, Purbalingga Regency Police), the condition of suspects who can be assessed are addicts, abusers and victims of narcotics abuse. The ones cannot be assessed if they are dealers and couriers. However, the practice done by Purbalingga Regency Police were not in accordance with the provisions of conditions. Almost all cases of narcotics handled got assessment [24].

In this regard, Masmudi, a Head of the Public Criminal Section of Purbalingga State Attorney, more agrees that each case should be assessed in order to investigate its role in case of crime. Meanwhile, Wahyu Eni (Head of Rehabilitation Section of Purbalingga National Narcotics Agency) said, "During this time, I have assessed a suspect who was caught red-handed with lower weight evidence with the provisions of the regulation (SEMA), for instance, if the shabu under 1 gram. If I know more than that I will refuse to do the assessment". The unclear conditions about who should be assessed appears from Kurniasih's opinion (Psychologist of Goeteng Tarunadibrata Purbalingga Regency Hospital, as a Member of the Assessment Team). She believes that who should be assessed is unclear until now. The Head of Rehabilitation said that the subject matter which can be assessed is mentioned in Article 127, while the Head of Narcotics Eradication said "all assessments may be conducted. However, if looking at the provisions of SEMA, the one who may be assessed is the violator of Article 127, and it is not related with other articles. I'm more confident with that. But during this time all cases were assessed" [24].

The lack of understanding in Integrated Assessment Team can be seen in several cases. Sometimes, the assessment is necessarily done but it is not and vice versa due to the poor coordination among related parties and to absence of relevant regulation. For instance, Abdullah case. According to the result of assessment, Abdullah was arrested with the evidence 12.36 gram methamphetamine. The other facts experienced by "AS". he is purely as a drugs user and right now is in prison without getting special treatment there. He is a drug addict or drug user caught by BNN Purbalingga Regency on May 25th 2016 with the evidence 0.51 gram methamphetamine [24].

"AS" as a suspect, did not get special treatment in prison, he should get the treatment according to the Law. At the time of the trial, "AS" also preferred to be sentenced to imprisonment rather than by undergoing rehabilitation due to need high cost of the process. The high cost of rehabilitation is not denied by BNNK of Purbalingga, Wahyu Eni, Kurniasih, as well as the RSUD Goeteng Tarunadibrata as institutions receiving compulsory report [24].

Provisions in [5] assessment under Article 12 paragraph (1) letter B of the Regulation of the Head of National Narcotics Agency Number 11 Year 2014, states that the assessment should be implemented and signed by at least 2 medical teams. Based on the assessment of the data, the provision is rarely met because the one who conducts the assessment and signs it is only one medical officer. With the result, it contains a formal defect that causes the recommendations of TAT Team is not eligible to be evidence on trial [24].

The settlement of narcotics crime cases is not an exception from negative [9] impression of judicial bureaucracy. The placement of addicts and victims of narcotics abuse to rehabilitation institution is mandated in Law Number 35 Year 2009 and Circular of Supreme Court Number 4 Year 2010. Even so, the regulations seem to be neglected by law enforcer. Punishment is still a favorable even though they are not the perpetrators but victim.

The reality is shown from research result which shows that only 1 from 6 cases of narcotics in Purbalingga – Central Java sentenced to rehabilitation, meanwhile the rest are sentenced imprisonment. The placement of addicts and narcotics abuse to penitentiary is not better, but can potentially cause the opposite effect. Avoiding the suspect from the judicial route is a solution to avoid second victimization [24].

Unprofessional and easily intervened integrated assessment practice in traditional approach can be said already appropriate with the set procedures and bureaucracy. Normative provisions in regulation about assessment procedures may have been done, however in non-traditional approach context this matter needs to be criticized. Reminiscing that behavior from assessment team in working and making decision is not independent. These behaviors are containing *criminogen* characteristic. The procedure has not been done properly, and it substantially does not give benefit for the justice seeker. This is what is known as justice has not been right procedurally with neglect substantial justice.

Assessment is done in order the determination of a suspect or defendant narcotics crime does not make mistakes, especially in post-event treatment. In the view of judicial bureaucratic organizations, this can be viewed as a way to make more responsible decisions. However, it cannot be separated from bureaucratic problem, such as inefficiency. Longer procedures are vulnerable to intervention; therefore, the person who should be eligible to be imprisoned is even decided to be rehabilitated. In the end, an assessment becomes a place to get the legitimacy of rehabilitation. Law enforcement officers are not ready to apply the correct procedures. The way punishment or punishment behavior of the law enforcement apparatus has not completely changed from the old habits, the habit of cheating the bureaucracy is still in their behaviors. The orientation of the results is not followed by the correct process; therefore, the result is not as expected by the policymaker.

IV. CONCLUSION

Traditional approach in criminal justice cannot give complete explanation about *criminogen* factors in criminal justice. Non-traditional approach which concerning the aspect of law enforcer's behavior and criminal justice bureaucracy can give a better explanation. Justice cannot be separated from bureaucracy 'disease' which is caused by law enforcer deviation behavior. In bureaucracy or procedural the verdict may have been right (procedural justice), yet how they get or the substitution of verdict may be wrong (substantial justice). This is what happens in settlement of narcotics criminal.

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