

JOHN BRAITHWAITE'S INFLUENCE ON THE INTEGRATED APPROACH IN THE *CRIMINAL JUSTICE SYSTEM*

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ABSTRACT

The criminal justice system can be defined as the use of a systems approach to the administrative mechanism of criminal justice, and criminal justice as a system is the result of the interaction between laws and regulations, administrative practices and social attitudes or behavior. Understanding the system itself implies an interaction process that is prepared rationally and in an efficient manner to provide certain results with all its limitations. According to John Braithwaite, a serious study is needed so that the concept of restorative justice can be applied effectively in the enforcement of cases of violations of tax law, both in terms of violations of administrative provisions and penalties. .

Keywords : Criminal justice system, Criminal, John Braithwaite, Law

INTRODUCTION

The term "Criminal Justice System" or the Criminal Justice System (SPP) has now become a term that indicates a working mechanism in crime prevention using a basic systems approach [1]. The criminal justice system can also be interpreted as the use of a systems approach to the administrative mechanism of criminal justice, and criminal justice as a system is the result of the interaction between laws and regulations, administrative practices and social attitudes or behavior. The understanding of the system itself implies an interaction process that is prepared rationally and in an efficient manner to provide certain results with all its limitations [1].

Research[2] is very important in the development of science and technology[3]. Sometimes the law becomes irrelevant to the current conditions of society or is no longer in accordance with the development of technology used by humans.[4] So that in practice the government can revise the provisions of the legislation, both articles and overall regulations. Research conducted in the context of legal science,

John Braithwaite, one of the foremost figures in defending restorative ideas, suggested that restorative justice is a new direction between the justice and welfare model and between retribution and rehabilitation. In simple terms, restorative justice is an alternative in the criminal justice system by prioritizing an integral approach between the perpetrator and the victim and the community as a unit to find solutions and return to the pattern of good relations in society [5]. Currently, Indonesia has been left far behind from the progress of thinking in the legal world [6]. From the problems above, the research focuses on examining how to carry out an integrated approach in the application of the Criminal Justice System based on the influence of John Braithwaite.

METHOD

The research method used in writing this paper is a normative empirical legal research method, this method is basically a combination of a normative legal approach with the addition of various empirical elements. Empirical normative research method regarding the implementation of normative legal provisions (laws) in action on every particular legal event that occurs in a society. This research belongs to the category of research that is non-judicial case study. So that its nature is a case study approach to law that is without conflict and does not interfere with the courts. In addition, the author also uses research methods, live case studies. This live case study research method is an approach to a legal event whose process is still ongoing or has not ended. The legal materials used in this research are primary, secondary and tertiary legal materials. This is related to the opinion of CFG Sunaryati Hartono, [7] "We must dare to use normative legal research methods, even though (so that our research is not speculative) we must also start from the results of legal sociology research". For the sake of the development and development of national law, in order to return to using legal research methods, without letting go or belittling the meaning of social research methods that we have now mastered.

DISCUSSION

In its further development, nowadays, there are changes in views of the law because: 1) The law must be based on the principles of community justice which continues to develop; 2) It turns out that legislators cannot keep up with the speed of movement of society or the process of social development, so that the formulation of laws is always behind; 3) The law cannot solve every problem that arises. The law cannot be detailed (detailed) but only provides *algemeene richtlijnen* (general guidelines); 4) Laws cannot be perfect, sometimes vague terms are used and judges must give further meaning by giving interpretations; 5) Laws cannot be complete and cannot cover everything. Here and there there is always a *leemten* (emptiness in the law) so the judge must arrange it by conducting legal reconstruction, *rechtsverfijning* or *argumentum a contrario* ; 6) What is appropriate and reasonable in certain cases also applies to other similar cases.

Reviewing comparative law in terms of various purposes, functions of theory, and practice. From another perspective, the function of comparative law can be distinguished between the function in the development of legal science and the function in the practice and development of law. The various groups are interconnected and complement each other, so this description will concern all these groups.

The fact shows that each country has its own culture and laws that are different from the laws and cultures of other countries, for example Anglo Saxon law (*common law*) is different from Continental European law (*civil law*), it is also different from the laws of socialist countries, even the laws of socialist countries. What applies in Indonesia is also different from our customary law. To find out the differences and similarities and to find out the causes, comparative law has an important role.

Comparative law has a very important role in the future era of legal development. This era of development includes "development of legal knowledge" and "legal practice and development". The role of comparative law in the development of science is considered very important because: 1) Through comparative law it can be seen that the law owned by one country is different from the law owned by another country, this is due to differences in the rules, principles and institutions -

the legal institution; 2) Through legal comparisons, it can also be seen that completely different legal systems can show similarities in their legal concepts or in their legal principles; 3) Whereas in carrying out legal comparisons, it can be directed to other fields of law (the fields of sociology, philosophy and legal history).

Comparative law is also very useful in legal practice, especially for *applied research* and the formation of new laws. In the field of legal development, the role of comparative law should not be ignored. Comparative law applied in conjunction with the development of legal philosophy, legal sociology and legal history, especially if it is also motivated by knowledge in economics, psychology, engineering and futurology, can help create law not only for the present, but also for future law. Thus, Indonesia will give birth to law graduates who can plan law for the future (*legal planners*). Law graduates who cannot be invited to evolve, who are always left behind with social conflicts that arise in society, will be erased by themselves, and will even turn into law scholars as pioneers in the formation of a society that is peaceful and harmonious.

Without the ability to repair the damaged relationship between the perpetrator, the victim and the community, the public's reaction to the crime will only be punitive, which does not serve the purpose of a deterrent effect. In addition, criminal procedural law, which is designed to address the “average” problem of all crimes, will not be able to touch the substance of each unique crime problem. In Weber's (1978) observation, although modern criminal procedural law is capable of being a rational (measured) procedural instrument, it has lost its ability to produce substantive justice, which is unique for each case, because procedural law operates on the average assumption. Based on the description above, it can be briefly formulated that in order to restore the relationship between the parties experiencing conflict, there are several main principles for the operation of *Restorative Justice* , which are based on 3 (three) main principles: 1) People experiencing conflict (including crime)); 2) Material and symbolic improvements to victims and the community; 3) Social reintegration of violators.

CONCLUSION

Based on the description and discussion, the authors can draw temporary conclusions as follows: 1). The basis behind the Police Not Following Up on Reports From Any Party Against the Twitter Account Owner @ Fchkautsar is, because of direct instructions from the National Police Chief "For criminal acts that are included in the scope of Law Number 11 of 2008 concerning Information and Electronic Transactions which have been amended by Law -Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions ("UU ITE"), settlement of criminal cases with the principle of Restorative Justice (*restorative justice*). *justice*) is regulated in an instruction issued by the National Police Chief, to all Polda in the country via Telegram Letter No: ST/339/II/RES.1.1.1./2021 dated 22 February 2021. Several criminal acts in the ITE Law that can be resolved with the principles of *restorative justice* , namely defamation/slander/insulting based on Article 27 paragraph (3) of the ITE Law, Article 207 of the Criminal Code, Article 310 of the Criminal Code, and Article 311 of the Criminal Code. In the instruction, it is explained that for criminal acts of defamation/slander/insult, no detention shall be carried out". *Restorative Effect Justice* on the Performance of other Criminal Justice Sub-Systems (Prosecutors, Courts and Correctional Institutions). "Currently, the practice of all law enforcement institutions in Indonesia, both the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Ministry of Law and Human Rights of the Republic of Indonesia have adopted the principle of

restorative justice . *justice*) as a way to resolve a case together, namely the Memorandum of Understanding with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia and the Indonesian Police Number 131/KMS/SKB/X/2012 Number M-HH-07. HM.03.02 of 2012. KEP-06/E/EJP/10/2012. Number B/39/X/2012 dated October 17, 2012 concerning the Implementation of Adjustment on the Limits of Minor Crimes and the Amount of Fines for Quick Examination Procedures and the Implementation of Restorative *Justice justice*) (“Memorandum of Understanding”) which regulates the settlement of criminal cases through the principles of restorative justice (restorative justice) . *justice*). In this Memorandum of Understanding, the principle of restorative *justice justice*) for the first time get a definition in Article 1 paragraph (2), “Restorative Justice (*Restorative* ” *Justice* is the settlement of minor criminal cases carried out by investigators at the investigation stage or judges from the beginning of the trial by involving the perpetrators, victims, families of the perpetrators/victims, and related community leaders to jointly seek a fair solution by emphasizing restoration back to its original state. ”.

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