# The Implementation of Simple, Fast, Low Cost Judicial Basis In the Judicial Practices

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**Abstrak**

The basic problems judgments simple, fast and low cost also upon the Supreme Court, where various rules, whether in the form of the Supreme Court rules or circular Letter of the Supreme Court was issued in order to accelerate the examination process until the escaping minutasi decision so that the person can immediately determine further steps, including by utilizing technology to speed up the process. But until this time, in the jurisdiction of the criminal justice not mistakes to make *small summary court* and not teradopsi in total on the basis of *restorative justice*. Although there is a process of checking with the event quickly in KUHAP only against criminal acts of light and the matter in a traffic accident (laka necessarily) and adopted the basis of *restorative justice* on the legislation that are custom without connecting with KUHAP. The basis of the judiciary is simple, fast and low cost in the jurisdiction of the practice of the law appears in the form of a distorted, where often a suspects/Defendants start since the jurisdiction of the pre-adjudikasi offered not to use mentoring from the power of the Law with the reasons will be changed the article will tangled by so that the requirement will be more lightly.

Kata kunci: *behavior leads, venues adjudikasi, accompanied and defended by the power of the Law*

## INTRODUCTION

The legal system in Indonesia has many structural similarities with colonial Dutch legal system is still measurable accomplishments in the Indonesian Archipelago. But the structure of the legal system to obtain the meaning that given the people against it, and Indonesian legal system today is carried out by the people of Indonesia, not by the Dutch nation. (Daniel S. Lev , 1990).

Every citizen has the same rights and duties before the law. The law limits and at the same time enrich the independence of citizens. The law presses the negative impact that can be caused by the action of citizens. But the law also increases the positive impact of the citizen activities of the state. So the law basically ensures the emergence of the positive aspects of humanity and inhibits the negative aspects of humanity. The law is obeyed will raise order and maximize the expression of the community potential.

The enforcement of law and order is a requirement for the efforts of the creation of Indonesia that peace and prosperity. Without the existence of the law that established and order that realized, then the certainty, safe feeling, quiet, or the life of the impossible pillars can be realized. So also the absence of the enforcement of law and order it is impossible for the community to strive to and work with both to meet the needs of his life. So once again, this shows that there are strong ties between the peace, justice and peace. The improvement in the aspect of justice will facilitate the achievement of prosperity and peace.

As a social creature, people have different interests between one another. The difference these interests can lead the formation of contrast, strife, dispute, even hostility. To prevent the required norms or the beacon of life, then known with legal norms that is very important role in regulating human behavior in societal life. (Muhammad Nasir , 2005).

The law functions as a protection of the man interests. In order for human interests are protected, the law must be implemented. The implementation of the law can be normal, peace, but can also occur because of the transgression of the law. In this case the law that has been violated must be enforced. Through this law enforcement of the law to be a reality. Enforce the law there are three elements that always must be noted, namely legal certainty (*rechtssicherheit*), utility (*zweckmassigkeit*) and justice (Sudikno Mertokusumo & A. Pitlo, 1993).

But the three elements were very is not possible when then technically experiencing the obstacles with the accumulation of things. So that the desire of the community in the search for justice is restricted.

The pile of things is the classic problem faced by the Supreme Court that even until now has not been successfully solved. In fact, problem of accumulation of things not only happen in Indonesia. In many countries also it is also a strange problems. In the Supreme Court of the Philippines, since 1994

until 1998, not less 6000 until 7000 cases (between the number of things that are pending and the new entrance to the Supreme Court every year.

In the United States, the number of cases each year increased by around 3.8 %. This can be seen in 1998 totaled 7.109 things, in 1999 to 7.377 things. Even in the United States alone the percentage of cases with the things that interrupted especially in the Supreme Court the federal level only about 1 percent per year. While in the Netherlands the number of cases in one year ranged between 5000-5500 things.

In fact when there was interesting research institutions Research and Development of the Social Sciences at the University of Indonesia (LPPIS-UI), which is investigating the cause of the accumulation of things. Inferred LPPIS-UI that the main cause of the accumulation of things is the aim of the case in the Supreme Court which is very bureaucratic and complicated. Infection any time consuming. To reach the final decision, something must through 26 step examination. The team suggested that the processing of the case is shortened. Unfortunately, research results was rumored to evaporate so. The case by case nears, and continues to accumulate in the Supreme Court.

## ANALYSIS AND DISCUSSION

### 1. Accusing Culture

According to Lawrence Meir Friedman that the substance of the structure and the culture of the law is a unity in the conduct of the law enforcement efforts. Thus the best anything a legislation when it comes with a good executive structure and culture that supports it will be difficult to enforce the law (*power tends to corrupt, absolute power corrupt absolutely*). Indonesian culture is very closely connected with the values of togetherness and cooperativeness.

In the development of the study had been born new term namely "culture of the law' as impregnation between the law and cultural variables. The term legal culture first put forward by Friedman to mention the forces of social (*social forces*that affect the workings of the law in the community in the form of the elements of the values and attitudes of the community related to the institution of the law. (Budi Agus Riswandi, & M. Syamsudin, 2005).

As known that, culture of the law was the climate change the mind of the community and the strength of the community that determines how a law is used, avoided or misunderstood use. The culture of the law is also a culture of non material or spiritual. (Citrawinda Priapantja, 1999).

Based on this, it is known that the law with the culture has a relationship that is closely, namely the law is concrete from the values of the culture of a society, in other words the law is the embodiment of the system of the values of the society culture. The development of this analysis gave birth to the term culture of the law as impregnation between the law and cultural variables.

When associated with the judiciary in Indonesia with the culture of the law that developed in both the public and the community of the law, then as a system, judgments have sub system that support the workings of the judicial system. The judicial system has a mechanism that moves toward toward realizing the mission of the essence of the existence of the judiciary as an institution will ultimately do the judicial system requires a clear vision so that the activity or the implementation of the role of the judicial process is effective and efficient.

Since a man, either voluntarily or because of necessity, fusing themselves to a community, since that was when the potential for conflict of interest (*conflict of interest*), then needed a set of rules in order to balance the interests of the place. A set of rules will appear in the association of human life through the agreements that are collegial agreed as the norm/rules. The norms/rules that live and grow it and then on the development attached sanctions as a tool to overawe to ensure justice for the victims, which then norms that have rule/sanction was called as the norm/rule of law.

The law regulates the relations of the law. The relationship of the law consists of the ties of the bond between the individual and the community and between the individuals themselves. In an effort to regulate the law adjust the interests of individuals with the interests of the community with the best in trying to find a balance between giving freedom to the individual and protect society against individual freedom. Remember that society is composed of individuals that causes the interaction, then will always conflict or tension between the interests of individuals and between the interests of the community. The law is attempting to accommodate the tension or conflict in the best possible way. (Sudikno Mertokusumo , 2002).

To be paid attention in this writing is the ***first***, the type of criminal act and the ***second***, the level of awareness of the law. It is undeniable that technological and trade globalization also brought the impact to the development of the law significantly. Globalization brought the impact of these changes is not only against the norms/rules, but also having an impact on the value of living in the community. Why

in the period of time for some twenty years, the community experienced a change in maintaining norms that live in the community itself?

According to **Soerjono Soekanto**, which explains the social changes in a society can occur because of a variety of reasons. The reasons can come from the community itself (*Internal Auditor*) muapun from outside of the community (*a result of*). As for *internal audit* among others can be mentioned for example the increase population; new discoveries; contradiction (*conflict*); or perhaps because of a revolution. For *a result* can cover for that comes from the natural environment physical, the influence of other cultures, war and so on. A change can happen quickly when a society more often happens contact communication with the other, or have an advanced education system. (Soerjono Soekamto, 1997) Thus the globalization in the era of free currently experiencing collaboration with the development of technological information and education system that advanced raises the level of awareness of the law is high for each individual. Everyone is currently able to feel whereas the existence of a loss because terlanggarnya legal interest and the rights of the law which he possessed by others.

But the **author** himself saw an *ambiguous behavior* behavior that ambiguous), where on one side of the community realize the rights and interests of his law stolen generations so that he should require it through the path of the law; on the other hand, he felt the law in Indonesia, especially the law enforcement agencies that *corruptible* become the main barrier for him to obtain justice and the rights of him. However, *ambiguous behavior* behavior that ambiguous) is often decided to continue to use the path of the law as a solution to settle dispute.

Figure that more accurately conveyed by **Adi Sulistiyono** (2005) in scientific oration which asserts as follows:

> "*In Indonesia, when dispute occurs in general there are many people using the path court to get justice. This condition has led to the flow of things that flows through the courts raced quickly, so that the accumulation of cases in the Supreme Court in September 2001 alone has reached 16.233 things, then at the beginning of the year 2005 arrears case has increased to 21,000 things. Due to arrears the matter, the process of handling a case to get the verdict and legal stay in Indonesia the average take years, even until 12 years. For the party who contend ever find justice process is clearly not profitable, both from the energy of mind is wasted and many costs. The condition did not discourage the parties contend to still give trust judicial institutions to resolve disputes would*."

Even though the context that is conveyed by **Adi Sulistiyono** were tainted by penal, but it is the representative darideskripsi conditions general awareness of the law of Indonesian society today. Penal nuance is not much different with nuasan kepidanaan, in addition to factors such as the level of awareness of the law and the politics of criminal law which is realized through the establishment of the legal system of Criminal also trigger outbreaks of the requirements of the law by kepidanaan. The Criminal Law Politics has determine the direction of the policy of the law against a type of deeds that previously was not a criminal act, then specified as a criminal act or known by the term "penalisasi" in the jurisdiction of Crimes or "criminalisation" in the jurisdiction of Science Criminology. Many types of new criminal act which was formulated into a legislation, also gives the gap or the means for everyone to take advantage of it as a criminal offense.

***The third factor***, the institution of law enforcement agencies (Advocates, police, prosecutors and judges) acts as "trash". Between the first factor and a second factor, have dependence on the process of the workings of the law with the role of law enforcement agencies (Advocates, police, prosecutors and judges) or APH. Almost all APH, thrown on to the ***fourth factor*** that is involvement of economy needs, removes the concept of *win-win solution* and concentrate their work on the *win-losesolution* with a shelter to defend the rights and interests of the client or the reporter/claimants.

The accumulation of criminal cases also caused the ***fifth factor*** namely the fulfillment or terserapnya Isian List budget implementation of the budget (DIPA) the state budget has been allocated as the financing of law enforcement. The fifth factor to move in the two sides of the nature of the negative, namely (1). The things that the middle-*handle* almost impossible stopped, due to the replacement of the operational cost is at the end of the settlement of the matter. Unless there is the replacement of the cost of the revocation process things; (2). So that the budget DIPA next year can level and trying to not reduced, then aph a prime public institutions, especially the police and the prosecutors, tried hard to spend the budget. Even in some areas outside the Great cities, many things that forced to enter the criminal justice process. Although we should be appreciation with the existence of the technical regulations of each institution that try to perform preventive measures the accumulation of things.

The five factor is not a static electricity, but can only grow more and more. But the certainty of the luster of the culture of demand or claim is very high. It is slightly different with the jurisdiction of penal, where advocates are required to reconcile, where judges are required to perform the mediation

even though the process is done carelessly file the and did not seem concerned, but still far better than the jurisdiction of criminal practices. The inability and incomprehension about the implementation of law using the instrument diskresi very far from hope. So in practice, peace means the cost that will be issued by the perpetrators of the criminal acts will swell. Accusing culture, like it or not love, became one of the prime mover of the economy and increase the *income of* the parties.

Accusing culture phenomenon is reflected in the emergence of the phenomenon of *overcapacity* from all LAPAS in Indonesia. According to the data from the Directorate General of socialization of 33 of the Province, 28 of them are *over capacity of* prisoners or prison inmates. Place the detention that specifically stated as the house state prisoners still in number as many as 264. But the number of decline from the previous as much as 291 detention. Detention has not increased, thus death row inmates increased. Since the year 2007 is 86.550 con, in 2013 rose to 108.143 prison inmates. Data released on May 2016 by Director General fit the number of citizens as much as 187.000 Target people who occupy 477 LAPAS and detention center in the whole of Indonesia, but on June 2016 the number of schools in the whole of Indonesia rose to 193.800 people. different Data revealed by the Ministry of Justice and Human Rights through Yasonna H. Laoly where on October 2015 the number of escaped inmates all over Indonesia as much as 160.722 people, but on April 2016 the number increased to 180,000 people. This means that within a period of time in the period of 6 months increased by 23,000 people. The data shows the average 2015, 1.112 people. 2016 average already 1.805 per day.

LAPAS Bengkelu occupied 138,000 target citizens, LAPAS Gulf in occupied 2,195.07 target citizens with the capacity of 366 people, Gorontalo LAPAS occupied by 1339 target citizens with the capacity of 330 people, LAPAS Medan was occupied by as many as 3,000 Target citizens with the capacity of 1,000, LAPAS Gayo Lues occupied 93 Target citizens with the capacity of 65 people, LAPAS Tekengon occupied 130 Target citizens with the capacity of 65 people, LAPAS Pangkalan Bun occupied 550 Target citizens with the capacity of 280 people, LAPAS and detention in Lampung Province was occupied by as many as 5,700 Target citizens with the capacity of the people, LAPAS 3.100 Paledang Bogor was occupied by as many as 1.039 citizens with the capacity to target 634 people, LAPAS Cipinang occupied as much as 3213 target citizens with the capacity of 1,300 people, LAPAS Medaeng East Java was occupied by as many as 1.542 Target citizens with the capacity 504 people, LAPAS class 2B Banyuwangi occupied 842 Target citizens with the capacity of 260 people, LAPAS class 2B Nyomplong Sukabumi City occupied by as many as 403 Target citizens with the capacity as much as 200 people, Lapas shelter capacity and detention in West Java 15.217 people, so that occurred over the capacity of 2.957 people or 19,43%, among others Lapas Bekasi, Karawang, Cibinong, Bogor, earrings, Bandung Cirebon, Tasikmalaya with density level 75% to 250%, penitentiary for and house prisoners in all Riau experience over the capacity reached 5.836 people or as 288 percent consisting of 14 mabes and lapas and mabes branches in all Riau. With a capacity of 3101 the prisoners. While the existing prisoners reached 8937 people. The data is a part of the new authors show on this writing.

The impact of the phenomenon of *overcapacity* is adding the cost of eating the citizens of target where the cost of eating issued state for prison inmates reach Rp2,4 trillion in a year. The calculation, money eat Rp15.500 thousand people per day, and adding the building LAPAS and the new Detention Center in order to resolve the overcapacity. Although, is a solution, but for the author of the discourse of adding LAPAS and the new Detention Center is not the appropriate solution and does not touch the root of the problem in criminal law and social development in Indonesia.

The phenomenon of inversely proportional with what is happening in the Netherlands, which is the country that "force" paradigm of his Criminal Law in Indonesia through colonialism, where in each year decrease the crime rate as much as 0.9 percent. So, on 2016 forced the Netherlands must close 5 (five) LAPAS him. Which resulted in the dismissal of 1,900 employees LAPAS. Like "jokes", there are 2 (two) the phenomenon that is ***first***,Netherlands trying to find solutions to the laid off with how to rent out of the empty LAPAS LAPAS against Belgium and Norway; the ***second***, one of the toughest prisons in the Netherlands, Hittites Arresthuis, in Roermond, near the border with Germany now even have changed the form. The building that was to be feared has now been converted to a luxury hotel.The Ministry of the Law of the Netherlands explained that the Dutch legal system is more focused to does not claim the evil that does not cause the sacrifice, rehabilitation, short sentence, skills program, and assimilation back with the community.

## 2. The Basis of Fast, Simple, and Low Cost Judgment

This principle is contained in Article 2 paragraph (4) of Act No. 48/2009 asserts the "*Judgments done with simple, fast and low cost*." while in KUHAP, basis is contained in the General explanation of the Number 3 letter e which asserts as follows:

> "*Judgments that must be done quickly, simple and low cost and free, honest and no partiality must be consistently applied in all judicial level*."

As a consequence of the basis, then Judgment (in this case is the judge) have an obligation to help justice seekers and attempting to overcome all obstacles and barriers to the achievement of the judgments that are Simple, fast and low cost (*vide* Article 4 paragraph (2) Constitution 48/2009), but the obligation cannot ignore other basis.

Before describe more toward principle, visible there are legal norms that *summir* and *ambiguous*. Where the Act No. 48/2009 using the *term* "judgments" while on the explanation using the phrase "*in the examination and settlement of the case in court*". So the question is whether the basis of the judiciary is simple, fast and low cost is valid from since the process on the jurisdiction of the pre-adjudikasi until the implementation of the verdict, or only applies to venues adjudikasi only?

Referring to the view of Roeslan Saleh (1983) who explained that the court is only a that enhance what has been started in the preliminary examination (pre-adjudication). Then associated with Article 38 paragraph (2) Constitution on 48/2009, then the functions associated with the judicial process is the function of the assistance or legal services, the function of an investigation and investigations, the prosecution function is the function of the implementation of the decision and the function of the settlement of disputes out of court.

So the views expressed M. Yahya Harahap (2004) then interpret the basis through the systematic interpretation that explains the derivations from the basis as commanded by the Article 50 KUHAP, namely:

1. Get an examination of the Investigators;
2. Immediately submitted to the Public Prosecutor by the investigators;
3. Immediately submitted to The Court by the Public Prosecutor;
4. Qualify immediately judged by the Court.

The existence of the basis, on the struggles to provide protection and guarantee legal certainty for the parties involved in the criminal justice process, not only against suspects/accused but also for victims and the community. Therefore, associated with simple basis so it is expected that the event in the judgment must be clear, easily understood and not circular or bureaucratic, keep away from all kinds of formality of formality that is difficult to understand by reason. So that the examination process can run fast, including in it is the process of the settlement of the transcript of the proceeding examination, the making of the decision by the judges and the implementation of the execution. Yet in the implementation of the judicial basis of simple and low cost, in practice has started to look for changes that are encouraging, even marked with the emergence of filing case examination by *prodeo* (free). While for the implementation of the basis of fast is still a great questions and unresolved primarily in the execution of the implementation of the decision of the Judges. Not rare for the implementation of the decision takes one to two years. (Jeremias Lemek , 2007).

The basis of the judiciary is simple, fast and low cost is not a basis that *simple*, but thus contains the complexity of its own complexity in the practice of the law. In the development of the law today, the basis of the judiciary is simple, fast and low cost is more often diindetikan on the basis of *the speedy administration of justice*. Where the basis of judgments is simple, fast and low cost is closely related to the administration system built by each of the law enforcement institutions. We often hear of the accumulation of things, not only in the Supreme Court only, but also on the level of investigation that has spillover effects to the jurisdiction of the prosecution. The problem is whether KUHAP provide legal efforts and sanctions if the Article 50 the KUHAP terlanggar? In fact it is not available, so that Article 50 KUHAP is very vulnerable to an abuse of authority. It is indeed very relate with the mentality and professionalism from every public officers as law enforcement agencies.

Article 18 paragraph (3) KUHAP has nothing that is closely connected with the basis of judgments quickly, which then raises the question of the judicial related about telling the time that will be taken to the families of the suspects get notification on efforts to forcibly arrest? KUHAP does not provide an explanation about the word "soon". It is then bother a sense of justice for the families who have the right to know the existence and legal status of the suspects. Related to the fulfillment of the meaning of the word "soon" depends on the system administration of the things which is implemented by a law enforcement institutions.

Based on colliding the rights of suspects and/or juxtaposition of family, the Constitutional Court through the decision on the Decision of the Constitutional Court of Indonesia No. 03/PUU-XI/2013, to grant the petition with interpret the meaning of the word 'soon' which is not more than 7 (seven) days from since an effort to force the arrest.

## CONCLUSION

Related to the implementation of the judicial basis is simple, fast and low cost in the practice of the judiciary, then when you see the index many his cases in the level of cassation or the Supreme Court, each year has increased. So that the accumulation of cases in the Supreme Court and finally the intent of the law - providing legal certainty, justice and the benefit to not achieved. In addition, author also displays a comparison with the Netherlands are considered to be successful in forcing the settlement of criminal cases in the rank of mediation so that there will be no *overcapacty* as occurred in Indonesia. Change of Article 51 H KUHAP Netherlands that divided the authority to the Attorney in memediasikan certain things to the police is a strategic steps. It is different with what happened in Indonesia. To avoid the accumulation of things, Supreme Court only issued several letters circulated to speed up the process of criminal investigation, but in fact the judicial adminitrasi system is not as simple as that. The judicial process that these old apparently did not discourage justice seekers to mengajukankan through the mechanisms of the criminal justice system.

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