

Research Article

Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System

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ABSTRACT

The criminal justice system should be an embodiment of values of Pancasila. Few cases raised concerns and questioned Pancasila's practice because it hurt community justice sense. Pancasila must be reflected in criminal law enforcement. The criminal justice system is open whose operation is influenced by the environment the subsystems's operation, it is very important to be studied comprehensively. This article discusses the Indonesian criminal justice system with a Pancasila perspective; Indonesian criminal justice system with the concept of Pancasila as an open criminal justice system; subsystem in the Indonesian criminal justice system has the concept of Pancasila as an open criminal justice system. The research method in this article is normative with philosophy approach. The results showed that criminal justice system has Pancasila perspective, means that it must prioritize humanity, the balance of the interests of perpetrators and victims, the justice of God, humanity and society (substantive justice). As an open system, it does not work in solitaire in a vacuum, but must pay attention to legal values and community justice sense so that the working of it is more contextual in applying criminal law to achieve its success. And all subsystems in the criminal justice system have basically been based on Pancasila as an open justice system.

Keywords: Criminal Justice System; Open System; Pancasila.

ABSTRAK

Sistem peradilan pidana Indonesia seharusnya merupakan pengejawantahan dari nilai-nilai Pancasila. Beberapa kasus menimbulkan keprihatinan dan mempertanyakan pengamalan Pancasila karena melukai rasa keadilan masyarakat. Pancasila harus tercermin dalam penegakan hukum pidana. Sistem peradilan pidana bersifat terbuka yang operasionalisasinya dipengaruhi lingkungan bekerjanya subsistem-subsistemnya, maka penting dikaji lebih komprehensif. Tulisan ini membahas, sistem peradilan pidana Indonesia berwawasan Pancasila; sistem peradilan pidana Indonesia berwawasan Pancasila sebagai sistem peradilan pidana terbuka; subsistem dalam sistem peradilan pidana Indonesia berwawasan Pancasila sebagai sistem peradilan pidana terbuka. Metode penelitian pada artikel ini adalah normatif dengan pendekatan filosofis. Hasil penelitian menunjukkan bahwa sistem peradilan pidana berwawasan Pancasila berarti sistem peradilan pidana dalam bekerja harus mengutamakan kemanusiaan, keseimbangan kepentingan pelaku dan korban, keadilan Ketuhanan, kemanusiaan dan kemasyarakatan (keadilan substantif). Sebagai sistem terbuka, sistem peradilan pidana dalam bekerjanya tidak soliter di ruang hampa, tapi harus memperhatikan nilai-nilai hukum dan rasa keadilan masyarakat sehingga dalam bekerjanya sistem peradilan pidana lebih kontekstual dalam menerapkan hukum pidana untuk mencapai keberhasilannya. Dan kesemua subsistem dalam sistem peradilan pidana pada dasarnya telah didasarkan pada Pancasila sebagai sistem peradilan terbuka.

Kata Kunci: Sistem Peradilan Pidana; Sistem Terbuka; Pancasila.

A. INTRODUCTION

Pancasila is philosophical foundation of the state of Indonesia. This means that Pancasila also acts as the highest source of law. Pancasila has become the guidance on how Indonesians should live in the society. According to Mahfud MD, Pancasila as the foundation and ideology of the state can be viewed from three aspects. The first aspect is philosophical aspect. This means that Pancasila is as the basis for running the state. The second is juridical aspect. This means that Pancasila as the foundation of the state becomes legal ideal which must be the basis and objective of every law in Indonesia. The third is political aspects. Pancasila can become a guidance of value and ethics in practicing politics and organizing the state (Absori et al., 2016).

Therefore, Indonesia's criminal justice system should be the embodiment of the values of Pancasila and the 1945 Constitution of The Republic of Indonesia (1945 Constitution) in order to realize legal justice, legal security, and legal utility as the foundation of life as a society and a nation. By doing so, it is expected that the order of life of Indonesians as a nation can create justice and virtue of humanity and social justice for the society (Huda, 2013).

Pancasila is not merely a jargon. It is a principle that must be understood, instilled, and practiced. However, some cases have sparked concerns about our criminal justice system and questioned the practice of Pancasila.

There are some example cases in that justice system was questioned. The first case is a case of a watermelon theft with an accused, Cholil and Basar

Suryanto, which was finally sentenced to 15 days in jail with one month probation. The second case is a theft case of Kapok worth Rp. 12,000,- with the accused, Masinih and her two daughters and her cousin in Batang. For this case, they were sentenced up to 24 days. The third case is a theft case of banana worth Rp. 2,000,- in Sleman region with the accused, Klijo Sumarto. Another case is a theft of a neighbor's t-shirt worth Rp. 10,000,- with the accused, Aspuri (Setyanegara, 2013). Another case that sparked public attention is a theft case of 3 cacao pods in Banyumas with the accused Minah, an Elderly. Many people said that the judgment made by the judge was unethical (Desismansyah, & Putra, 2014). Minah was sentenced to one month and 15 days in jail with 3 months probation period. The trial decision implied injustice for the people. It was even considered absurd because people were wondering how come such minor cases, which were worth nothing, could obtain immediate judgment while major cases often took a long time to judge, and even remained unsolved and were left hanging (Dewi, 2010).

The phenomena of criminal justice have hurt the sense of justice in the society. As a nation which has Pancasila as the philosophy of the nation, Indonesia should use the perspective of Pancasila in its criminal justice so that substantive justice can be realized. Pancasila as an ideology and at the same time also as the soul of the nation should be the basis of practicing criminal justice system. Pancasila as the principle of the state of Indonesia must be embodied

in the law enforcement of criminal. So, what is criminal justice system with Pancasila perspective?

Criminal justice system with Pancasila perspective is an open system which is influenced by institutions or the people's environment and life in terms of its operation (Muladi, 2018). As an open system, criminal justice system, in practice, is not solitary. It is affected by other factors. Thus, turmoil in the society highly affects the process of criminal justice. Another question arises. What does criminal justice system with Pancasila perspective as an open criminal justice system mean?

Another important matter is how those subsystems works as parts of Criminal Justice System with Pancasila perspective as an open system. Criminal Justice System in Indonesia along with its subsystems in all stages from investigation, prosecution, examination, and execution must be based on Pancasila

According to the description aforementioned, the formulation of problem in this study are first, what is Criminal Justice System with Pancasila Perspective?; second, what is Criminal Justice System with Pancasila perspective as an open system?; and the third, how the subsystem of Criminal Justice System with Pancasila perspective works?

Some previous researches discussed open system theory as a frame to analyze criminal act (Munro, 1970). A study concerning general system theory and criminal act also discussed an open system in a wider sense (Bernard, Paoline, & Pare, 2005). Another study concerning Criminal Justice

System is by Nyoman Satyayudhadananjaya. This study discussed an integrated Criminal Justice System (Satyayudhadananjaya, 2014). A study by Hasuri discussed Criminal Justice System through law control and enforcement approach (Hasuri, 2019). Mahrus Ali in his study examined progressive Criminal Justice System in association to alternative of criminal law enforcement (Ali, 2007). Michael Barama investigated the model of the development of Criminal Justice System (Barama, 2016). Cyril O. Ugwuoke investigated criminal justice system and environmental conflict (Ugwuoke, 2017). Lee Michael Johnson and Paul Elam with Susan M Lebold investigated the use of evidences in criminal justice professionals (Johnson, Elam, & Lebold, 2018).

Those studies indicate that discussion on Criminal Justice System has always been an issue. However, Criminal Justice System with Pancasila perspective as an open system has never been mentioned. This is contrary to the fact that in enforcing criminal law in Indonesia, Pancasila is the basis. It is necessary to examine Pancasila considering that Pancasila is the main core of life of Indonesian people more comprehensively because there is always novelty and new study about Indonesia's Open Criminal Justice System with Pancasila perspective.

B. RESEARCH METHOD

This study was a normative legal research focusing on the inventorization of positive laws, legal principles, and legal doctrine. This study used

philosophy approach. The data used were secondary data. Secondary data are data obtained from literature study (Ali, 2014).

The secondary data were divided into three legal bodies. The first legal body were primary legal sources which were the 1945 Constitution of The Republic of Indonesia (hereinafter referred to as 1945 Constitution), Law no. 12 1995 concerning corrections (hereinafter referred to as Law of corrections) , Law of Judiciary Power, The Law of The Republic of Indonesia Number 2 year 2002 concerning State Police (hereinafter referred to as Law on State Police), and Law of The Republic of Indonesia Number 16 2004 concerning the Republic of Indonesia Public Prosecution Service (hereinafter referred to as Law of Public Prosecution). The second legal body was secondary Laws consisting of books and scientific articles. The third legal body was tertiary Laws, which consist of any materials obtained online. Then, the results of the research were analyzed using qualitative analysis.

C. RESULT AND DISCUSSION

1. Indonesia's Criminal Justice System with Pancasila Perspective

Phenomena concerning criminal justice such as case of Cholil and Suryanto, case of Manisih , her two daughters and her cousins, case of Klijo Sumarto, Case of Aspuri, and case of Minah, an elder have hurt sense of justice in society. In the case of Basar and Cholil who were accused of stealing 2 watermelons from a watermelon farm because they were thirsty, the legality basis was too rigid, far from

the values of Pancasila, consequently, they were still charged as thieves merely because the case fulfilled all the criteria stated in Article 362 Criminal Code (Maulidah, & Jaya, 2019). On contrary, according to law applied in society, the people around the farm are allowed to take the watermelon whenever they feel thirsty, only for him/herself. Another case is a cohabitation and adultery. Cohabitation and adultery are two forbidden acts according to the principle of Belief in The One and Only God. However, criminal code does not state those two acts as an act against the law, thus legal action cannot be taken against them. Yet, is it allowed to do that if viewed from the perspective of Pancasila? The consequence of making Pancasila the philosophy of the nation is that every aspect of life either in society level or national level must be based on Pancasila. In this case, Pancasila has to be the guidance in the practice of criminal justice system." Pancasila even becomes a parameter for becoming " an Indonesian as a whole" (Nurahman, & Soponyono, 2019).

The characteristics of Pancasila are the first, Belief in The One and Only God. God as primary cause so that as the people who believe in God, Indonesians have to obey The one and Only God. The practice of criminal justice system must be based on morality and religiosity because we must face the account to God. The practice of law enforcement is based on God's rules. The second is to respect each other without discriminating tribe, culture, religion, race, and language and that all men are created equally by God. This is in accordance with a just civilized humanity, meaning that justice is to treat

everyone equally, and civilized means that the treatment must serve humanity. There is appreciation for human rights. Justice means there is balance between rights and obligations. This second principle has become legal foundation which respects and protects human rights. It is no discriminative. It does not allow the law to only work for low class society and to suppress powerless common people. The third is that Indonesia as a nation highly appreciates the unity of the state. In unity, cooperation can be built in harmony. The unity of the nation is before individual interest, but that does not mean individual interest is denied. The presence of Unity in Diversity principle admits the richness of local heritage and appreciates differences. The fourth is the people's life as society and a nation based on democracy system. In order to practice democracy, deliberative consensus must be prioritized to decide whether a case should be followed up or not, law enforcement officers should prioritize and make effort to practice deliberative consensus or non-penal. The fifth is social justice for all the people of Indonesia. This principle is the legal foundation in the society which is based on social justice. Therefore, an individual who is weak socially and economically cannot be suppressed by another individual who has more power and is arbitrary (Ronto, 2012) (Nurahman, & Soponyono, 2019). The end result is the welfare of the people of Indonesia which is aligned with the national goal as stated in paragraph four the Preamble of 1945 Constitution of the Republic of Indonesia (Nurahman, & Soponyono, 2019).

Based on those characteristics, Indonesia's Criminal Justice System with Pancasila perspective means that in practice, criminal justice system must prioritize several aspects as follows: first, humanity (human rights) as the embodiment of the second principle. Basically, the constitution of the Republic of Indonesia has guaranteed the citizens to practice their human rights and to give legal protection for the people to gain the rights as stated in chapter XA concerning Human Rights 1945 UUD (Gunarto, 2013).

Human right is the most fundamental right given by God. Human rights make an individual dignified and civilized (Bachtiar, 2015). Human as the creation of God has been given non-derogable right since they were born. This means that in running criminal justice system, law enforcers must take into account humanity values. As for example, the right of the suspect/ defendant in criminal justice must be protected during the process of the trial starting from the initial investigation process until examination process, even until the defendant is in correctional facility. However, in reality the process of criminal justice is still far from the principle of human rights. It is indicated that police frequently violate the law and ignore the sense of humanity impacting negatively on the relationship between Police institution and the people. In handling those cases, to some extent Justice institution still seems discriminative. This can be proven by the minor cases committed by common people which were prosecuted unjustly fast. Here, the law acted like a very sharp sword. Meanwhile, this was not the case with major cases (Hartini, 2010). In

a legal country, each individual is treated equally before the law, and this becomes the main element of basic conception of Human Rights. This has manifested and implemented in the form of presumption of innocence. This principle is the basis of Human Rights protection for a suspect or defendant from arbitrary act by the investigators, prosecutors, and even judges who decide his/her case. A suspect or a defendant must be considered innocent until the judge makes the decision in the trial. Law enforcers are required to always acknowledge the aspect of human rights (Bachtiar, 2015).

The second is the balance of the interest of the perpetrators and the victim which is associated with the second, fourth, and fifth Principle in Pancasila. Basically, the perpetrators and the victims are the principal parties in a case, yet the victims are represented by the state which later are represented by the prosecutors. Therefore, in its implementation, Criminal Justice System must take into account what the interest of the perpetrators (individual idea) and the victim is. This must be done impartially and must be balanced. The decision of the prosecution must also be based on the objective of the punishment which is based on *daad-dader strafrecht* criminal justice system. This system is the balance model of any interests, the state's interest, perpetrators' interest, and the victims' interest (Mulyadi, n.d.). The prosecution is made in order to nurture and maintain social cohesion intact. In order to be humane and to avoid the sense of retribution, Criminal Law must not merely be based on the act (*daad stafrecht*).

However, criminal law also cannot merely take into account the interest of the perpetrators (*dader strafrecht*). This will give impression that the practice of criminal law may be to ease the perpetrators and pay less attention to a wider interest, as for example, in this case the interest of the people, the state, and the victims. Criminal law aims to protect and maintain the balance among various interests (Soponyono, 2012).

The third is Divine Justice associated with the first principle of Pancasila which is the root of the following principles which realize the aim of social justice as stated in the fifth principle. As a nation that believes in God, Indonesia's criminal justice system must also be based on divine justice. This can be seen in court judgment which follows the principle "For the sake of Divine Justice". This principle means that in every court decision there is a dimension of judge's responsibility to The One and Only God, the state and the nation, the law, him/herself, the people along with the police and persecutors' responsibility as parts of law enforcing process (Ishak, 2016). In addition, This is in accordance with Article 2 section (1) Law Number 48 Year 2009 stating that "the judiciary exercised for the sake of fairness upon the divinity of the one true god", meaning that all of judge's decisions must be able to give a sense of divine justice for the people. This meaning is not only related to the search of justice but also related to God, the justice which is based on God. Thus, in this case, justice does not only cover the responsibility of judge to the people but also the responsibility of judge's to the One and

Only God (Kurniawan, 2013). The knowledge of Divinity in exercising law is so important that legal decision made by law enforcers can create justice. One of God's demand in exercising fair criminal law is that legal decision must be made based on justice. The knowledge of Divinity which conveys the sense of Divine wisdom is an original law with natural values that innately exist. It does not need juridical basis in criminal law system in Indonesia. Therefore, what has been found so far in the provisions of law in association with the knowledge of divinity is not juridical foundation, but it is legal provision which emphasizes on the importance of the knowledge of divinity (Batubara, & Arief, 2013).

The fourth, humanity and society (substantive justice) is associated with the second and the fifth principles. Principally, the process of criminal justice does not merely concern with legal security but also with how substantive justice can be realized as the objective. This is why in nomenclature of each judge's decision it is always written "For Justice Based on The One and Only God", and not written "For Legal Security Based on Law" (Rais, 2017). Law enforcement which is based on law practiced in society is an attempt to create substantive justice because justice is sourced from the reality of law occurring in the society (Setyanegara, 2013).

2. Indonesia's Criminal Justice System with Pancasila Perspective as an Open Criminal Justice System

Criminal Justice System is a network of criminal justice which uses material criminal law, formal criminal law and criminal execution. However,

this institution must be seen from social context. Muladi confirmed that integrated criminal justice system is synchronization and harmonization which is distinguished into 3 types. The first is structural synchronization. Structural synchronization is synchronization and harmonization inter-law enforcement institutions. The second is substantial synchronization. Substantial synchronization is synchronization and harmonization which is vertically and horizontally related to positive law. The third is cultural synchronization. Cultural synchronization is synchronization and harmonization in embracing perspectives, attitudes, and philosophy which thoroughly underlie the implementation of criminal justice (Atmasasmita, 2013). Based on the theory of law system by Lawrence Friedman, law as a system consists of three subsystems, namely legal substance, legal structure and legal culture. All the three subsystems must be integrated to each other (Wibawa, 2017).

The importance of law enforcement contextually is also in accordance with Hulsman's opinion. Hulsman stated that essentially criminal justice system is social issue (Muladi, 2018). Law must be understood thoroughly and completely as part of the society because the bases of law are in the hand of the people. It is necessary to understand how law works within the society and how the interaction between law and social and political life of the people (Rizanizarli, 2014).

In addition, law is a set of social rule which is a reflection of values practiced in society. Thus, an ideal law is a law which is compatible with the law

practiced in a society (Parwata dkk, 2016). Law is made based on moral values or rules which has initially been present and practiced in a society (Hasuri, 2019).

Law enforcement is vital part of norms enforcement in society which are based on the values practiced in society. Therefore, for Indonesians, as a society which holds the philosophy of Pancasila, those values are the values of Pancasila. From the perspective of legal system, Criminal Justice System is basically a legal substance, structure, and culture practiced daily in a society. Criminal Justice System ensures the enforcement of values in the society. When the values enforced are not aligned with the values practiced by the society, there will be potential disorder in the implementation of criminal justice system. Criminal justice system must be in harmony with the values and attitude of the society where the system applies. Therefore, law enforcement in criminal justice system means enforcing legal values and the sense of justice or fairness in society.

All of the discussion aforementioned shows that Indonesia's Criminal Justice System with Pancasila perspective is an open system. As an open system, criminal justice system does not work solitarily. It is also influenced by other elements. An open criminal justice system in its concretization or operation is influenced by institutions or the environment of society and the environment where people live (Muladi, 2018). In conclusion, in the practice of criminal justice system, there will be factors which are fundamental which cannot be

controlled solely by criminal justice system because many factors influence it. Thus, the implementation of criminal justice system depends on attitude or behavior of other factors.

This is in accordance with Muhladi's statement stating that Criminal Justice System, in its process, will always experience interface (interaction, interconnection, and interdependence) with its environment in society levels covering from economic, political, education, and technological aspects as well as subsystems of criminal justice (Muladi, 2018). Criminal Justice System is highly influenced by external factors that make Criminal Justice System an open system. This means that it is a system which, in its attempt to achieve its purpose, are highly influenced by environment and any aspect of society life.

La Parta described the interface (interaction, inter connection, and inter dependence) of criminal justice system with its environment in ranks consisting of society as the first rank, economy, technology, education, and politics as the second rank; and subsystem of criminal justice system as the third rank (Muladi, 2018). Society is in the first rank of the interface of criminal justice system with its environment. The importance of social behavior is seen in stigmatization. As for example, people assumed that when a person is arrested and hand cuffed means that he is a criminal despite the presence of presumption of innocent which means that a person will not be charged guilty until final decision is issued. Despite any change of behavior shown by inmates during the sentence, they will

come back to the society with bag guy label. This, most of the time, will undo the reintegration process. In addition, in its operation, criminal justice system is also influenced by the perpetrator of an offense. When, in performing its function, criminal justice system can respect perpetrator's rights by not forcing confession, the success of the system will be greater. The consequence of power abuse committed in criminal justice system to offenders may return to the system itself. Mistreating the offenders will not make any positive change for them. It will not change them into a better person. Instead, there will hold revenge to the system and grow skepticism towards criminal justice system in general. As for example, an offender who received a violent treatment, coercion, and other mistreatment during the criminal justice process will tend to take the system for granted and will potentially commit recidive which then will cause failure in criminal justice system. Offenders are both the input and output of the system, and people as stakeholders take part as input and output.

In its practice, criminal justice system is required to take into account legal values and community sense of justice which is based on the philosophy of Pancasila. Criminal Justice System is a means to enforce values in the society. Those values conveyed in Pancasila include Divinity, humanity, unity, democracy, and justice as mentioned in the previous discussion. When the values enforced are not aligned with the values applied in the society, there will be potential of chaos in criminal justice system. Criminal justice system must be in harmony with the values and attitude of the society which

underlies the criminal justice system. Law enforcement in Criminal Justice System is to enforce legal values and the community sense of justice which is based on Pancasila. This is in accordance with the purpose of the practice of criminal justice system which, according to Matthew Robinson and Marian Williams, is to reduce crime and to create justice (Robinson, & Williams, 2009). Moreover, according to Muladi, the purpose of the implementation of Criminal Justice System is , in short term, to reintegrate inmates, and in long term, to achieve social welfare (Pujiyono, 2012).

Therefore, as an open criminal justice system which cannot work alone, the way Criminal Justice System works will tend to be contextual because it works by taking into account legal values and community sense of justice in order to achieve success, or , according to Muladi, the ultimate goal is people welfare.

3. Subsystems in Indonesia Criminal Justice System with Pancasila perspective as an Open Criminal Justice System

Criminal Justice System consists of systemic moves of subsystem supports namely, The Police, The Prosecution Service, the Judicial, and Correctional Institution which, as a whole, is a unity making an attempt to transform an input into an gain output as the goal of Criminal Justice System. (Muladi, 2018). In the process of criminal justice, a judge does not work alone. The judge works together with investigators, prosecutors, correctional institution, and even with lawyers (Bhawana, 2016).

All of the parties involved influence each other in order to achieve the goal of criminal justice system.

Ironically, the process of law enforcement has been in the spotlight. In addition, the data of perceptions index in Transparency International Indonesia (TII) show that law enforcement institutions are the most corrupt institutions in Indonesia. Even in reality, there have been many judges' decisions which were not accepted by the society. Consequently, this even led to a protest. To make matters worse, there are even several police officers who acted brutally, abusing their power. Moreover, some prosecutors involved in blackmail case and manipulate a case for his own sake, in this case to gain material profit (Ali, 2007).

Although in practise, there are many cases of violation to the values of Pancasila, this does not mean that the subsystems in criminal justice system are not based on Pancasila. Every subsystem in Criminal Justice System is required to be based on Pancasila which gives precedence to Human Rights, the balance of the perpetrators and the victims' interest, fairness based on divinity, humanity, and substantive justice. The following are the elaboration of each subsystem.

a. Investigative Institution

Police in Criminal Justice System has a role as an investigative institution. Basically, investigators do not only consist of Police. Other investigative institutions are prosecution service, which has both the authority of prosecution and investigation, investigators of KPK (Corruption Eradication Commission), and investigators of Indonesian Navy.

The character of Indonesia's Police, according to General Elucidation of Police Law, is stated in Tri Brata and Catur Prasatya which become the source of police's code of ethics derived from the philosophy of Pancasila. This regulation is expected to be able to strengthen the position and role of police in performing their duties in order to realize civil society which is just, prosperous, and civilized based on Pancasila and 1945 Constitution of the Republic of Indonesia. In performing their duties and authority Police are in *casu* 19. This means that they act based on legal norms, religious norms, courtesy, morality, and human rights. All of those values are the reflection of the values of Pancasila. In accordance with the function of police according to in *casu*, the Elucidation of Article 2 needs to take into account the enforcement of human right, law, and justice. This is also the reflection of the values of Pancasila. The enforcement is contextual by taking into account legal values and community sense of justice.

Furthermore, in *casu* Article 14 concerning the duties of police mentions law and regulations. Thus, it is clear that enforcing law does not mean enforcing regulations because enforcing law does not only enforce law but also enforce law existing in the society so that the enforcement if law will result in substantive justice.

b. Prosecution Institution

The Prosecution Service in general Criminal Justice System is a prosecution institution. Basically, prosecutors do not only consist of attorneys. KPK or Corruption Eradication Commission is also prosecution institution.

The Prosecution Service is a component of criminal justice system which is required to always be independent from any party's involvement including executive. Independence is highly important in order to guarantee the implementation of the principle of equality before the law (Wibowo, 2015), so that justice is served for the people of Indonesia. Prosecution Service according to Article 8 Law of Prosecution acts in the name of justice and truth based on Divinity. An attorney performs a prosecution based on legal evidences. In performing their duties, prosecutors must always act based on religious norms, courtesy, morality, and humanity. They also need to keep their professional respect and dignity. In conclusion, in this case, the values of Pancasila have become a reference, and those values work contextually.

c. Judicial Institution

Judicial Institution is one of criminal justice subsystems which have a role in examination and court decision making. The Judicial Power according to Article 1 number 1 Law of Judge Power is the power of an independent country to exercise justice to enforce law and fairness based on Pancasila and the 1945 Constitution of The republic of Indonesia in order to realize a legal nation. Thus, it is clear that judges, in enforcing criminal law, refer to Pancasila by taking into account the values of law and the sense of justice in the society.

In enforcing law, a judge is independent. a Judge has full freedom and should not be intervened when exercising his/her judicial power. Judicial power covers three aspects as follows: first, it is free from

involvement from another power, second, it is clean, and third, it has integrity and is professional. The freedom has been guaranteed in the 1945 Constitution of The Republic of Indonesia and The Law of Judicial Power. Essential justice is the main requirement to preserve the life of a society. Judicial Institution as a law enforcing institution in Criminal Justice System is the pillar of hopes for justice seekers (Hertoni, 2016).

Furthermore, in in casu judge's decision Article 2, there is also nomenclature "For Justice Based on The One and Only God". State Court applies and enforces law and justice based on Pancasila.

In making decision with regard to the characteristics of Open Criminal Justice System, a judge must be able to see the context by referring to Pancasila. The judge can also make dissenting opinion.

d. Correctional Institution

Correctional Institution (criminal executor) as one of the subsystems in Criminal Justice System is an institution which exercises criminal based on judge's decision. According to General Elucidation of Correctional Facility Law, for Indonesia, which is a country based on Pancasila, Correctional Facility is no longer seen merely as a prison. It also functions as social rehabilitation and reintegration facility for inmates. Correctional system, according to Adi Sujatno, aims to help inmates return to the society as a civilized citizen and to protect people from the possibility of the inmates to recommitting the same offense, and also as the implementation and part

which is separated from the values conveyed in Pancasila (Utoyo, 2015).

This means that correctional institution as one of subsystems in criminal justice system is based on Pancasila as an open criminal justice system.

Based on the elaboration of the four subsystems, it is noticed that all the subsystems are based on Pancasila as an open criminal justice.

D. CONCLUSION

In conclusion, Criminal Justice System with Pancasila perspective means that in its practice, Criminal Justice System must prioritize human rights, the balance of the perpetrators and the victims' interests, divine Justice, humanity, and substantive justice.

As an open system, Criminal Justice System does not work in solitary. It must take into account the values of law and the sense of people justice so that in practice, Criminal Justice Law is more contextual in exercising criminal law in order to gain success.

The success is also influenced by criminal justice subsystems which functions properly. These subsystems consist of investigation institution, prosecution institution, judicial institution, and correctional institution. All of the subsystems have basically been based on Pancasila as an open criminal system.

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