


EDITORIAL

Penal Policy and the Complexity of Criminal Law Enforcement: Introducing JILS 4(1) May 2019 Edition

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AFTER the previous edition of JILS raised the theme of “Crimes and Society: General Issues on Criminal Law in Indonesia”, in this edition JILS wanted to explore various cases and developments in criminal law enforcement. The complexity of criminal law enforcement in many conditions presents a variety of debates, ranging from legality and non-retroactive principles of law which in certain cases find discrepancies between facts and existing theories. In addition, criminal law which is considered *ultimum remedium* and has the character of a double-edged sword, on the one hand protects the interests of victims and the public but on the other hand injures the rights of the accused, becomes very complex because of its relation to the protection of human rights.

In order to provide the most up-to-date discourse in the development of criminal law enforcement, in this edition we take the theme “Penal Policy and The Development of Criminal Law”. This theme provides a different perspective for readers relating to criminal law policy and formulation of

criminal law enforcement. In this edition, we received a large number of articles sent to the editorial desk, therefore it requires considerable time in choosing, reviewing and giving our best feedback and comments to the authors. To highlight the development of criminal law enforcement, this Journal volume is dedicated to discuss several issues related to the penal policy and development of criminal law enforcement. Ningsih, for example, discuss the idea of criminal responsibility as well as the relationship between criminal law and technology is malware product. The liability and negligence on this issue examined on two different kind of laws: criminal law and private commercial law. She emphasized that the digital transaction is run by an information system and is provided with special software that runs it. Damage to computer devices and software can cause all kinds of damage. This damage can cause someone to experience damage or loss due to damaged hardware or software, one or more of the following legal areas can provide recovery, such as: contract law, technology law, consumer protection, and product liability.

Another article written by Adegbite analyzes the *Law Enforcement, Military Discipline, and the Notion of Military Justice: Building a Case for the Constitutional Rights of Service Personnel in Nigeria*. He brought interesting issues to be studied relating to law enforcement and human rights in relation to military law in Nigeria. The police and military have an important role in law enforcement, but according to him in many cases constitutional rights and basic rights are violated. He provides different discourses in the study of law, especially for the study of law in Indonesia and can be compared with Nigeria.

Sugeng Wahyudi discusses about *Penal Policy on Assets Recovery on Corruption Cases in Indonesia* as one of contemporary and controversial issues in Indonesia. Corruption and criminal law enforcement often face many problems even more so with the shifting of the motive of corruption towards the international that crosses national borders. Even in some international meetings, the international community supports the inclusion of corruption as an extraordinary crime. On his paper, Wahyudi emphasize that Criminal Law in the Framework of Returning State Losses due to Corruption in Indonesia was not maximal, as evidenced by the lack of maximum or no maximum return on state losses for corruption, therefore recommendations on simplifying regulations in terms of early prevention or since In the beginning of corruption cases which caused a lot of damage to the state's financial need, there was a special formulation so that the handling could be maximized to restore state losses in corruption.

In fact, in the same study, anti-corruption, Damaitu considered that corruption cases had become cases that needed special attention and treatment. He discusses about *Progress and Decline of Legal Thought: Ex-Corruptor as a Legislative Candidate (Analysis of General Election Commission Regulation (PKPU) No. 20/2018)*. He argued that restrictions for ex-corruptors to become legislative candidate can trigger various human rights violations.

Wikan Sinatrio in the development of law enforcement provides a discourse on the protection of children through restorative justice. Through his article entitled *The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia* he proposed an alternative punishment for children who have problems with the law. He studied the implementation of restorative justice in cases relating to juvenile law in Pati, Central Java, Indonesia. He found that basically, PERMA RI Number 4 of 2014 serves to fill the void and law enforcement for the practice of governance and the system of legislation referring to the consideration of letter b of PERMA RI Number 4 of 2014 stated that Law Number 11 of 2012 on System The Child Criminal Court has not yet clearly set out the procedures and the stage of diversion. Therefore, there are some things that have not been regulated in the SPPA Act and then regulated in PERMA No. 4 of 2014, as a function of fulfilling legal vacuum and law enforcement.

In line with Wikan, Ratri Novita Erdianti, Sholahuddin Al-Fatih also studied concerning to alternative sanction for child in the context of juvenile criminal law and restorative justice. Erdianti and Al-Fatih propose fostering or guidance for child as an alternative sanction. Through their paper entitled *Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia* confirmed that as *ultimum remedium*, criminal law must not be used in criminal cases relating to children. They argued that institutions that are used as a means of criminal guidance can be a type of social institution or educational institution that is adapted to the pattern of child development. Thus, the effect of deterrence and development of children's competencies will be obtained at the same time.

Gerry Mario Paulus, Jimmy Pello, and Aksi Sinurat with their paper entitled *The Completion Pattern of Adultery Case Based on the Customary Law of Sabunese* seek another perspective on criminal law enforcement especially on customary criminal law on adultery cases. They compared the Sabunese value

on completion the adultery case. Criminal law policy in traditional criminal values in the Sabu people can be an alternative for the formation of national criminal law.

Law Enforcement Policy on Violation of Illegal Cigarette Circulation in Indonesia (Study on Indonesian Customs Directorate General) written by Cahyo Baksoro Indra Maulana reveals many things about criminal acts in the excise sector, especially in the distribution of illegal cigarettes. His study at the Semarang Excise Directorate showed that the implementation of law enforcement in eradicating the circulation of illegal cigarettes was still diverse and was strongly influenced by the role of the function and capacity of PPNS.

JILS this edition also provide one article of general topic, entitled *Promoting the Right to Education through A Card: A Paradox of Indonesia's Educational Policy?* by Muhammad Bahrul Ulum and Dina Tsalist Wildana. They explore and examine the policy of rights to education on Indonesia's educational policy. Ulum and Wildana emphasized that there is a paradox in the government's educational policy on the fulfillment of human rights to education in dealing with the PIP program. While educational complexities faced in remote areas cannot be hindered and it is granted not solely to students from vulnerable families. Such discrepancies in programs circumstantially affirm that the government ignores the root of Indonesia's educational problems, including providing free education as its obligation to human rights.

We think it is important to convey that by this year (2019) our Journal, *Journal of Indonesian Legal Studies* has been accredited by Ministry of Research, Technology and Higher Education (Kemenristekdikti). JILS also has been indexed by several leading indexers, both national and international such as HeinOnline, DOAJ, IPI Garuda, SINTA, Microsoft Academic Search, Directory of Research Journal Indexing, Google Scholars and many more. This achievement is quite a happy achievement for the development of our journal, and this is inseparable from the participation of many parties, including writers and reviewers who provide many suggestions on the development of our journal.

We would like to express our great thankfulness to: Sudjino Satroatmodjo (Faculty of Law UNNES), Rodiyah (Faculty of Law UNNES), Topo Santoso (Universitas Indonesia), Jhon Aycock (Peking University School of Transnational Law) for very valuable comments and feedbacks to our journal.

We would also like to extend my sincere gratitude to the board of editors as well as editorial team and administrative staffs of JILS Journal. We also express our thankfulness to APJHI (Association of Law Journal Managers in Indonesia, Asosiasi Pengelola Jurnal Hukum se-Indonesia) who have provided a lot of information and assistance in the quality of our journals.

Finally, we wish this Journal edition provides you some new insights and another perspective on legal development issues.

Law Quote

“Every society gets the kind of criminal it deserves. What is equally true is that every community gets the kind of law enforcement it insists on”

—

Robert Kennedy

Source: https://www.brainyquote.com/topics/law_enforcement