Original Article

Civil and Criminal Procedure and Criminal Proceeding in Pharmaceutical Industry

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Abstract

This article discusses civil and criminal laws and the process of their implementation. Civil law, which is a product of private law, has undergone many developments and changes, as has criminal law, which is public law. Legal developments need to be further studied to gain a deeper understanding of these legal products and their applications in society. This research is qualitative in nature with a statutory, conceptual approach and literature study, and also uses a literature study to obtain all information and thoughts from relevant research results related to civil and criminal law products. In its application, civil law in Indonesia originated from Burgerlik Wetboek (B. W.), which was later adopted into the Civil Code (KUH Perdata), which civilly regulates various matters relating to individual and legal entity issues, family law, property law, and inheritance law. While criminal law regulates the relationship between the interests of the state or society and individuals, the state has the highest position above that of an individual or someone who has committed a crime.

Keywords: Civil, Criminal Procedure, Criminal Proceeding.

INTRODUCTION

Civil law originally came from the Dutch language, namely Burgerlijk Recht, sourced from Burgerlik Wetboek (B.W), which was later adopted by Indonesian law and known as the Civil Code (KUH Perdata). The codification of Indonesian civil law was carried out on May 1, 1948, and was sourced from the Civil Code (KUH Perdata). (Rifai, 2019) .

Private law or civil law in Western Europe is usually divided into civil law and commercial law. In Indonesia, this division is also known as the division of civil law and commercial law. From its history, it is known that European civil law is the largest part of French civil law which was codified on March 21, 1804. Before the codification in France, there was no legal entity (eenheid van Recht). (Santosa, 2019)

The enactment of civil law in Indonesia cannot be separated from the influences of liberal political forces in the Netherlands who tried to seek fundamental changes in the colonial legal system. This policy is known as de bewuste rechtspolitiek. 17 The years 1840 - 1860 were the years that were a new chapter in colonial policy in Indonesia, namely the policy to foster the colonial legal order. participate in seeking legal protection that is more certain for all layers of the population who live and do business in the colonies. This colonial legal system policy turned out to be strongly directed to carry out the codification and unification of law with the main preference being to utilize European law based on the principle of concordance. (Ginting, 2013)

Many cases occur related to civil law. Civil law becomes an important object and subject in the settlement of interests between citizens. Civil law is the law that regulates the interests between one individual citizen and another individual citizen. There are civil laws that are written and some are not. Written Civil Law is civil law as regulated in the Civil Code. Civil law that is not written is customary law. (Sefira & Martha, 2015)

Civil law changes over time and changes in the pattern of people's lives. Civil law which was originally a Dutch heritage has changed as a result of rapidly growing interests in society. Civil law regulates various matters relating to individual and legal entity matters, family law, property law, and inheritance law. (Arrias et al., 2019)

Indonesia is a country that has pluralism and pluralism in terms of ethnicity, ethnicity, culture, and religion which causes pluralism in the legal field, one of which is related to civil law, where the objective reality regulates people's lives and the constellation of various legal systems, namely customary law, Islamic law, and European law. which is the basis of Indonesian legal pluralism. Legal pluralism is the core of the legal system in Indonesia. (Supriatna, 2019) .

The enactment of plural civil law applies to this day depending on the population group subject to the regulation. For the European and Eastern Chinese foreign population groups, it is subject to the provisions of the Civil Code. For those who are Muslims subject to Islamic Law. While natives are not Muslim and are still bound by customary law, local customary law applies. (Agustina, 2020)

In addition to Civil Law, other laws regulate public relations or interests, namely Criminal Law. Criminal law is divided into two types, namely ius poenale and ius puniend. Jus poenale is an objective criminal law which in its context is a legal rule that binds to a certain act that meets certain conditions in the form of a crime (Sihombing et al., 2022). Or in its broadest sense, it is said that criminal law includes orders and prohibitions that have been determined by the threat of sanctions by the competent state institutions, the rules that determine how or with what means the state can react to violations of these provisions, the rules that apply to a certain area. The criminal law ius puniend or the notion of subjective criminal law has two meanings, namely broad understanding; is related to the right of the state/equipment to impose or determine criminal threats against an act. Narrow definition, namely the right of the state to prosecute criminal cases, impose and carry out crimes against people who commit criminal acts. This special right ensures that criminal law is included in the realm of public law. Public law is the law that regulates the relationship between individuals and the general legal community, namely the state or regions within the state. The rights granted to the state are in line with the obligations that must be carried out, namely maintaining order and security, as well as creating welfare for the citizens of the community. (Mertha, 2019) .

Criminal law has the nature of public law, namely the law that regulates the public interest (general public), if detailed further, the nature of public law about criminal law, public law has the characteristics of regulating the relationship between the interests of the state or society and individuals, the state. has the highest position above an individual, a person who has committed a crime, the prosecution does not depend on the individual (who is harmed) but on the state/ruler who must prosecute based on his authority. (Sofyan & Azisa, 2020)

Some jurists are of the view that Criminal Law is public law. They include Simons, Pompe, Van Hamel, Van Scravendijk, Tresna, Van Hattum and Han Bing Siong. Criminal law is part of public law because it regulates the relationship between society and the state. This is different from Civil Law which is private and regulates the relationship between citizens of one community and another. (Maroni, 2018)

Literature Review

Civil Law

Civil law in a broad sense includes all the basic laws of money regulating individual interests. Civil law can also be interpreted as a law that regulates the interests of one individual citizen with another individual citizen. Although civil law regulates individual interests, it does not mean that all civil laws strictly regulate individual interests, but because of the development of society, many fields of civil law have been colored in such a way by public law, for example in the fields of marriage law, labor, and so on. The word "Civil Law "is sometimes used in a narrow sense, as opposed to commercial law. As in Article 102 of the Constitution. Meanwhile, those who order the bookkeeping (codification) of the law in our country against civil law and commercial law, civil criminal law, military criminal law, civil procedural law, criminal procedure, and the composition of court powers. (Agustina, 2020) .

Civil law is the rules or norms that limit and guarantee that each individual is balanced between one interest and another in a particular society. Civil law dictates, that in relationships, people must submit to anything and what rules they must obey. In addition, Civil Law authorizes on the one hand and imposes obligations on the other. In this case, what is meant by "law "is

the whole of the rules, while "right "is the authority that arises from those rules. According to Vollmar 1989:2), the notion of such rights is taken from the notion of rights in a broad sense, so that it includes obligations arising from law. (Setiawan, 2017)

Criminal Law

In Indonesian laws and regulations, there is no definition of a criminal act. The definition of a crime that has been understood so far is a theoretical creation of legal experts. Criminal law experts generally still include mistakes as part of the definition of criminal acts. Because based on the principle of concordance, the Indonesian criminal law system adopts criminal law from the Netherlands, the original term for "criminal acts "comes from the word "strafbaar feit ". "Strafbaar feit "is a Dutch term that in Indonesian is translated by various terms. Furthermore, several varied views emerged in Indonesian as the equivalent of the term "strafbaar feit ", such as: "criminal act ", and "criminal event ", (Judge, 2020)

Criminal law is the whole set of rules that determine what acts are criminal acts and what penalties can be imposed on those who commit them. Criminal law is not the one that enforces the legal norms itself, but already lies in other norms and criminal sanctions are held to strengthen the adherence to these other norms. As the strongest, highest, and largest organization, only the state has the right and authority to determine and implement criminal law. This means that the state is the only legal subject that can form rules that bind all its citizens and can run them as well as possible so that these rules are enforced and implemented in the context of ensuring public order. (Priyatno, 2015)

Criminal law is a law that is included in the realm of public law. For this reason, criminal law contains rules that determine actions that should not be carried out accompanied by threats in the form of punishment and determine the conditions for which a criminal can be imposed. As rules that are accompanied by threats, criminal law cannot be separated from human values, so criminal law is often described as a double-edged sword, on the one hand, criminal law aims to uphold human values, but on the other hand, criminal law aims to uphold human values. On the other hand, the enforcement of criminal law provides sad sanctions for humans who violate it. Thus, criminal law activists must study criminal law massively and in detail because if criminal law is studied haphazardly, something fatal will happen because criminal law is also related to life and the abolition of the right to independence. somebody. (Wicaksana, 2016) .

Method

This research is qualitative in nature, namely research that holistically intends to understand the phenomenon of what is the subject of research, be it events, perceptions, and actions, and by the description in the form of words and language, in a special context that is natural and by utilizing various natural method. The approach used is statutory, conceptual approach, and literature study. Several investigations of legal materials were analyzed using the method of interpretation and content analysis. (Judge, 2020). Furthermore, the author also uses a literature study that can not be separated from a study. The theories that underlie the problem and the field to be researched can be found by conducting a literature study. In addition, a researcher can obtain information about similar or related studies. And the research that has been done before. By conducting a literature study, researchers can take advantage of all the information and thoughts that are relevant to their research. (Purwono, 2018)

Results and Discussion

Scope of Civil Law

The term Civil was received by the official for the first time and listed in Indonesian laws and regulations:

1. The RIS Constitution is included in Article 15 paragraph 2, Article 144 paragraph (1), Article 156 paragraph (1), and Article 158 paragraph (1).

2. UUDS is included in Article 15 paragraph (2), Article 101 paragraph (1), and Article 106 paragraph (3).

Civil Law can be divided into two types: Civil Law Material and Civil Law Formal. Civil Law Material is commonly called Civil Law, while Civil Law Formal is called Civil Procedure Law, which regulates how the method somebody maintains rights

if violated by others. If you see it in the English language, civil law is known as civil law terms. The word Civil comes from Latin, namely Civis, which means citizens. This means that Civil Law or Civil Law is governing law about related problems with the rights of citizens or individuals.

1. Material Law Source

The Material Law Source is the place from which the legal material is taken. A source in the material sense is the source in the sense of "place" is the Staatsblad (Stbl) or the State Gazette in which the formulation of the provisions of the Civil Law law can be read by the public. For example, Stbl. 1847-23 contains B.W, L.N. 1974-1 contains the Marriage Law. The judge's decision (jurisprudence) also includes a source in the sense of a place where the Civil Law formed by a judge can be read, so that a source in the sense of place is called a source in a material sense.

2. Sources of Formal Law

Sources of Formal Law are a place to obtain legal force. This relates to the form or manner that causes the formal legal regulations to apply.

In particular, the sources of Indonesian Civil Law are written, namely:

1. Algemene Bepalingen van Wetgeving (AB), are general provisions of the Dutch East Indies Government which are enforced in Indonesia (Stbl. 1847 No. 23, April 30, 1847, consisting of 36 articles)

2. The Civil Code or Burgelijk Wetboek (BW), is a legal provision for products of the Dutch East Indies promulgated in 1848, enforced in Indonesia based on the principle of concordance

3. KUHD or Wetboek van Koopandhel (WvK), which consists of 754 articles, including Book I (about trade in general) and Book II (regarding rights and obligations arising in shipping.

4. Law Number 5 of 1960 concerning Agrarian Principles, this law revokes the entry into force of Book II of the Civil Code as long as it concerns land rights, except for mortgages.

5. Law Number 1 of 1974 concerning the Basic Provisions of Marriage, and the provisions contained in Book I of the Civil Code, in particular regarding marriage, are not fully valid.

6. Law Number 4 of 1996 concerning Mortgage Rights

Application of Civil Law in Indonesia

The Supreme Court through Circular Letter Number 3 of 1963 has put forward the "idea" so that Burgerlijk Wetboek (BW) is not considered a law but a document that describes an unwritten legal group. So implicitly the Supreme Court at that time through the SEMA a quo did not want to make B.W. a source of binding law in Indonesia parallel to the law, but merely a reference to a type of private unwritten law.

However, the fact is that until now the Civil Code which is a translation of Burgerlijk Wetboek hereinafter referred to as BW is still used by many parties and is cited by many decisions as the legal basis for deciding a dispute. BW is also considered a legal rule that is binding like a law.

More than that, the norms contained in the BW are often used by judges in deciding civil disputes between the Bumiputera group. Whereas as is commonly known, the provisions in the BW in principle only apply to the European and Eastern Foreign groups and do not apply to the Bumiputera group.

Even though, for example, the population classification is considered to have been valid again due to Law Number 12 of 2006 concerning Citizenship which only recognizes two citizenships, namely Indonesian Citizens and Foreign Citizens, an explanation is still needed regarding the application of BW as civil law to Indonesian citizens. Because apart from BW, there

are still many other sources of civil law such as customary law and religious law, which at the same time are all still valid, it becomes a problem if the classification of the population is based on Article 131 jo. Article 163 Indische Staatsregeling is considered no longer existent.

Then which rules of civil law must be applied in a legal event, and to whom should these provisions be applied? However, the author thinks that juridically the classification of the population is still valid, even though sociologically this provision is no longer widely used.

As described above, although in principle BW only applies to residents of the European and Foreign Eastern groups, it turns out that in practice the rules contained in BW are often applied. According to the author himself, by taking into account the development of the times and the provisions of the prevailing population classification, the norms in BW can be applied in cases between indigenous people in four ways, namely as follows:

First, through submission. Juridically, submission to the provisions in the BW for a certain act can be done through the pouring of the statement of submission in a deed made specifically for the activity that has been done or a separate deed of submission. Article 27 paragraph (1) Staatsblad 1917 No. 12 states: "The submission is carried out with a deed, which is made for the actions that have been carried out, or with a separate deed".

Nowadays it seems very rare to find this kind of submissive practice. Even though normatively, the aqua provisions have never been revoked by laws and regulations so they should still apply. Submission is also considered to occur when an act is not recognized in the law applicable to the indigenous group, in this case, what is meant is customary law. For example, when Indonesians take legal actions in the form of cessie, novation, or bringing into a company to obtain a share of shares which in principle are not recognized in customary law. In such a condition, the perpetrator of the act is considered to have submitted to European civil law or BW.

Second, through the choice of law. Choice of law in principle can occur when BW and customary law regulate the same event. As in the case of buying and selling, which are both regulated by customary law and BW. Similar to the process of submission, legal elections can take place openly or secretly.

The open choice of law can be seen in the clauses of the agreement which clearly indicate the norms used or expressly stated at the time of agreement. Secretly, the choice of law can occur, for example in a lawsuit as well as an answer to a lawsuit, where the parties base their dispute arguments on the norms in the BW. So that the parties are considered to have chosen the legal rules regulated in the BW to be applied to the settlement of the dispute

But keep in mind, in the case of an agreement whose object is land rights, the principle applies to customary law, and there is no possibility of a choice of law (vide Article 5 of Law No. 5 of 1960). This choice of law, in principle, can only be exercised in a legal act, therefore for unlawful acts or other acts that are not legal, the principle of choice of law does not apply.

Third, through the application of the Die normative kraft des factischen principle. This principle enforces a norm because there is a "reality" or feit or the fact that the norm is used by the community in the area to resolve a case repeatedly.

The indicator is that the norm is used as a legal basis in repeated court decisions in the area or the community in the area continuously performs actions or applies these norms continuously in each of their legal actions. As a result, the application of these norms or habits increases the "legal awareness" of the community concerned, with the community's understanding that this is indeed the law.

If there is a condition where the norms in BW are used repeatedly in a legal field, then for disputes in that field, judges based on the principle of Die normative kraft des factischen can use the norms in BW to resolve and adjudicate the case. Even if the community is in principle not the person to whom BW applies.

Fourth, if needed by the community. Referring to Article 131 of the Indische Staatsregeling, the application of BW to indigenous groups can also be carried out based on community needs. Unfortunately, it is not explained how this assessment of community needs is carried out. However, by considering the theory of legal ideals, the community's need for BW can be measured based on the judge's understanding of the fulfillment of legal objectives, namely justice, legal certainty, and expediency. The objective of the law, which still looks abstract, can be adapted to the legal politics that is developing and is being realized by the state.

Such as the use of BW in a dispute over the inheritance of the Indonesian people (Bumiputera) in a certain area, even though customary law should be used. However, because local customary law does not give women a share of the inheritance, the judge views that customary law is not by the legal politics of the Indonesian state which wants to provide equal rights for women and may feel unfair in concreto if the relevant customary law rules are still applied.

Therefore, judges are given the authority to apply BW in these cases based on the provisions of Article 131 Indische Staatsregeling, where the legal rules in BW still provide opportunities for girls to get an inheritance share.

Based on the description above, it can be understood that although in principle BW does not apply to indigenous Indonesians, in several circumstances, by taking into account the legal ideals and legal politics of the Indonesian state, the norms in BW can be applied. Often in several areas and cases that the author has encountered, the legal rules in BW can provide more aspects of protection and legal certainty for the community, and have become legal awareness for the people concerned that this is indeed the law.

However, the application of this BW must still pay attention to the needs and awareness of the legal community concerned, which is also related to the classification of the population. So that the rules contained in the BW are not applied haphazardly, especially to the point that they are considered legal norms that simply apply to the people of Indonesia without considering the circumstances that need to be considered.

Criminal and Criminal Process Steps

Criminal Procedure Law System

In criminal procedural law, it is known that there is an examination system:

a. The inquisitor system means examination, which is an examination system in which the suspect is the main object of the examination. The examination of the suspect himself is directed in such a way according to the will of the investigator until a guilty confession is obtained from the suspect and then recorded in the examination file. This system is clear that in the State of Indonesia, it is also related to the existence of one precept from Pancasila which is the Prie of Humanity, which in essence must be followed by the accusation system. So in carrying out their obligations, investigators and prosecutors of criminal cases must always remember this fact and regard the suspect as always a subject who has the full right to defend himself (Prodjodikoro, Criminal Procedure Code in Indonesia, p. 19).

b. Accusatoir system in Indonesian means to accuse where the suspect is considered a subject and the suspect gets the opportunity to argue with each other and argue with the accuser, namely the Police or the Public Prosecutor in such a way that each party has the same rights.

Before the enactment of the new criminal procedure law, the inquisitor system was applied in examinations at the investigation level (preliminary examination) while the accusatory system was applied in the examination process before a court session. What about the enactment of the new criminal procedure law (KUHAP) now? To answer the system used in the examination of cases, it can be returned to the background of the issuance of the Criminal Procedure Code where human rights based on the 1945 Constitution and Pancasila as well as in the Criminal Procedure Code adhere to the principle of "equal before the law" namely the principle of presumption of innocence where human rights Human beings are respected and upheld, then the accusatory system should be applied since the examination at the investigation level, so that the suspect/defendant is considered a subject who has full rights to defend himself. If it is observed between the two systems above, after the entry into force of the Criminal Procedure Code. Indonesia does not adhere to a pure closed system (the prosecutor is an investigator in certain crimes outside the Criminal Code.), this can be seen in Article 284 of the Criminal Procedure Code. As well as the explanation, Article 32 letter b of the Law on the Prosecutor's Office of the Republic of Indonesia. No. 16/ 2004

The principles of Criminal Procedure In criminal procedure law include the following:

1. Principles of justice fast, simple, and cost light

2. Presumption principle of not guilty

3. The principle of opportunity

4. Inspection principle court open for general

5. The principle of equal treatment before the judge

6. The principle of direct and oral examination of judges

7. Help principal law

8. The principle of ne bis in idem

9. The principle of rights denied

10. Presence principle defendant

11. Change principle loss and rehabilitation

12. Principle of certainty period detention.

Scope of Criminal Procedure

Regarding the scope of criminal procedural law, it is closely related to the process of examining criminal cases, which the Criminal Procedure Code is currently divided into 4 stages, namely: Investigation, prosecution, examination in court, and implementation of decisions (execution).

a. Criminal case investigation

The investigation is the first stage in the examination of criminal cases carried out by investigators, in this case, the police, since there are suspicions that someone has committed a criminal act. Investigations carried out by investigators are of course based on the methods regulated in the law (KUHAP); compare with article l4 paragraph 1 g of the law. 2/2002 on the Indonesian National Police.

b. Prosecution of criminal cases

Prosecuting is the action of the public prosecutor to delegate a criminal case to the competent district court, in the case and according to the method regulated in the criminal procedural law with a request that it be examined and decided by a judge in a court session. Prosecution of criminal cases is a task carried out by the prosecutor's office.

c. Examination in court

After a criminal case has been brought by the Prosecutor/General Prosecutor to the competent court, the next task is for the court judge to examine and try and then make a decision. To adjudicate is a series of judges' actions to accept, examine and decide criminal cases based on the principles of being free, honest, and impartial in court proceedings in matters and according to the method regulated in the criminal procedural law.

d. Execution of decisions

Implementing the judge's decision is to organize so that everything contained in the judge's decision can be implemented. The implementation of this judge's decision is the duty of the prosecutor's office with the supervision of the judge. See 17 Law N0. 16/2004 on the Attorney General's Office of the Republic of Indonesia, article 30 paragraph l. The essence of this execution is so that the court's decision/dictum can be implemented. In particular, the Court's decision to release the defendant / vrijspraak is in custody, so that he is immediately released (pay attention to the human rights of each individual)

Sources of Criminal Procedure

a. 1945 Constitution

In the 1945 Constitution, several provisions regulate criminal procedure law:

1. Articles 24 and 25 of the 1945 Constitution result amendments mention the following.

2. Article 24, paragraph 1, changes the third of the 1945 Constitution "power "Justice To independent power for organizing justice to use enforce law and justice;

Article 24 paragraph 2 Amendments Third, the 1945 Constitution states that: "Power justice is done by a Supreme Court and judiciary which exists underneath in environment Justice general, environment religious court, judiciary military and environment State Administrative Court and by a Court Constitution.

Article 24, paragraph 3, changes the fourth of the 1945 Constitution: "determining other bodies whose functions are related by judicial power arranged in the street laws ".

Article 24 A paragraph 5 Amendments: The three 1945 Constitutions determine the arrangement, position, membership, and procedural law of the Supreme Court and judicial bodies underneath set with laws. Article II Rules The transition to the 1945 Constitution states that all state agencies and existing regulations are still directly valid, as long as not yet new ones are held according to laws.

b. Constitution

In journey history, there are criminal procedural laws in Indonesia that regulate criminal procedure laws:

1. Law No. 8 of 81, LN 1981 No. 76 of the Criminal Procedure Code

2. Law No. 20/2001, regarding Eradication Follow Criminal Corruption 18

3. Law No. 4/2004, yo Law No. 48/2006 concerning Trees Power Justice

4. RI Law No. 8 of 1995 concerning the Capital Market, in particular Chapter XIII, concerning Investigation, and Chapter XN on Criminal.

5. Law No. 11 (PNPS) of 1963, LN 1963 No. 101 concerning Eradication Activity Subversion 6) Law of the Republic of Indonesia No. 16 of 2004 concerning RI Prosecutor's Office

6. RI Law No. 2 of 2002 National Police of the Republic of Indonesia

7. Law No. 16 of 1961, LN 1961 No. 225 concerning Formation High Prosecutor

8. Law No. 5 (PNPS) of 1959, LN 1959 No. 80 concerning Authority Attorney General/ Prosecutor Great Army and aggravating threat punishment to act criminal certainty.

9. Law No. 7 of 1955, LN 1955 No. 27 concerning Investigation, Prosecution, and Judiciary Follow Economic Crime

10. Reglement op de Rechtelijke Organization en het beleid der Justitie abbreviated

11. Law No. l8/2003 Regarding advocate

12. Law No. 24/2003 on MK

13. UU no. 4/2004. About Justice

14. UU no. 5/2004 Regarding MA.

c. Regulation Government

1. Regulatory Government, No. 27/1983 LNRI No. 36/1983 Implementation of Criminal Procedure Code.

2. PP No. 35 of 1996 Concerning Investigation Follow Criminal Field Customs and Excise.

3. Presidential Decree No. 73, 1967, About Giving Authority to Attorney General Do Investigation and Inspection Introduction to those who do smuggling.

4. Presidential Decree No. 55 years old 1991, about the Arrangement Organization and Work Procedure RI Prosecutor's Office.

5. Presidential Decree No. Ten Years 1995, About Judge's allowance.

6. of Indonesia Supreme Court Circular No. 3 of 1990 concerning Investigation In Indonesian waters. 19

7. Minister's Decision RI Justice. No. M.14. PW.07.03 1983 dated December 10, 1983, concerning the Addition Guidelines Implementation of the Criminal Procedure Code.

8. Minister's Decision RI Justice. No. M.03. HN.02.01 1988 dated March 10, 1988, concerning Procedures for Application Change Criminal Prison lifetime Life Become Criminal Temporary Based on RI Presidential Decree. No. 5 of 1987 About Reducing Travel Time Criminal (Remission).

9. Minister's Decision RI Justice. No. M 2789. KP.04.12 of 1985 dated July 1, 1985, concerning Military Judge Appointment All Indonesia For Trial Things Connectivity.

10. Circular Supreme Court of the Republic of Indonesia N0. 7 of 1983 dated 11 November 1983, concerning The Switching of the Transition Period Article 284 KUHAP

Parties In Criminal Procedure Law

1. Suspect/defendant

The term suspect/defendant is regulated in the Criminal Procedure Code, which distinguishes the meaning of the term suspect and defendant, as stated in Article 1 points 14 and 15, as follows: "A suspect is a person who because of his actions or circumstances based on preliminary evidence should be suspected as a criminal act" (Article 1 point 14) "The defendant is a suspect who is prosecuted, examined and tried in a court hearing" (article 1 point 15)

Regarding the term suspect/defendant mentioned above, it can be related to the criminal procedural law of other countries such as the Netherlands and England, namely: the Netherlands in criminal procedural law (wetboek van Strafvordering) does not distinguish between suspects and defendants and only uses one term "verdachte" for both types of understanding. However, there are two distinct meanings of verdachte before prosecution and verdachte after prosecution. The definition of verdachte before prosecution is parallel to the definition of a suspect in the Criminal Procedure Code, while the notion of verdachte after prosecution is parallel to the term defendant in the Criminal Procedure Code. And then the UK distinguishes two terms, namely "the suspect" (before prosecution) and "the accused" (after prosecution), so the understanding of the suspect and the accused in the UK is the same as the understanding of the suspect and the accused in the Criminal Procedure Code.

The position of the suspect/defendant cannot be separated from the existing examination system in criminal procedural law, namely the "Inquisitor" system and the "accusatory" system. The application of the examination system is according to the stages in the examination, namely, in the HIR era an inquisitor system was used in the preliminary examination stage so that

the suspect's position was as a mere object, and on holding the examination before the court an accusatory system was applied where the position of the accused was no longer an object but as a subject.

With the enactment of the current Criminal Procedure Code for changes by the objectives of the Criminal Procedure Code to guarantee and protect human rights, the examination system is fixed but in the stage of investigating the case, the suspect is entitled to legal assistance. (Article 54 of the Criminal Procedure Code).

Rights suspects/defendants. The KUHAP in Articles 50–68 is as follows:

1) The right to be immediately examined, brought to court, and tried (article 50 paragraphs 1, 2, 3)

2) The right to know clearly and in a language, he understands what is being charged (article 51point a)

3) The right to give information freely to investigators and judges (article 52)

4) The right to obtain legal assistance at every level of examination (article 54)

5) The right to obtain legal advice from a legal advisor appointed by the official concerned at all levels of examination for a suspect/defendant who is threatened with the death penalty free of charge (article 56)

6) The right of the suspect/defendant of foreign nationality to contact and speak with representatives of his country (article 57 paragraph 2)

7) The right to contact a doctor for detained suspects/defendants (article 58)

8) The right of the suspect/defendant to present a witness a discharge (article 65)

9) Right to claim compensation and rehabilitation (article 68) Besides the rights above, there are rights others, for example, in things like food, search confiscation, and so on.

2. Prosecutor / Prosecutor General

The definition of a separate prosecutor, as well as a public prosecutor and can, be a prosecutor / public prosecutor at the same time. With the enactment of the current Criminal Procedure Code, a distinction is made between the definition of a prosecutor and a public prosecutor, which is regulated in the general provisions of article 1 point 6, namely:

1) Prosecutors are officials authorized by this law to act as public prosecutors and carry out court decisions that have permanent legal force.

2) Public Prosecutor is a prosecutor who is authorized by this law to carry out prosecutions and carry out judge decisions. (article 13)

So from the two terms and understandings mentioned above, it can be concluded that "Prosecutor" is related to his position, while "Prosecutor" concerns his function. After the entry into force of the Criminal Procedure Code. In Indonesia, the prosecutor / public prosecutor is no longer a case investigator, this is the authority of the police. However, this does not apply, because in certain crimes prosecutors are also given the authority to carry out investigations, such as Corruption Crimes. Subversion, Human Rights Violation. (determined outside the Criminal Code.).

The position of the Prosecutor / Public Prosecutor is no less important if we look back at the criminal procedure law in Indonesia, namely since the previous Dutch East Indies government until the issuance of Law No. 8 of 1981 (KUHAP), the time of the Dutch East Indies government. that the work of the public prosecutor in the district court is carried out by the prosecutor. The position of the prosecutor is similar to that of "Ambtenaar openbaar Ministerie" for European courts. However, in practice, the prosecutor's job is not authorized to carry out prosecutions, while those who are authorized to request punishment and or

implement decisions. Thus, the prosecutor's job is only to be an accomplice of "resident assistants, who do not have their authority as public prosecutors such as openbaar ministries" in European courts.

During the Japanese military administration, the position of the public prosecutor/prosecutor underwent a major change, namely that the prosecution of criminal cases was entirely handed over to the prosecutor. And then based on "Osamu series" No. 49 (Japanese Government Regulation) it is expressly stated that the prosecutor's job is to find crimes (investigating officers), prosecute cases (prosecutor employees), and carry out judges' decisions.

In the government of the Republic of Indonesia Government Regulation No. 2 of 1945 stipulates that all previous laws and regulations (the Law on Japan and the Dutch East Indies) remain in effect until the law is replaced with a new one. remain as a public prosecutor at the district court.

Furthermore, with the issuance and enactment of Law No. 15 of 1961, it was again emphasized that the Prosecutor's Office of the Republic of Indonesia is a tool of the state that enforces laws, which mainly serve as "Public Prosecutors".

Furthermore, the public prosecutor, especially regarding the authority of the public prosecutor, is regulated in Chapter. IV KUHAP in two articles namely articles 14 and 15 which are detailed as follows:

1) Receive and check file case investigation from investigator and investigator servant

2) Hold a “pre-claim “when there is a lack of investigators by paying attention to provisions article 110 paragraphs 3 and 4 with giving guidance in the completion investigation

3) Give extension detention, detention, or detention continued, or change the prisoner’s status after the thing assigned by investigators.

4) Make a letter of indictment

5) Overflowing matter to court

6) Convey notification to the defendant about the day and time case on trial with an accompanying letter calling good to the defendant or witnesses for coming to the appointed meeting.

7) To do prosecution

8) Close case by law

9) Stage other actions in scope duties and responsibilities answer as prosecutor general according to provision Constitution this

10) Perform the determination law.

In certain criminal acts, the Public Prosecutor/Prosecutor is authorized to carry out investigations such as Economic Crimes, Subversion Crimes, Corruption Crimes, Money LLaunderingCrimes, Crimes of Serious Human Rights Violations

3. Investigators and Investigators

Terms of Investigator and Investigator With the entry into force of the Criminal Procedure Code in the field of police, the term Investigator and Investigation is known, article 1 point 1 states that: Investigators are officials of the State Police of the Republic of Indonesia or certain civil servants who are authorized by law to conduct investigations. Investigators are police officers of the Republic of Indonesia who are authorized by law to conduct investigations. (article 1 point 4). Likewise with the provisions of Articles 1 to 5 of the Criminal Procedure Code. Determining "is a person who conducts an investigation, namely a series of investigators' actions to seek and find an event that is suspected of being a criminal act to determine whether or not an investigation can be carried out according to the method regulated in this law".

Thus it is clear that the coordination relationship between investigators on the one hand and investigators on the other. In the guidelines for the implementation of the Criminal Procedure Code, there is a point of contact, that investigation is not a stand-alone function, separate from the investigation function, but is only a method or method or sub-function of the investigation that precedes other actions, namely taking action in the form of arrests, searches, confiscation, examination of letters, summons, examination actions, settlement and submission of case files to the Public Prosecutor.

The difference between investigators is clear that investigators consist of certain police officers and civil servants while investigators are only police officers (Articles 4, 6 of the Criminal Procedure Code). Furthermore, it can be explained regarding the duties of the Police as investigators based on rank (article 6 paragraph 2), and the rank in question has been regulated in PP. 27 of 1983 (Regarding the Implementation of the Criminal Procedure Code), namely: at least the level I Junior regulator (goal II/b) and/or the equivalent. And besides investigators, there are also other police duties, namely: as "auxiliary investigators" (Article 10 of the Criminal Procedure Code), whose appointment is also based on rank (PP. within the Police. See also article 14 paragraph 1g of Law No. 2/2002 on the POLICE. 25

The position of the Police before and after the Criminal Procedure Code in Article 53 HIR stipulates that the head magistrate is the Wedana, the Camat, members of the State Police with at least the rank of Minister of Police, and other State Police employees specially appointed by the Attorney General in agreement with the respective Governors for their respective areas of the office. The nature of the job of the help magistrate is to do part of the work of the Prosecutor. It is said partly because the tasks that can be done are in the completion of the preliminary/preliminary examination only, and are not entitled to prosecute cases.

Such a situation is still maintained with the enactment of the Act. No. 13 of 1961 and Law. No. 15 of 1961, which can be seen in the provisions of Article 2 paragraph 2 of the Law. No. 15 of 1961 which states that: The Prosecutor's Office has the task of carrying out further investigations of crimes and violations as well as supervising and coordinating investigators' tools according to the provisions of the Criminal Procedure Code and other state regulations (compare with the provisions of Article 30 of Law No. 16 of 1961). 2004; Regarding the Indonesian Attorney General's Office). From the above provisions, it can be concluded that the Prosecutor's Office has a duty in addition to carrying out prosecutions, it is also in charge of conducting investigations (advanced investigations), meaning that the Prosecutor's Office has a dual function, namely as public prosecutors and investigators. However, with the enactment of law number 8 of 1981 (KUHAP), there is a fundamental change regarding the duties/authorities of the police, namely that the investigation task is entire with the police of the Republic of Indonesia (article 6 of the Criminal Procedure Code). Furthermore, in the transitional rules of the Criminal Procedure Code article 284, for special crimes, the prosecutor/public prosecutor is still given the authority to conduct an investigation. Compare this with Law No. 16/2004.

The duties/authorities of the Police, it is regulated in Law No. 2/2002 on the Indonesian National Police. This is regulated in article 14. and also in Law no. 8 of 1981 (KUHAP). 1) According to Articles l3 and l4 of Law No. 2/2002, the duties of the police are as follows: Article l3: The main duties of the Indonesian National Police are: a. Maintaining public security and order, 26 b. Enforce the law and c. Provide protection, protection, and service to the community. Article 14 determines: (l) In carrying out the main tasks as referred to in Article 13, the Indonesian National Police are tasked with: a. Implementing regulation, guarding, escorting, and patrolling the community and government activities as needed; b. organize all activities.

In the Criminal Procedure Code, specifically regarding the duties of the police, they are divided according to their positions and functions, namely investigators, investigators, and assistant investigators.

4. Judge

In a state of law, one of the joints in law enforcement lies with the judges/assemblies. Based on the provisions of Article 5 of the 1945 Constitution, it is determined that the position of judges is guaranteed by law. As stipulated in the Law on Justice no. 4/ 2004 yo Law No. 48/2006, when a judge carries out his duties, examines cases, is expected to act wisely and wisely, upholds the value of justice and material truth, is active and dynamic, based on positive legal instruments, performs logical reasoning, is appropriate and in line with theory and practice, so that everything boils down to a decision that will be handed down that can be accounted for from the legal aspect, the defendant's human rights, society, and the state, oneself and for the sake of justice based on "Belief in the One God".

In carrying out their duties, judges have the duty and authority to

1. For examination, the judge is authorized to make detentions (article 20 paragraph 3, article 26 paragraph 1 of the Criminal Procedure Code).

2. Provide a suspension of detention with or without collateral based on the specified conditions (Article 31 paragraph 1 of the Criminal Procedure Code).

3. To issue a stipulation so that the defendant who is not present at the trial without a valid reason even though he has been properly summoned for the second time is forcibly presented at the next first trial.

4. Determine whether or not all reasons are legal at the request of people who because of their position, and dignity or are required to keep secrets and ask to be released from their obligations as witnesses (Article 170 of the Criminal Procedure Code).

5. Issue a detention order against a witness who is suspected of having given false information in court, either because of his position or at the request of the Public Prosecutor or the defendant (article 174 paragraph 2 of the Criminal Procedure Code).

6. Ordering the case briefly submitted by the Public Prosecutor to be submitted to a court hearing with the usual procedure after an additional examination within 14 days, but the Public Prosecutor has not yet been able to complete the additional examination (article 221).

7. Giving orders to someone to take an oath or promise outside the court (Article 223 paragraph 1 of the Criminal Procedure Code)

5. Legal Advisor

With the enactment of the Criminal Procedure Code in Indonesia, the existence of legal advisors has a very important position. This is because one of the principles in the Criminal Procedure Code, the increase/guarantee of the human rights of a suspect/defendant is very important. The state in this case through law enforcement agencies (police) must uphold these 29 principles. Since the entry into force of the Criminal Code. In the law enforcement system, they are known as advocates, lawyers, defenders, and legal advisors.

This institution has the function of assisting/defending suspects/defendants from the level of the investigation until the end of the trial process, which is called a Court Decision. The legal basis for the existence of a Legal Counsel/ Advocate can be seen in Articles 37 to 40 of Law No. 2/2004, Law of the Republic of Indonesia. No. 18 of 2003 concerning Advocates, the term for Advocates is a person who has the profession of providing legal services, both inside and outside the Court, who fulfills the requirements based on the Law (Article 1 point 1). And based on the provisions of article 1 letter a of the Indonesian Advocates' Code of Ethics which was stipulated on 23 May 2003, the definition of an advocate is the same as a lawyer, legal advisor, practicing lawyer, or legal consultant.

Before the Lawyer accompanies/defends the suspect/defendant, it must be attached with a “Special Power of Attorney”, which is made before the authorized official, between the suspect/defendant and the lawyer. Or the transfer of power of attorney can be done verbally by the defendant in a trial with a judge's determination or an appointment by a panel of judges to a defendant who is unable to pay attorney's fees, while the law has determined so (the penalty is more than 5 years in prison.

Legal counsel rights:

1. Legal counsel has the right to contact the suspect/defendant from the moment he is arrested, and detained at all levels of examination, according to the procedure stipulated in the law (art. 69).

2. Legal Counsel has the right to contact and talk to the suspect at every level of examination and at any time for the benefit of his defense (Article 70 paragraph 1 of the Criminal Procedure Code);

3. The suspect's legal counsel may ask for a derivative of the examination report for the benefit of his defense (Article 72).

4. Legal advisors have the right to receive and send letters to suspects (Article 73 of the Criminal Procedure Code). 30 If the Legal Counsel misuses his relationship with the suspect, there is a limitation on the relationship carried out persuasively by

5. In the case of crimes against State security, the abovementioned officials can listen to the contents of the conversation. (71 KUHAP)

Conclusion

Based on the discussion above, the authors can conclude related to the application and process of civil and criminal law. Civil law is a legal product that has been applied since the Dutch colonial era which refers to civil law in Europe. Civil law that regulates the substance of rights (Recht) and obligations (verplicht) of legal subjects is called material civil law, while how (how) legal subjects defend their rights and obligations before certain legal mechanisms are called formal civil law. Law between individuals regulates the rights and obligations of one individual to another in family relationships and community relations. Implementation is left to each party. While criminal law is the whole of the rules that determine what actions are criminal acts and what penalties can be imposed on those who commit them. Criminal law is not the one that enforces the legal norms itself, but already lies in other norms and criminal sanctions are held to strengthen the adherence to these other norms. Criminal law can be divided based on material criminal law and formal criminal law; objective criminal law and subjective criminal law; general criminal law and special criminal law; national criminal law, local criminal law, and international criminal law; as well as written criminal law and unwritten criminal law.

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