

RECONSTRUCTION OF INDONESIAN CRIMINAL JUSTICE SYSTEM IN THE PERSPECTIVE OF THE JUDICIAL POWER INDEPENDENCE

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ABSTRACT

Criminal justice system as a tool of law enforcement in Indonesia does not work optimally. The situation itself is explained by fact that most of its functions are placed under the executive power. According to Article 24 (1) Constitution of 1945 Republic of Indonesia, judicial power is an independent power, in a narrow sense, and is not integral with other function of criminal justice system, because it is only related to judicial subsystems independency. However, structurally and functionally, other subsystems such as investigative, prosecution, and execution power are under the executive power. As the result, their role as power instruments is to serve the power's interest. This research on 'Reconstruction of Indonesian Criminal Justice System in the Perspective of the Judicial Power Independence' holds a purpose of setting an ideal format of integrated criminal justice system, to embody judicial power in independent and integrated criminal law enforcement by implementing structural, substantial, and cultural reconstruction and reorientation on criminal justice system. The main object of this research is criminal law enforcement policy. The approaches used are normative juridical and sociological approach, equipped by historical and comparative approach. Secondary data serves as the main data for qualitative analysis. The result of this research shows that, functionally and institutionally, the subsystems in criminal justice system (investigation, prosecution, and execution) have not appeared to be any independent. It is because structurally the subsystems are placed under the executive power. While the judicial power is already set as an independent power out of executive power. Its aspects of organizing, budgeting, staffing, and career system are under one roof system that is subordinated by Supreme Court. Criminal justice system tends to be partial and fragmented. It triggers rivalry among the subsystems and resulting in hindering the system performances. It is then needed to establish an independent and integrated criminal justice system through reconstruction of the subsystems of criminal justice and organized under judicial power of Supreme Court as the top law enforcement leader to all law enforcement processes.

Keyword: reconstruction, criminal justice system, independence of judicial power

A. Introduction

In juridical and factual aspect, subsystems of criminal justice system in law enforcement power do not reside under one judiciary roof. Police and Attorney are the two pillars of law enforcement in investigation and prosecution functions, along with Correctional Institution as a criminal execution instrument under the legitimacy of executive power (government). As viewed from the perspective of Indonesian constitution, institutionally, the three judicial institutions are executive organs and are all subordinate to executive power. If the judicial power constitutionally acknowledged as independent power, it is then certain that subsystems of the judiciary in criminal law enforcement must be under the same roof of its judicial power.

General study on the nature of institutions, including the subsystem institutions of criminal justice system, there are two main interrelated and inseparable elements, in which institution has its role as an organ and a functie. Institution as an organ means that itself is the body or the frame. And as a functie, institution is movement of the body in accordance to its establishment purpose. Institutions of criminal justice subsystems (police/ investigators, attorney/prosecutor and prison/criminal executor) as organs. They are enrolled to be executive instruments, whereas the function is conducting criminal justice enforcement implementation function in unison with judiciary institution as the cantilever of judicial power. Study above shows that the dimension of organ and function are not in sync. It has an impact on practical implementation of the criminal justice system, it will often rise problems that lead to the inefficiency of criminal justice system performance.

As a whole judicial management, it causes a very unfavorable condition. This situation causes the subsystems of criminal justice system to being not independent and can be easily intervened by other powers, either by the government power (executive) or by its head organizations (police agencies, prosecutors and the Ministry of Justice and Human Rights). Some supporting facts on this hypothesis are : cessation of investigation on the bank account of a Indonesian senior police officer who is suspected to be receiving bribery from illegal logging actors; Conditional Release granted to Hutomo Mandala Putra; Conditional Release given to David Nusa Wijaya who was convicted for the Liquidity Assistance of Bank Indonesia, in which this case is allegedly loaded with internal intervention (on Ministry of Law and Human Rights) that there was no coordination done with attorney agencies. Several cases mentioned above illustrate that the institutions of criminal justice subsystems are not entirely secure from external judicial power interventions.

For the judicial power in criminal law enforcement to be able to embody its impartial and independent condition, the integral independence of each subsystem within the judicial power of criminal law enforcement is needed. From the perspective of judicial management, integrative independency can be achieved if there is an integral and systemic policy.

Departing from the idea, an in-depth study that is retrospective and reconstructive to establish the integration of judicial power is needed. Especially the one in regard to the integral criminal law enforcement system that promotes the embodiment of an independent and integral judicial power. Hence, the title of this study as taken is Reconstruction of Indonesian Criminal Justice System in the Perspective of the Judicial Power Independence.

Problem Formulation

1. How is the factual description of criminal justice system functions and positions in the implementation of independent judicial power nowadays? What factors are affecting the implementation of independent judicial power in criminal law enforcement? What is the arising implication related to the dependent position of criminal justice subsystems?
2. How is the ideal construction of an integrated criminal justice system that is consistent to the concept of independence of integral judicial power?

Method of Study

1. Method of Approach

This study is using the multiple approach method (multi-approach). The first approach used is the juridical-normative and socio-judicial, in which it is equipped with the historical approach and juridical-comparative approach.

2. Data Resources

The data types in this study are consist of primary and secondary data. Primary data is the data that is obtained from the first source, through observation process and interviews with law enforcement officials, experts, community leaders and other competent sources to the questions of this study. Secondary data consists of primary legal materials in the written form of laws and regulations related. And the secondary legal materials are taken from various books and literatures related directly or indirectly to the research questions.

3. Method of Collecting Data

There are three (3) methods of collecting data which comprehensively and simultaneously used in this research, they are: literature study, documentary studies and interviews (inclusive and observation).

4. Method of Analysis

Results of the research in the form of data are being collected, systematized, sub-divided, filtered, and selected, then retrieved the relevant data to the issue of the research to be analyzed qualitatively.

B. Results and Analysis

A. Function and Position of Subsystems in The Criminal Justice System Criminal Law Enforcement

Investigation Subsystem

1.a. Indonesian National Police (POLRI) Investigator

Police investigators are an integral part of the function and position of the Indonesian National Police (POLRI) as the state apparatus under the power of a president. The investigation function runs most tasks of POLRI, particularly in the field of law enforcement. Article 13 of Law No. 2 in 2002 on the Indonesian National Police (POLRI) confirms that its main tasks are: a. maintaining security and public order; b. enforcing the law; and c. providing protection and service to the community, and also maintaining security and public order. The police investigation function carries out by the detective unit that is tied by laws and legislation, it has the authority to perform inquiry, investigation and coordination and supervision on Government Officer Investigators.

According to Article 16 (1), specifically, in order to fulfill tasks as referred in Article 13 and Article 14 in the field of criminal proceedings, the Indonesian National Police is authorized to: a. perform arrest, detention, searches, and confiscation; b. prohibiting any person from leaving or entering the crime scene for investigation purpose; c. presenting relevant and related people for investigation to the investigators; d. stopping people who is suspicious to be then asking and checking their personal identification; e. doing inspection and letter confiscation; f. contacting people to be questioned further and hearing the information they have as a suspect or witness; g. presenting the needed experts in relation to the proceedings; h. terminating an investigation; i. submitting the case files to the General Prosecutor; j. proposing a direct request to the competent immigration officers at immigration checkpoint in emergency circumstances to prevent the suspected people committing a crime; k. providing guidance and assistance on investigation for the Government Officers investigators, accepting its results, and submitting them to General Prosecutor; and l. conducting other actions by responsible law.

In particular, it can be seen that the law enforcement function of Indonesian police is subordinated to executive power, it is because the police institution lies under the President's legitimacy. Chief of Indonesian National Police is an underling of the President and all performances of his duties are to be accounted to the President. Investigative and investigation function of Indonesian National Police is a part of criminal law enforcement implementation process which integrally is a division of the subsystems in overall criminal justice system. Its central position in this investigation function plays a vital role of law enforcing. Conceptually, Indonesian National Police as an upholder of the law enforcement functions, it has to be independent, non partisan and impartial. Article 8 Act No. 2 of 2002 on Indonesian National Police (Police Act) does not provide such guarantees, given that the institution is one of government instrument.

1.b. Government Officer Investigator

Recognition for the Government Officer Investigators is described in Article 6 (1) Act No. 8 of 1981 on Law of Criminal Procedure (Criminal Procedure Code). Investigator is an appointed officer of the Indonesian National Police or a certain Government Officer that is specifically authorized by the Act. Authorized investigations are conducted by investigator based on the acts and laws as their fundamental attestation and it is characterized as *lex lex generalis*. Investigation authority is adhered to the provisions of Criminal Procedure Code as long as its basis legal setting does not set any specific rules.

Government Officer Investigator's legitimate investigation is done in accordance to the acts of its legal basis. It means limit to this investigation authority depends on the constitution of its legal setting. Results of this study show that authority of the Government Officer investigator is varied from one another. It is related to authority to conduct forced acts, delivery of the case files, notifications on investigation commencement and coordination function.

1.c. Prosecution Investigator

According to the Act No. 16 of 2004 on Indonesian National Prosecution, Prosecution is a national institution conducting prosecution power of the state. In accordance to Article 37, prosecution authority is conducted independently and to be accounted to President and the House of Representatives referring to principle of accountability. Constitution of 1945 implicitly sets the Indonesian National Prosecution presence in its state system, as associated body with judicial authorities (see Article 24 paragraph (3) of the 1945 amendments to the 3rd jo. Article 41 Act No. 4 of 2004 on Judicial Power), as an upholder of *dominus litis* principle, securing control over case processes to determine whether or not a person is a defendant and to be presented in the court based on valid evidences according to constitution, and as *executive ambtenaar*, executor of the court's and verdict in a criminal case.

In the investigation field, prosecutor earns authority given from the provisions of Article 284 of Criminal Procedure Code. Prosecutorial authority to perform investigation is temporary and only for certain criminal acts. Politic of law of Criminal Procedure Code on investigation puts Indonesia National Police as the main investigator that is legitimate to conduct any kinds of criminal investigation. Even so, politic of law of constitution maker remains allowed to give investigation authority to the Prosecution, especially for certain criminal acts (specific criminal acts). Its politic of law is contained in the Act No. 5 of 1991 on Prosecution, Act No. 16 of 2004 on Prosecution, and explicitly stated in Article 30 paragraph (1) letter d.

1.d. Investigator of Corruption Eradication Commission

Corruption Eradication Commission (KPK) is a state agency that is independent and free from any influence of power. This commission has five (5) tasks and 29 kinds of authority. According to Article 6, the task of the Commission are:

- a. Establishing coordination with other authorized eradicating corruption agencies ;
- b. Supervising the other eradicating corruption agencies;
- c. Conducting investigation and prosecution on corruption criminal;
- d. Conducting preventive actions on corruption;
- e. Monitoring the conduct of state government.

In carrying out the tasks in Article 6, the Commission has the authority that is regulated in Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13 and Article 14. As referred in Article 7 up to Article 14, the commission is a super body agency that is not only Corruption Eradication Commission is legitimate to coordinate the institutions of investigation function -police and prosecution- in a criminal investigation, but also this agency is qualified to take over cases handled by the police and prosecution, which it is considered slow and there is a possible conflict interests.

1.e Navy Investigator

The lack of personnel, infrastructure, law enforcement ability (of the police) and other law enforcer in developing law enforcement in territorial waters, constitution authorized the Indonesian Navy to perform law enforcement tasks in the form of an investigation on criminal acts occur in the sea.

In the universal sense, Navy has three roles : military role, police role, and diplomatic role. Its role of police executed in order to enforce law of the sea, protecting marine resources and national wealth, maintaining security in the sea in agenda to support the development of the nation.

Subsystem of Prosecution

According to Article 13 of Criminal Procedure Code, prosecution is conducted by General Prosecutor who is granted authority by law to prosecute and execute the verdicts of the judge. In all types of criminal case, General Prosecutor is a prosecutor of the Indonesian National Prosecution, except for corruption cases the prosecutor will be from the Corruption Eradication Commission.

2.a. General Prosecutor of Prosecution Institution

Duties and authority of a Prosecutor are stated in Article 30 Act No. 16 of 2004 on Prosecutor. Based on Article 2 (1), prosecutor is an executive agency (government) which performs judiciary functions in the field of criminal case prosecutor. Basic principle of the law enforcement is that it is independent. The prosecutor position as government official, as stated in Article 19, is not independent, subordinated, and even co-opted by government authority. As a result, implementation of law enforcement conducts by the prosecutor will stay dependent¹.

¹ The thesis is based on General Prosecutor's, Hendarman Supandji, spoken facts and statement on his speech delivery in front of the Faculty of Law community in Diponegoro University. Mr. Supandji mentioned that general prosecutor is a government's apparatus and a President's subordinate, so

2.b. Public Prosecution Institution of Corruption Eradication Commission

Corruption Eradication Commission as a "super body" agency has several authorities that are not shared with other law enforcement instrument. The commission has three (3) authorities at the same time: as the inquiry instrument, investigator and prosecutor. The commission prosecution authority is not situated under coordination and supervision of other institutions. It is defined in Article 39 (2) on the Commission Act. It states that inquiry, investigation, and prosecution referred in paragraph (1) should be done according to given commands and fully delivered on behalf of Corruption Eradication Commission.

Although the commission is institutionally independent, investigator power and its prosecutors are not supported well by their own human resources. This commission's prosecution personnel (General Prosecutor) are those prosecution personnel of Prosecution Institution that is in under command operation. This means, temporary, the General Prosecutor personnel of Prosecution Institution are empowered in the commission and become the employees under the commission's command. These personnel can be returned to their original institution (as the commission is an Ad-Hoc body) when they are no longer needed, or they can also be withdrawn any time if needed by their original agency. In the term of personnel, this condition resulting in the commission to be not independent and its General Prosecutor cannot perform optimally.

Subsystem of Court

Constitutionally, the structure and organization of Indonesian justice system can be found in provisions of Article 24 Amendment of Constitution 1945 and other organic law that rules the judicial power. Article 24 (2) states that "judicial power governed by the Supreme Court and judicial bodies under its power in the form of public court, religious courts, military court, administrative court and by the Constitutional Court".

According to the Article 24 (2) Constitution of Indonesia, Supreme Court is the apex of judiciary. Its further affirmation is described in Article 20 (1) Act No. 48 of 2009 on Judicial Power. It states that the Supreme Court is Indonesia's highest court among the all four jurisdictions. Supreme Court as the peak of Indonesian justice brings in the presence of one roof system in the justice system implementation. Hence the fostering of judicial or organization arrangement, personnel administration and financial matter of its judicial bodies are under the power of Supreme Court. (Article 13 (1) of Act on KK).

Subsystem of Criminal Justice Implementation

The correctional institution is a technical agency of General Directorate of Correctional responsible for conducting coaching prisoners (inmates), it is regulated in the Act No.12 of 1995 on Correctional. General Directorate of Correction is a part of Ministry of Law and Constitutions. Therefore the correctional institution is part of government institutions (executive) that runs series of law enforcement functions as the criminal executor. Correctional institution delivers criminal punishment sentenced by the Judge in imprisonment verdict. Imprisonment in correctional system is related to its punishment purpose. Correctional institution determines criminal enforcement policy in accordance to the system.

Correctional institution owns authorities to set its legal law on the criminal policy. This institution is granted authority to deduct the period of criminal detention or reducing the upper time limit of a penal execution set by the judge. It means that decision of a judge who has the permanent power is changed by the Correctional Institution. This change of policy can be done through several instruments as a remission granting or a conditional release.

B. Causal Factor Of Judiciary Power Dependence In Criminal Law Enforcement

B.1. Legislation and Institutional factors

Institutional factors which cause the judicial authority of criminal law enforcement to be not independent.

B.1.1. Police Investigator

Although the police are now a civil organ (civil in uniform), its line of command is still very strong. The investigator itself is not independent and professional, their movements entirely depend on commands and not within personal capacity. In some cases, it happens a lot where investigators lose their capability and credibility in the eyes of the suspect. It is because the suspect has a close connection to the superior of investigator team.²

In administrative context, the release of inspection license for a suspected official is often hindered by administrative bureaucratic stages. The hindrances are by disrupting the license release, objecting or even rejecting to give permission (the letter of inspection license), in which it is caused by the direct superior officer's interest on discontinuing some particular cases.³

Another factor causing the investigator to be dependent and unprofessional is the placement of detective structural official (Head of Unit, Chief of Directorate, and even Head of Agency). It often happens where the person in charge is not an officer from the detective unit career path such as the Traffic Unit, Binamitra and others. The absence of sustainable career path for special personnel

that it is they cannot run an investigation on a suspected corruption-related regional chief without permission from the President. This fact shows that general prosecutor is not independent and co-opted by the executive power (President). It showcases a bigger obedience towards a ruler authority rather than to the law.

² Taken from the interview with Suliadi, detective officer Kepolisian Kota Besar Semarang.

³ Taken from personal interview with a detective officer Kepolisian Daerah Jawa-Tengah

in the department of criminal investigation detectives leads to a lot of shifting and alteration in the detective personnel hence the difficulty in getting a professional investigator.

B.1.2 Government Officer Investigator (GOI)

In practical, Government Officer Investigator is not independent at times, and even it seems to be subordinated and situated as an assistance for the police investigators. Article 3(1) Act No. 2 of 2002 states that the Indonesian National Police is the police function implementator and is assisted by: a. Special police; b. Government Officer Investigator and/or c. private security service.

Government Officer Investigator is put as a police function auxiliary especially in law enforcement (investigation). This is contrary to the provisions of Criminal Procedure Code Article 1 point 1 Jo Article 6 (1) where it states that the position of Government Officer Investigator and Indonesian National Police investigators are equal. In the Criminal Procedure Code, it is regulated that the GOI performs its tasks under coordination and supervision of the Indonesian National Police Investigator (Article 7 (2) Criminal Procedure Code). The supervision and coordination are not in the sense of subordinate position but on an equal footing. The equivalent position can be found by reviewing the development of political of laws of the constitution that rules GOI authority, wherein GOI authorities in the investigation on some particular criminal offenses such immigration related crime, customs, and lastly environmental crime, GOI investigator has a broad authority up to arresting the suspects.

Under several regulations GOI can directly submit their findings to the General Prosecutor without police investigator. Description above can be deducted into statement that GOI is not a 'helper', an 'accessory' or even a complementary body for police investigator in the investigation function. This affirmation of understanding is important so that Indonesian National police investigator does not look down on GOI or even find them intrusive on their duties.

Vice-Head of Public Relation Division of Indonesian Police Headquarters (at that time) -Brigadier General (Pol) Anton Bachrul Alam- in front of the Commission III of House of Representatives once stating that Police investigations tasks were often hampered by the GOI where they could not go through because GOI has authority on such custom-related investigation. Speaking further he enunciated that function of the GOI is often being misused, so Indonesian Police investigator is ready to take over the authority.⁴ The police back then did not act positively by conducting some legal proceedings against GOI investigators who were in action of doing their investigation duties. In Semarang, GOI of environmental field investigated by the police for entering the company without a legitimate authority. While on that case, the GOI, in fact, had the authority to run an investigation against the company's waste processing unit which said to be polluting the environment.⁵ In another case, an investigation the GOI conducted later being investigated by police investigator and turned out the case is discontinued.⁶

In organization of its internal, GOI is very much not independent, as a Government Officer and their investigation function is an additional task. Therefore their investigating duty is a sideline task to their essential task as government's bureaucracy officer. Many of them facing various obstacles from the lack of support from their superior on earning permission for their investigation function, barely professional due to the short period of training and that GOI is not converged into one body.⁷

B.1.3 Prosecution Investigator

After the year of 1959, precisely in 1961, the independent prosecution in a sense and understanding that this is an independent institution or body separated from the Department of Justice. The prosecutor status itself is not independent because they are no longer the Supreme Court's general prosecutor, but instead is as now a minister or member of the cabinet (assistant of the president). As they do not retire at the age of 65 so there will be constant uneasiness because it is possible for them to be replaced anytime by the President.

According to Andi Hamzah, such condition affects the General Prosecutor in carrying out his law enforcement duties to be constantly vigilant to not offend the President's political interests in which it pushes him into being not independent.⁸ Referring to the history of reality, prosecutorial agencies today are not independent due to their position as a government official (government agencies), under the executive power and subordinate to the President (Article 2 (1) Act No. 16, 2004).

Such non independent position has great impact on performance of the dependent functions because as government officials they have to be highly dedicative carrying out their governmental functions, although in Article 2 (2) Act No. 16 of 2004 the prosecutor independence to conduct their function is guaranteed. There are problematic and contradictory condition on prosecutor's position and function.

B.1.4 Investigator of Corruption Eradication Commission

The commission and its independent position and status, from the findings of this study, in the personnel aspect, substantially the availability of investigation force and public prosecutor still depends on police and prosecution institution, because status of the

⁴ Polisi Siap Ambil Alih Kewenangan PPNS, available in : WWW.berpolitik.com accessed September 22th 2009

⁵ Dialogue in Technical Meeting and GOI Coordination Meeting in Central Java, Ungaran Cantik Hotel

⁶ Dialogue in Technical Meeting and GOI Coordination Meeting in Central Java, Ungaran Cantik Hotel

⁷ Research by Nikmah Rodisah (Graduate Thesis, Universitas Indonesia) "Manfaat Penyidik Pegawai Negeri Sipil (PPNS) Dalam Upaya Penegakan Peraturan Daerah" Hindrance to GOI duty is the lack of support from their supervisor because their main duty as government's bureaucrat is hampered. Available in: <http://www.digilib.ui.ac.id/opac/themes/libri2/detail.jps.id> (accesed November 5th 2009)

⁸ Andi amzah, Log-Cit

investigation and prosecution personnel is a delegated person and placed under the commission operational command. Although the moment they join the commission, they will instantly become its personnel. But considering the commission status as an AdHoc body that can be dismissed anytime propels the under command personnel to not working optimally because for anytime they can also be withdrawn back to their origin. This kind of condition results in loyalty dualism which affects the commission performance, and even attracts intervention from their original agency. Disaccord between police institution, in which it is backed up by the prosecution institution, and Corruption Eradication Commission proves this point.

B.1.5 Navy Investigator

The navy investigator is a member of military despite carrying out functions of investigation. And as a military institution it highly obliges military discipline and there is total loyalty to the superior or their unit. Military doctrine is really different from the civil institutions doctrine. Law enforcement functions is conducted by the Navy against criminal perpetrators, mostly the civilians, in water area. In terms of status (civil and military) and doctrine equality, investigation function runs by Navy investigator raises the risks of violations against human rights. Judging from an institutional aspect where Navy really does concern and tends to prioritize the chain of command, it will lead to a big potential of institutional intervention.

B.2. Culture of Law Factor

This study found the facts that culture of law of the enforcement law on corruption shows an unpleasant image. It then further brings out an institutional arrogance, fragmented thinking, sectoral and unsystematic thinking. The term "Cicak (Lizard) vs Buaya (Crocodile)" is a reflection of police institution's arrogance to another institution (the Corruption Eradication Commission). Along with that, it also brings out an adage in which it is reflected from the dishonorable criminal justice practice, packed by the mafia justice, as it is sourced from the low morality and unprofessional. The terms of Kitab Undang-undang Hukum Pidana (Criminal Code) spoofed into "Kasih Uang Habis Perkara (Money Wins It All)", law trading, settling disputes through bribery and other foul actions.

C. Reconstruction Of Criminal Justice System To The Integrally Independent Judicial Power

C.1 Reconstruction of Substance of Law

Reconstruction of Substance of Law is a reconstruction related to substance of law that sets up the function, position and authority of criminal law enforcement agencies. This study found the fact that an overlapping regulation is a vertically and horizontally unsynchronized regulation. Conditions of an unsynchronized regulation can be classified into:

1. Regulation governing the partial or sectoral subsystems shows no cohesion
2. Overlapping regulations wherein this condition surfaced regarding some regulations grant an equal authority to several law enforcement agencies
3. Regulation that negates other institutions authority
4. Regulation that is not synchronized to the reformation spirit
5. Regulation that conditions the law enforcement agencies to be inferior from one another

C.2. Reconstruction of Law Institution

According to Barda Nawawi Arief, he stated that equalizing the judicial power as merely a prosecution power, Constitution of 1945 (Amendment) emphasizes more on the narrow definition of judicial power.⁹ It is because that the judicial power to enforce criminal law is not only run by the judiciary institution. Judicial power in criminal justice enforcement is supported by four institutions of the linier authority. Criminal justice system works by the pattern of domino effect, starting from its investigation process, prosecution, court's inspection, and the execution.

From the criminal justice law perspective with a 'controlling' model, each of the role or authority bearer (the subsystems) has their own legitimation to determine and set up their regulation and law. Investigator is rightful to discontinue their investigation (sentencing a regulation or decision on the case) if there is not enough evidence or is not a criminal case by issuing Decree of Investigation Termination (Surat Perintah Penghentian Penyidikan (SP3)), so the case will not be proceed to prosecution stage. The General Prosecutor and his Decree of Prosecution Cessation (SKP2 (Surat Keputusan Penghentian Penuntutan)) instrument and authority to exclude some cases (seponering) and discontinuing a proceeding so the case will not be passed to the court.

In overall, watching from the dependency of institution subsystems in criminal justice system, it is important to have a systemic and integral organization for the new construction. It refers to the broad definition of judicial power, in which subsystems of the criminal law enforcement implementation and its supporting agencies need to be reconstructed under one judicial power (judiciary) and culminated at the Supreme Court's power. Supreme Court rules as "the top law officer" in criminal law enforcement so it soon will be established a construction focuses on the judicial realm. And then by default, the subsystems will be integrally independent as the bearer of judicial power in criminal law enforcement.

D. Conclusion

Referring to the research question, from the research findings and its analysis can be concluded that the position of the Indonesian subsystem of criminal justice system is not independent. It is caused by its position that is under the government power

⁹ Barda Nawawi Arief. *Pokok-Pokok Pikiran Kekuasaan Kehakiman Yang Merdeka*. Paper presented as recommendation for Year End Report Arrangement Expert Team Ministry of Judiciary

and also as the part of government officials (the Executive), except for subsystem of court. Subsystem of court's independence is guaranteed, based on Article 24 Constitution of 1945, as an independent and self-sufficient power. Aside from the institutional factor, the not so good factor of substance and legal culture trigger several behaviors such arrogant, egocentric, and practice of office commercialization. These conditions negatively implicate the performance of criminal justice system, such as how law enforcement cannot be optimally running, on halting or even tend to be serving more on pragmatic interests beyond the law enforcement purposes. In order to perform a restoration related to this condition, it is necessary and urgent to do some holistic and comprehensive thinking reconstruction (integral), through the management of legal substance, legal structure and legal culture. Specifically related to the reconstruction of law structure from the view of case management process (*administrative justice process*) in the law enforcement function, it should be arranged that the entire subsystems of criminal law system to be placed under the same one roof of judicial power and puts Supreme Court as the top leader or the top law enforcement officer. In relation to the court administration, each of the subsystems (except for the court) should have their own institutional organization management, administrative, and financial arrangement independently established and apart from the Supreme Court. Repositioning, consolidation process, and establishment of new institutions should also be done right away. For the investigation agencies, in particular, it is urgent to have a unification of several investigation bodies to be merged into one agency as an investigation subsystem. The criminal justice implementing agency should also be established into one body of criminal law implementation.

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