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Implementation Of Diversion In Settlement Of Middle Crimes

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Abstract
For the sake of law certainty, every crime should be enforced. The objective of the law is justice, expediency, and law certainty. Those three elements are becoming an inseparable unit in imposing a sanction against the perpetrator/criminal. In addition, sanction imposition is also aimed at returning tranquility that had been disturbed, hence, criminals should be fairly enforced. However, a problem arises in disparity among Judges when deciding legal cases which dominantly occur between poor communities who could not face such crimes.

A. INTRODUCTION

Law functions as a system that has its characteristics and as a tool to regulate human life. Moreover, in its development, the law is also considered a dynamic growth process on the basis of a belief that the law occurs as a plan from a certain situation to achieve a goal. Of all the law's objections, its main purpose is to create order in a society in addition to legal certainty because it becomes the main requirement for the creation of an orderly and cultured society.

The law in its application in society will also apply effectively whenever accepted and following the community law. Therefore, law and society have a close relationship that can influence each other. Hence, the law as an institution that regulates human life to create order in their social life is not autonomous.

In that relationship, the main problem lies in how the order of both affects each other. To see the relationship between those two changes, can be determined by finding a definition of law that contains instructions about legal sensitivity to changes in a society which can be seen from the operation of the law. Specifically, the law does the following tasks:

1. To formulate relationships among community members by showing prohibited and allowed actions
2. To allocate and confirm who may use over whom, following the procedure.
3. Settlement of disputes.
4. To maintain the adaptive capacity of society by rearranging relationships in a society when circumstances change.

From the interpretation of legal work, the relationship between law and social change in the form of legal adjustments to changes in society is moving so fast, which consequently arises the need for law adaptation. In contrast, the law could also lead to Social Engineering.

Law serves to create and maintain order and peace in people's lives. Therefore, there is an adage "Ibi ius ubi Societas" (wherever there is society there is a law).

Before discussing law enforcement against ordinary crimes with light motives using restorative justice from the perspective of criminal law reform, the researcher will initially explain the meaning of criminal acts.

The search for the meaning of minor crimes is hard when the Criminal Code (KUHP) itself does not regulate it. Meanwhile, Wirjono Pradjodikoro in his

book "Principles of Criminal Law in Indonesia" states that:

> "In the Criminal Code there are several crimes concerning property (vermogendelicten), if the loss caused does not exceed twenty-five rupiah, it is called a "minor crime" (lichte misdren) and is only threatened with a maximum sentence of imprisonment for 3 months. This minor crime consists of:"
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> 1. Minor theft (Article 364), namely if the stolen goods are not in the form of livestock (vee) and if the theft accompanied by vandalism is not carried out in a residential house or a closed yard, where there is a residential house;
> 2. Light embezzlement (Article 373), namely if the embezzled goods are not in the form of livestock;
> 3. Mild fraud (Article 379), namely if the goods obtained by the fraudster are not in the form of livestock;
> 4. Damaging other people's property (Article 407 paragraph (1));
> 5. Light detention (Article 482), namely if the goods are obtained by light theft, light embezzlement, or minor fraud[1]

Some of them provide directions for understanding, concepts, or criteria for minor crimes, namely:

1. Simanjuntak T mentioned that a minor crime is defined as a crime punishable by imprisonment for a maximum of three months and/or a fine of a maximum of Rp. 7,500 (seven thousand and five hundred rupiah) and light insult, except for certain violations of road traffic laws and regulations, as a guide in handling minor criminal cases as regulated in Articles of the Criminal Code and other laws and regulations; [2]
2. Hidayatullah argues that the criminal procedure law practice is known as "Tipiring" (Mild Crime) which is an abbreviation of the terms contained in CHAPTER XVI, Examination in Court Sessions, Part six Quick Examination, Paragraph I Procedure for Investigation Minor Crimes, the Criminal Procedure Code (KUHAP). Based on Article 205 paragraph (1) of the Criminal Procedure Code, the criteria for minor crimes are cases that are punishable by imprisonment for a maximum of three months or a fine of a maximum of Rp. 7,500 (seven thousand and five hundred rupiah) and minor insults except as provided for in paragraph 2 of this section. Meanwhile, concerning the Regulation of the Supreme Court (PERMA) Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Number of Fines in the Criminal Procedure Code, it is mentioned that "The number of losses stated in the law above is no longer following the current exchange rate". Based on Article 2 paragraph (2) of this PERMA stipulates a loss value of Rp. 2,500,000, - (two million five hundred thousand rupiah). With the issuance of PERMA No. 2 of 2012, it is hoped that there will be proportional handling with a quick examination of cases of minor crimes regulated in the Criminal

[1] Wirjono Pradjodikoro, *Asas-Asas Hukum Pidana Di Indonesia*, Cetakan ke-3, PT Eresco Jakarta, Bandung, 1981, p. 31

[2] Simanjutak T., *Penerapan KNIAP Dalam Proses Penyidikan Tindak Pidana*, Dinas Hukum Polri, Jakarta, 1998, p. 4, as quoted by Zurianto, Peranan Polri Dalam Penanganan Tindak Pidana Ringan Di Wilayah Kepolisian Resort Kota Tegal, *Tesis*, Program Studi Ilmu Hukum Program Pasca Sarjana, Universitas Jenderal Soedirman, Purwokerto. 2007

Code, such as (i) minor theft (Article 364); (ii) light embezzlement (Article 373); (iii) minor fraud by the seller (Article 384); (iv) light damage (Article 407 paragraph (1)) and light confiscation (Article 484). [3]

At the same time, an extraordinary crime is described as a form of crime that can affect the stability and security of society, destroys democratic institutions and values, ethical values, and justice, and disrupts sustainable development and law enforcement. [4]

The view of John Austin, a follower of juridical positivism, states that the legal system is real and valid, not because it has a basis in social life, nor because the law is rooted in the soul of the nation, nor is it a mirror of justice and logos, but because the law is positive form from the competent authority[5]. In this regard, this view can factually be seen as in the components of the Indonesian legal system. Not only legal substance in its positivist form but also legal structure in which the positivistic thinking of law enforcement officers in Indonesia in acting cannot be separated from the influence of legal substance itself as the basis. In the end, this also affects the criminal justice system which is more interpreted by resolving all criminal cases with rigid and mechanical positive legal signs, consequently, the implementation of law enforcement is carried out without case selection and is more manifest in procedural justice.

It can be seen that one of law enforcement carried out without case selection is ordinary criminal acts with light motives, which have received social reactions from the community. Disruption of the public's sense of justice for ways to settle ordinary crimes with light motives that do not provide space for non-formalistic solutions, as is the positivistic view that has been confirmed by law enforcement officers in law enforcement practices and places procedures as the basis for legality to uphold justice, even more, important than justice itself[6]. This is as seen in several cases of law enforcement for ordinary crimes with light motives that have received reactions from the public, such as Mrs (Mbok) Minah case in the theft of three cocoa pods in the Banyumas Police area, AAL (15 years old) known as the theft case of a pair of flip-flops that occurred in Palu, Central Sulawesi and the case of Deli Suhandi (14 years old) with suspicion of committing the crime of stealing a refill card worth Rp. 10,000, - (ten thousand rupiah) in Johar Baru, Central Jakarta.

The case is related to the pattern of sanctions types and the pattern of distribution of types of criminal acts. For example, according to the pattern of the Criminal Code (WvS), both "crimes" and “violations” are generally punishable by imprisonment or a fine, meaning that the concept does not distinguish between the two criminal acts. However, in the "work pattern", there is also a classification of criminal acts whose nature/weight is seen as "very light", "severe" and "very serious". "Very light" offenses are remained punishable by a fine, 'severe' offenses are punishable by imprisonment

[3] Hidayatullah, *Alternatif Penyelesaian Tindak Pidana Ringan Melalui Forum Kemitraan POlisi-Masyarakat (FKPM),* Studi Kasus FKPM Di Polres Salatiga, *Disertasi,* Program Doktor Ilmu Hukum, Universitas Diponegoro, Semarang, 2012, p. 112-113

[4] Kristian dan Yopi Gunawan, *Tindak PIdana KOrupsi, Kajian Terhadap Harmonisasi antara Hukum Nasional dan The United Nations Convention Against Corruption (UNCAC),* Refika Aditama, Bandung, 2015, p. 52-53

[5] Bernard L. Tanya, Yoan N. Simanjutak dan Markus Y.Hage, *Teori Hukum (Strategi Tertib Manusia Lintas Ruang dan Generasi),* Genda Publishing, Yogyakarta, 2010, p. 119.

[6] FX. Aji Samekto. *Justice Not For All, Kritik Terhadap Hukum Modern Dalam Perspektif Hukum Kritis,* Genta Press, Yogyakarta, 2008, p. 33.

or a fine (alternative), while 'very serious' offenses are punishable by imprisonment only (single formulation) or in special cases can also be threatened with the death penalty as an alternative to imprisonment for a certain time.

Essentially, the purpose of the law is definitely for realizing justice. Hence, the law must provide a fair arrangement in which some interests are protected in a balanced way to make everyone gets his share. However, justice should not be equally imposed, because justice does not convince everyone will get an equal share.

Justice is a relevant concept for the relationship between humans, meaning that the discussion is inseparable from the context of shared life between humans. The issue of fair or unfair can only arise as a result of a series of actions and reactions in the context of co-existent human behavior[7]. Discussing the issue of justice in the context of living together with humans is known as social justice.

According to Franz Magnis Suseno, social justice is introduced as a justice whose implementation depends on the power structures in a society, which structures exist in the political, economic, social, cultural, and ideological fields[8]. In this regard, it shows that the problem of social justice becomes a problem of structural justice (and the structural problem is an objective problem) [9]. Therefore, building social justice also means creating structures that allow the implementation of justice. [10]

Nowadays, the use of diversion has only been applied to juvenile justice as regulated in PERMA No. 4 of 2014 which stipulates that children who commit crimes in the process of the settlement must apply the PERMA as stipulated in Law No. 11 of 2012 concerning Juvenile Justice. Along with the current development of criminal law, diversion can be used in minor crimes as is happening today.

Diversion is the process by which offenders are transferred from conventional litigation to alternative program processes. By definition, it is a perpetrator-based concept and most diversion programs are developed to assist offenders and/or reduce the burdens of the criminal justice system. However, it is possible to create diversion procedures that include consultation with victims, reparations, and (if there is an interest) mediation with perpetrators. Diversion usually requires an admission of guilt from the perpetrator and is accompanied by a condition to fulfill certain conditions. In essence, diversion can be placed at any stage in the judicial process, including the stages of detention, prosecution, examination in court, sentencing, and post-sentence stages. If the conditions are met, the result may be a suspension or expulsion of the case from formal judicial proceedings.

B. RESEARCH QUESTION

The formulation of the problem that can be put forward in this study is as follows: "What is the perspective of resolving minor crimes using diversion?"

C. PURPOSES OF RESEARCH

The purposes of writing this paper are "To find out, analyze and find the concept of what is the perspective of resolving minor crimes using diversion"

D. BENEFITS OF RESEARCH

[7] Budiono Kusumohamidjojo, *Filsafat Hukum Problematik Ketertiban yang Adil*, Grasindo, Jakarta, 2004, p. 182

[8] Frans Magnis Suseno, *Kuasa dan Moral*, Jakarta: Gramedia, 1995, p. 45

[9] Budiono Kusumohamidjojo, *Loc.Cit.*, p. 184

[10] Frans Magnis Suseno, *Op.Cit*

The benefits of writing this paper are divided into 2 (two) parts, those are:

1. Theoretically

   This research is expected to have an important meaning for the development of theories or concepts in Law Enforcement Against Minor Crimes Using Diversion in the Perspective of Criminal Law Reform, especially concerning the law enforcement policies that must be formulated and implemented in legal cases, especially minor crimes committed by defendants, where the settlement can be carried out through the judiciary or outside the court, as regulated in the provisions of PERMA Number 2 of 2012 in cases of a mild nature.

2. Practically

   This research is intended to be able to provide input or contribution of ideas to policymakers for law enforcement for minor crimes, the community, and law enforcement officers and judges in deciding legal cases related to minor crimes in Indonesia.

E. RESEARCH METHOD

1. Research Approach

   The method used in this research is a descriptive-analytical method with the main approach being normative juridical. Analytical descriptive means to describe and describe something that is the object of critical research through qualitative analysis. Because what you want to study is within the scope of legal science, the normative approach includes legal principles, synchronization of laws and regulations, including inconcreto law discovery efforts. [11]

   In normative juridical research, the use of a statute approach is a definite thing. It is said to be certain because logically, normative legal research is based on research conducted on existing legal materials. Even though, for example, the research was conducted because of the existence of a legal vacuum, the legal vacuum can be identified because there are already legal norms that require further regulation in positive law. [12]

   In the context of this research, the approach is taken to the legal norms contained in several laws, such as in Law Number 1 of 1946 concerning the protection of criminal law, Government Regulation in Lieu of Law Number 16 of 1960 concerning Several Changes in the Book of Law. -Criminal Law (KUHP); Supreme Court Regulation Number 2 of 2012 concerning Several Changes in the Criminal Code (KUHP).

2. Research Specification

   The research specification that will be used is descriptive-analytical, which will provide an explanation of the procedures and implementation of the settlement of minor crimes using diversion from the perspective of criminal law reform.

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[11] Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif,* Jakarta: Rajawali,1985, p. 4-15. See juga Roni Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, 1983, p. 11-12

[12] Johnny Ibrahim, *op.cit.*, p. 301. According to Johnny Ibrahim, concerning normative research, 7 (seven) approaches can be used, namely: *statute approach; conseptual approach; analythical approach; historical approach; philosophical approach, and case approach.* Compare this with the opinion of Peter Mahmud Mamiki who only categorizes 6 (six) approach methods used in legal research, namely: *statute approach; conceptual approach; analytical approach; historical approach:* dan *case approach.* Peter Mahmud Marzuki, *Penelitian Hukum,* Cetakan Kedua, Jakarta: Kencana Prenada Media Group, Mei 2006, p. 93.

F. DISCUSSION

The Perspective of Alternative Model for Settlement of Minor Crimes by Using Diversion

According to Soedarto[13], generally, criminal law functions to regulate social life or organize governance in a society. In addition, the special function of criminal law is to protect legal interests from damaging acts. Thus, criminal law overcomes evil acts that want to damage the legal interests of a person, society, or state. Criminal means sorrow or suffering. In summary, criminal law is defined as a law that provides sanctions in the form of suffering or sorrow for people who violate it. Because of the nature of the sanctions that cause suffering, the criminal law must be considered as the ultimum remidium or the last remedy if sanctions or other legal remedies are unable to overcome the harmful act. In the imposition of criminal law sanctions, there is a tragic thing that criminal law is said to be a "double-edged sword". That is, on the one hand, criminal law protects legal interests (victims) but on the other hand, its implementation suffers legal interests (perpetrators).

Herbert L. Packer[14] argues that the criminal sanction should ordinarily be significant social dissent, as immoral, and in addition, the act is harmful to others. Criticism in determining a crime is a function of criminal law. The essential function of criminal law is to express and reinforce a society's moral seriousness about certain public rules of civilized behavior[15]. The use of legal remedies, including criminal law as a tool to overcome social problems, including in the field of law enforcement policies. In addition, because the goal is to achieve the welfare of society in general, this law enforcement policy is also included in the field of social policy, namely all rational efforts to achieve public welfare. As a matter of policy, the use of criminal law is not a must. There are no absolutes in the field of policy, because in essence, in policy matters, people are faced with the assessment and selection of various alternatives. [16]

Pompe stated that the emphasis of criminal law in its development at present is the public interest, the public interest. The legal relationship that is caused by the actions of people and also results in the imposition of a sentence is not a coordinating relationship between the guilty and the harmed, but the relationship is subordinate to the guilty party to the government, which is tasked with paying attention to the interests of the people[17]. Therefore, criminal law is a public law, while law enforcement officers act in the interests of the people.

According to Thomas Aquino, the basis of crime is the general welfare. For the existence of a crime, there must be an error (schuld) in the perpetrator of the act and is only found in voluntary acts. The punishment imposed on people who commit voluntary acts is nothing but retaliation. The retaliatory nature of the criminal is a general nature of the criminal, but it is not the purpose of the criminal, because the purpose of the criminal is essentially the defense and protection of public order[18]. In the Preamble to the 1945

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[13] Sudarto. *Hukum Pidana 1:* Semarang: Yayasan Sudarto.1990, p. 11-12

[14] Herbert L. Packer, *The Limits of Criminal Sanction, California:* Stanford University Press, 1968, p.: 264,266

[15] Murphy and Coleman, *Philosophy of Law, California,* Stanford University Press. 1990, p. 255

[16] Barda Nawawi Arif. *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara.* Cetakan ke-4. Yogyakarta: Genta Publishing. 2010. p. 17-18

[17] Bambang Poernomo. *Asas-asas Hukum Pidana.* Jakarta: Ghalia Indonesia. 1985. p.37

[18] Adami Chazawi, *Pelajaran Hukum Pidana Bagian 1,* Jakarta: Raja Grafindo, 2002, p. 163-164

Constitution of the Republic of Indonesia (UUD 1945), public welfare is one of the goals of the state. General welfare is a term used by the UUD 1945. This term is not widely used in the practice of government administration and state policy. Instead, the terms social welfare and people's welfare are used. These two terms are translations of social welfare and people welfare which are used in the government system and development administration of countries in the world.

According to the author, crime is still defined as a punishment for the violation of rights committed by a person against another person. The punishment occurred because of the agreement on the form of restoration of the situation for the violation of rights. When there is a violation of the rights of others, then a person who has committed the violation is obliged to restore the situation as before the violation of that right. Restoration of this situation requires a balance between the two parties (perpetrators and victims) and the community where the crime occurred. The author thinks that if the party whose rights have been violated and the person committing the violation have agreed to find a solution to restore the situation, then the crime does not need to be carried out.

The legal handling of criminal acts in Indonesia is like the power of a spider web. He is only able to ensnare small crimes but cannot touch large crimes. Suteki[19] gave an example of several judicial phenomena against “wong cilik” (the poor) then the author added new cases, for example, The case of the theft of watermelon (in Kediri), Cholil and Basar Suyanto was sentenced to 15 days probation for 1 month.

To explain and understand law enforcement[20], including the judicial process, two different perspectives can be used, namely the normative juridical perspective or also known as the doctrinal approach, or the sociological perspective which is also known as the non-doctrinal approach.

The normative or doctrinal perspective sees law from within the legal system itself or in Lawrence M. Friedman's terms that law by legal scholars is seen, used, and becomes a measure of behavior. More Friedman writes:

> "The lawyers look at it mostly from the inside. He judges law in its terms; he has learned certain standards against which he measures legal practices and rules or he writes about practical affairs; how to use the law, how to work with it".[21]

Law enforcement is understood and believed to be an activity to apply positive legal norms or rules (ius constitutum) to a concrete event. Law enforcement works like the automatic machine model, where the work of enforcing the law becomes an automatic subsumption activity. It is seen as a clear and definite variable that must be applied to events that are also clear and certain[22]. Moreover, law enforcement is constructed as a logical rational thing that follows the presence of legal regulations, particularly

[19] Suteki, *Kebijakan Tidak Menegakkan Hukum (Non Enforcement of Law*) *Demi Pemulihan Keadilan Substansial,* Inaugural Speech, delivered at the Acceptance of Professorship in Law at the Faculty of Law, Diponegoro University, in Semarang on August 4, 2010, p. 5-6

[20] The term Law Enforcement is an Indonesian word for *law enforcement,* or in Dutch known *rechtsoepassing* and *rechtshandhaving.*

[21] Lawrence M. Friedman, *The Legal System: A Sosial Sciene Perspective,* Russell Sage Foundation, New York, 1975, p.vii.

[22] Satjipto Rahardjo, *Sosiologi Hukum Perkembangan Metode dan Pilihan Masalah,* Muhammadiyah University Press, Surakarta, 2004, p. 173.

when logic becomes a credo in law enforcement.

The moral, political, cultural, institutional, and human dimensions as implementers of law enforcement are not variables that are taken into account in law enforcement, because the law (UU) has its logic and way of working following the logic of syllogism, namely the major premise, minor premise, and conclusion.

The logic of syllogism in positive law requires written documents or evidence to believe and underlie the occurrence of legal processes or transactions as demanded by the principle of rationality in material law and formal law. Therefore, procedures and mechanisms for enforcement are required otherwise it cannot be carried out.

That is the perspective and legal belief of law enforcers (Police, Prosecutors, and Judges) in enforcing or applying the law to a case.

The need for positive law following the principle of legality, as well as the availability of written evidence, procedures, and mechanisms that remain in its implementation, are often felt to be unfair to certain parties who are harmed or victims (in public law) who do not have enough evidence. Cases of human rights violations, for example, which incidentally are new types of acts that are formulated as crimes by law, will certainly face obstacles at the level of material, formal law, procedures, mechanisms, and the human capacity for implementing the law. There is a possibility that the material and formal laws are not clear enough or are not precise enough in regulating the procedures and the mechanisms are complicated and law enforcement officers are not trained or accustomed to the syllogistic way of thinking so that the enforcement of human rights law does not work as expected or even disappoints.

The phenomenon of law enforcement within the framework of a normative perspective has been criticized as blind law enforcement to the reality in which the law is made to live and work. Formal justice refers fully to the fulfillment of the material elements of the actions and procedures and mechanisms of the implementation of the law regardless of the social, moral, political, cultural, and human aspects of implementing the law. As mentioned by Francis Fukuyama that law enforcement in Indonesia is experiencing "moral miniaturization"[23] or moral stunting; a critical expression in appreciating law enforcement that denies aspects of justice at the practical level.

On the other hand, a normative approach is a sociological approach that views law and law enforcement from outside the law because the law exists and is part of the social system and that social system gives meaning and influence to law and law enforcement. Friedman says that the basic assumptions underlying the sociology of law view are:

> "The people who apply or use the law are human beings. Their behavior is social behavior: Yet, the study of law has proceeded in relative isolation from other studies in the social sciences".[24]

The human factor from the perspective of the sociology of law is important because humans are very involved in law enforcement since it is not merely seen as logical process but is full of human involvement. Moreover, law enforcement cannot be seen as a logical-linear process but rather a complex one. It is no longer becoming the result of logical deduction, but rather the result of choices.

[23] See Francis Fukuyama, *The Great Disruption: Human Nature and the Reconstruction of Sosial Order,* Profile Books, 1999, p. 281-282.

[24] Friedman, *loc. cit.*

It does not exist in a vacuum, but exists and becomes part of the social reality in which the law is made and implemented. Law enforcement is not just a juridical phenomenon, but also a social phenomenon that must be seen as part of the social system in which the law is enforced and even in what cases the law is applied.

Law and law enforcement from the perspective of the sociology of law cannot only be seen as an autonomous institution in a society but as an institution that works for and within the community. In Sinzheimer's language, the law does not move in a vacuum and deals with abstract things, but always exists in a certain social order and with living human beings[25]. Even Northop's word law, as quoted by Bodenheimer, cannot be properly understood if it is separated from social norms as "living law"[26], and the living law said Eugen Ehrlich, is interpreted as a law that controls life itself, even though it is not included in legal regulations. [27]

Law enforcement in the courtroom from the perspective of the sociology of law must be seen in a broad social context, not only legal factors, law enforcement apparatus factors, cultural factors or community culture, supporting infrastructure for law enforcement, but also the political (legal) context in which and when the positive law rules are made and implemented. By combining the analysis from the normative perspective and the sociology of law, a comprehensive picture will be obtained regarding the complexity of the problems surrounding the process and decisions of judges in the courtroom, which incidentally is a "social" space.

The process of judging and deciding which is carried out by judges is a process of judging and deciding dimensional human behavior. The first dimension is that he is a human being, an individual being, a creation of God whose human rights must still be respected, fulfilled, and protected.

Legal values, principles, and norms of legal norms are created for humans so that humans personally and socially, the life of the community, nation, and state can take place and be carried out in a civilized manner. Because it is not true and cannot be understood if the law is enforced against the principles of humanity.

The principle of Equality Before the Law (everyone is equal before the law); presumption of innocence; In dubio pro reo (in case of doubt the judge must decide in such a way as to benefit the defendant); Audie et alteram partem (both parties must be heard) are legal principles that are full of human values and messages to judges so they do not sacrifice human beings and the humanity of the accused, but instead prioritize humans, and humanity itself.

In the second dimension, humans who are dealing with the law are social beings. He is part of a small community and a large community with all kinds of problems and his social background. What and how the law and all its instruments treat it will be a lesson for both small and large communities.

Prita Mulyasari is a social being. The case that happened to her has caused social and legal shocks in small communities and large communities. Expressions of annoyance, discomfort, and threats to the freedom and future use of internet technology are starting to loom.

[25] Satjipto Rahardjo, "*Hukum dalam kerangka ilmu-ilmu sosial dan Budaya*", dalam *Majalah Ilmiah Masalah-Masalah Hukum*, Nomor 1 tahun 1972, p. 23.

[26] Edger Bodenheimer, *Yurisprudence: The Philosophy and Method of the Law;* Cambridge, Massachusetts, 1962, p. 106.

[27] *Ibid*, p. 106.

Likewise, in the case of Basyar Suyanto bin Casmadi Cs and Asyani called B. Waris bint Mukdin, better known as Grandma Asyani Situbondo and Amir Machmud, marginalized and legally illiterate individuals who have been convicted without a trial process that should be according to the law, are social beings. What happened to them has become the anxiety and fear of the large community so that the memory of the New Order's misguided judiciary comes back to haunt him; remember the fate of Sengkon, Karta, Pak De, who was sentenced to go to prison without ever committing the alleged wrongdoing. The deeper the disbelief, the deeper the anxiety, and the less hope and inspiration.

Judges' considerations and decisions also have long-term dimensions and implications for small communities, large communities, the nation, and the state; far beyond the implications of legal considerations and judges' verdicts on individual perpetrators. We should learn and take substance from the role of America's Supreme Court in its decisions that have such a large impact on humans, humanitarian relations, and the role of police, prosecutors, and judges when applying the law. Even against the country's Constitution.

The case of Miranda vs. Arizona is an example of a monumental decision by America's Supreme Court. In that case, the Supreme Court decided that before interrogation, the person concerned must be informed that he has the right to silence, the right to be accompanied by a lawyer, either provided by himself or provided by the state, and these rights are allowed not to be exercised provided he does so knowingly without pressure and coercion. Likewise in the case of Weeks vs. the United States (1914), the Supreme Court decided that evidence obtained unlawfully cannot be used in federal court.

Likewise in the case of Brown vs. Board of Education, where the Supreme Court ruled that racial segregation in public education violated the same legal protections guaranteed by the Constitution. In this ruling, America's Supreme Court looked beyond the formal equality of separate educational facilities between whites and blacks and based its judgment on the actual inequalities inherent in a separate education system for whites and blacks." [28]

The Supreme Court of America's legal arguments for the various claims or questions against its decisions is profound. The Supreme Court of America stated that "the criminal will go free if need be, but what frees him is the law. Nothing can destroy a government faster than its failure to heed its laws, or worse not to heed the written basis of its existence. alone.

In simple terms, a judge can be defined as someone who because of his position has the main function to examine and decide cases.[29] However, in reality, the function of a judge is not as simple as that definition. In the field, judges often face complicated and complex problems regarding the cases or cases they handle, so judges in carrying out their duties do not only examine and decide cases. Facing this, judges are required to have the ability and competence as well as unquestionable personal integrity.

According to Michael Lavarch, in carrying out these main functions, judges are required to have moral integrity and good character, be independent and impartial, have administrative skills, have spoken and writing skills, have good reasoning, and have a broad vision[30]. In

[28] See A.A.G. Peters and Koesriani Siswosoebroto, *op. cit.* p. 84-86.

[29] *Kertas Kerja Pembaruan Sistem Pembinaan SDM Hakim*, Jakarta: Mahkamah Agung R.I., 2003, p. 56.

[30] See The Hon. Michael Lavarch M.P.,

short, apart from personality problems, judges are required to have knowledge and expertise. Therefore, it can be said that the function carried out by judges is a function that focuses on aspects of individual expertise and independence. [31]

The issue of judge expertise and the independence of judges is increasingly important considering that in making decisions, judges do not solely base themselves on the sound of the articles of legislation. The process of making a decision is a process of processing intellectual abilities, substantive technical mastery, legal procedures, and judges' knowledge of social values that exist and develop in a society.

Aspects of human rights that will always be related to the function or role of judges, among others, are as follows:

1. The right to life
2. The right as a person before the law;
3. The right to obtain equality before the law;
4. The right not to be enforced based on retroactive rules (ex post pacto law);
5. The right to a fair trial.

In dealing with legal disputes in general, many parties feel that court institutions are considered too full of procedures, formalistic, rigid, and slow in giving decisions on a dispute. It seems that these factors cannot be separated from the judge's perspective on the law which is very rigid and normative-procedural in carrying out legal concretization. Meanwhile, judges should be able to become living interpreters who can capture the spirit of justice in a society and not be shackled by the normative-procedural rigidity that exists in statutory regulation, because it is no longer just la boucbe de la loi (the mouthpiece of the law) as in the cases of that befell the underprivileged which is the discussion in this study.

There are indications that judges do not have enough courage to make decisions that are different from the normative provisions of the law so substantial justice is always difficult to realize through court judges' decisions because judges and court institutions will only provide formal justice. The assessment of fairness is generally only seen from one party, namely the party receiving the treatment. Justice seekers are generally the defeated party in a case, and will always assess that the judge's decision is unfair. This is undeniably one of the consequences of the functions and roles carried out by the courts so far that have been oriented towards efforts to support and succeed in programs set by the government or the executive.

The use of the modern justice system as a means of distributing justice has been shown to encounter many obstacles. The causative factor is that modern courts are loaded with formalities, therefore justice distributed through judicial institutions is given through bureaucratic decisions for the public interest and therefore tends to be rational justice. So do not be surprised if the justice obtained by modern society is none other than bureaucratic justice. [32]

Dispute resolution using the judiciary has been proven to cause a lot of dissatisfaction among the disputing parties and the wider community. Public discontent is expressed in the form of cynical views, ridicule, and blasphemy against the performance of the court because it is considered inhumane to the disputing parties, keeps the disputing parties away from justice, where trade in

Judicial Appointment: Procedure and Criteria, *Discussion Paper*, 1993.

[31] Working Paper...*op.cit*., p. 3

[32] I.S. Susanto, *Lembaga Peradilan dan Demokrasi*, UNDIP, Semarangm 12-13 Nopember 1996, p.3

judge decisions takes place and other blasphemies directed at the judiciary.

The existence of the judiciary as a distributor of justice cannot be separated from the acceptance and use of modern law in Indonesia. Modern law in Indonesia is accepted and implemented as an institution either imported or imposed from outside[33]. Even though, honestly, from a socio-cultural perspective, the modern law we use is still a kind of "foreign object in our body." Therefore, to overcome the difficulties experienced by the Indonesian people due to using modern law is to make modern law a positive rule into a cultural rule. The problem is that the modern liberal legal system is not designed to think about and provide broad justice to society but to protect individual freedoms[34]. In addition, because the liberal legal system is not designed to provide substantive justice, a person with material advantages will get more "justice" than those without[35]. If we continue to hold on to the liberal doctrine, then we will continue to revolve in a vortex of difficulties to bring about or create justice in a society. To break away from the liberal doctrine, the idea of people or parties seeking and finding justice through alternative forums outside of modern courts is an attempt to reject closed legal thinking[36]. This is because justice seekers still feel very much, however not as strong as in the nineteenth century, liberal philosophy in law today still greatly contributes to the difficulty of enforcing substantial justice[37].

Judicial procedures deter employers from using the courts. In this regard, he quoted in full the comments of an advocate, who said:

> "... The judges today do not understand the law and pay less attention. I write exhaustive reasons for my cases, but young judges are often angry that the reasons are too long to read. ... So, despite my lack of pleasure in court, there is no need for the company I represent to take its case to court unless it is necessary. Not only was the trial difficult, but the whole process was tortuous. We have to give money unofficially to the registrar to obtain execution documents when the verdict is finally handed down. There are too many channels to go through to get things done, all of which cost money. In all the contracts I write for my client companies, I include an arbitration clause to avoid dealing with the courts."

The court here is not defined solely as a body to judge, but as an abstract meaning, namely "things to provide justice". Giving justice means that it is related to the task of the judiciary or judge in giving justice, namely giving to the person concerned - concretely to those who ask for justice - what are their rights or what the law is[38].

The existence of court is an institution that functions to organize the judicial process in receiving, examining,

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[33] Satjipto Rahardjo, *Supremasi Hukum dalam Negara Demokrasi dari Kajian Sosio Kultural;* dalam *Makalah Seminar Nasional* – Fakultas Hukum UNDIP, Semarang, 27 Juli 2006, p. 5-6

[34] Satjipto Rahardjo, *Rekonstruksi Pemikiran Hukum di Era Reformasi: in the paper National Seminar on Law Against Positive Legal Thought in the Reformation Era*, Semarang: PDIH-Undip, Angkatan V, Sabtu, 22 Juli 2000, p. 6-7

[35] Marc Galanter, *Why The Haves Come out Ahead: Speculations on The Limits of Legal Change; Law and Society*, Fall 1974, hm. 95-151

[36] Satjiptro Rahardjo, *Rekonstruksi Sistem Hukum Indonesia,* p. 21-23

[37] Soetandyo Wignjosoebroto, *Keadilan Komutatif, win-win Solution,* dalam Kompas 25 Nopember 2000

[38] Sudikno Mertokusumo, *Sejarah Peradilan, Op.Cit*., p. 2

and adjudicating community disputes, the duties of which are represented by judges. Therefore, public trust in the law and judicial institutions in this country is determined by the credibility and professionalism of judges in carrying out their duties in resolving disputes and upholding justice[39]. Thus, judges are required to be involved in making decisions, not just relying on their expertise in legislation. According to Roeslan Saleh[40], a judge is expected to always place himself in the law, so that the law for him is the essence of his life. The judge should not consider the law as a series of prohibitions and orders that will reduce his independence, on the contrary, the law must be something that fills his independence. Because "the law is not merely a rule or law, but more than that 'behavior'. Laws are important in a rule of law, but not everything and the process of providing justice to the community does not just end through the birth of articles of law." [41]

As stated earlier, in any legal system in the world, justice is always the object of the hunt through the judiciary. However, the breakdown and decline in the pursuit of justice through modern law is caused by a game of procedure which raises the question "whether the court is the place to seek justice or victory[42].

Justice is indeed an abstract object and therefore the pursuit of justice is a strenuous and exhausting endeavor. Meanwhile, the court as an institution for distributing justice has become a modern institution that was specifically designed along with the emergence of the modern state around the eighteenth century. Therefore, the work of adjudicating is no longer only substantially adjudicating - as in the past when Khadi Justice, which was a judiciary that was not oriented to "fixed rules of formally rational law," but to substantive law that departed from ethical postulates, religious, political and other considerations of expediency. Having become a modern institution, the court is the application of strict procedures. [43]

Based on the optics of the sociology of law that pays more attention to the function of the body that carries out the function of adjudicating, to find justice and where justice is decided, the factor of the institution or agency that decides justice is not important. Judgments about justice can be made anywhere in a society, not necessarily in court. Therefore, upholding and finding justice does not only have to be done through the formal structure of the judiciary. The judicial function can be carried out and takes place in many locations, so Marc Galanter[44] refers to it as “justice in many rooms.” On this basis, choosing an arbitration forum or mediation to resolve business disputes is a tendency to shift the interest of the justice-seeking community from using litigation in court to other channels whose format is less formally structured. However, the latter form is believed by its use to be able to give birth to substantial justice. for

[39] Satjiptro Rahardjo, *Tidak Menjadi Tawanan Undang-undang*, Kompas, Rabu, 24 Mei 2000.

[40] Roeslan Saleh, *Mengadili Sebagai Pergulatan Kemanusiaan*, Aksara Baru, Jakarta, 1979, p. 29

[41] Satjipto Rahardjo, *Tidak Menjadi Tawanan Undang-undang*, Kompas, Kamis, 25 Mei 2000

[42] Satjipto Rahardjo, *Indonesia Butuh Keadilan yang Progresif*, Kompas, Sabtu, 12 Oktober 2002

[43] Satjipto Rahardjo, *Sosiologi Hukum: Perkembangan Metode, dan Pilihan Masalah*, Muhammadiyah University Press, Surakarta, 2002, p. 134-136

[44] Marc Galanter, *Justice in Many Rooms;* dalam Maurio Cappelletti (ed) *Access to Justice and The Welfare State.* Italy: European University Institute, 1981, p. 147-182

decades people in several countries[45], including Indonesia, have trusted the judiciary to manage the disputes they are facing, in the hope that they will get justice as normatively and explicitly stated in the laws and regulations. [46]

However, the fact is that the judiciary is considered unable to meet the expectations of the justice-seeking community. Many factors have caused the court in the course of its history to be like that.

Determination of an act as a crime or a form of violation of the law, then of course as a consequence it will cause a reaction from the community. Formal reactions to crimes are reactions given to criminals for their actions, namely violating criminal law, by parties who are authorized or have the legal power to carry out such reactions. Often, to make it easier to describe the figure who is authorized to give the (formal) reaction, the state in this case is the government, which in turn delegates its duties to an official law enforcement agency.

The official agency appointed by the government to deal with the problem of responding to crime is known as the Criminal Justice System. The criminal justice system, thus, is a system that exists in society to tackle crime. As a crime control system, in detail, the objectives of the criminal justice system are thus:

1. Prevent people from becoming victims of crime;
2. Resolve cases of crimes that have occurred so that the community is satisfied that justice has been served and the guilty are punished; as well as
3. Ensuring that those who have committed crimes do not repeat their crimes.

The enforcement of criminal law is a process that takes place in the event of a violation of the rules of criminal law. If we look closely, this process is a set of management actions or an administration, so it is often referred to as the administration of criminal justice. We understand that in an administrative mechanism some managers and actions cannot be separated from the responsibility of the managers. If we return to the terminology of criminal law enforcement, criminal justice administrative officers are known as law enforcers who are involved in the criminal justice administration mechanism. The law enforcers are the police, prosecutors, judges and correctional officers. Overall, in an integralist view, the administration of criminal justice is known as the Criminal Justice System.

The questions of why, how and when we should punish criminals are easy to ask but difficult to answer. Many philosophers and sociologists have tried to answer this question, resulting in the emergence of various theories of punishment.

Society always punishes people who go against the established value system. However, responses to criminals have been influenced by theories of criminal behavior that emerged at different times. A full history of punishment in the form of harsh punishments given to perpetrators including caning, stoning, shackles and others. However, in this world, most such punishments are now almost obsolete.

Every society in the world has a "law" that prohibits various deviant or unacceptable behavior. Society expects its members to follow the law and not indulge in "unlawful" activities. The law defines

[45] Takeyoshi Kawashima, *Penyelesaian Pertikaian di Jepang Kontemporer;* dalam AAG Peters & Koesriani Siswosoebroto, *op.cit.*, p. 99

[46] See Law on the Basics of Judicial Power

prohibited behavior and the response or punishment related to the type of behavior of people. Therefore, it can be said that the history of punishment is very old. Walker[47] considers punishment to be an "institution" that is present in almost every society in the world. Pereda[48] considers the criminal justice institution as one of the oldest and most persistent social mechanisms in history.

Settlement of criminal cases of ordinary crimes with mild motives can be done using restorative justice which basically will provide benefits for all parties. This is because of all the profits, the victim gets compensation, the perpetrator does not go to jail but compensates and apologizes, there is peace in the community and there are no big costs.

Entering the middle of the 20th century, especially in the United States, the prosecutor's role and position have become increasingly stable. In the tradition and legal culture of the United States, the prosecutor has a dual role: (1) as an administrator (organizer) and (2) as a semi-judge, also referred to as a quasi-judicial officer. [49]

As an administrator (criminal justice organizer or in Indonesia called law enforcer), the prosecutor carries out the function of the public prosecutor, acting as a Rambo. He prosecutes cases intending to produce a sentence from the judge as heavily as possible and as much as possible to avoid case arrears. [50]

As a semi-judge or quasi-judicial officer, the prosecutor carries out the function of "minister of justice", acting like a pope, namely protecting the innocent, considering the rights of suspects, and preventing prosecution based on revenge. Therefore, the prosecutor is equipped with the authority to stop the case process, either for technical reasons (stopping the prosecution) or for reasons of public interest (setting the case aside). [51]

In short, prosecutors in the United States can decide not to prosecute a case without anyone being able to change it, not even a judge or other agency outside the prosecution. In addition, the prosecutor has the power to determine the severity of the sentence from the judge, because, in the criminal system, there are articles that only contain a minimum sanction, one type of punishment, for example, a prison sentence of 15 years, so that the judge cannot impose a lower sentence than that. In other words, prosecutors in the United States can de jure make criminal decisions decisively and legally binding.

Meanwhile, in the presence of the suspect's defense/legal counsel, the de facto prosecutor can carry out "negotiations" with the suspect which results in an internal compromise. Even though the judge can reject the agreement that has been reached between the prosecutor and the suspect, it can be said that the judge rarely refuses[52]. Thus, in recent developments, the prosecutor in the United States is not only a semi-judge but is already a full judge or "a judge beside

[47] Nigel Walker. *Why Punish.* Oxford: Oxford University Press, 1991

[48] C. Pereda. 2002. *The Bad Reputation of Punishment.* (online) Available at: http://wings.buffalo.edu/law/bc1c/bcirarticles/5(2)/Pereda.pdf

[49] John Jay Douglass (ed.) *The Prosecutor in America.* Houston, Texas: University of HouSton College of Law, National College of District Attorney, 1977 dan Stanley Z. Fisher, "Zealousness and 'Overzealousness': Making Sense of the Prosecutor's Duty to Seek Justice." *The Prosecutor,* Vol. 23 No.3, Winter 1989. Bdgk RM Surachman, "Memahami diskresi kejaksaan" dalam RM Surachman (1996), *op. cit.,69* sepeol juga dirujuk oleh Bambang Waluyo, *et al.* (2000), *op.cit.*, 26-27

[50] Bdgk RM Surachman, "Memahami diskresi kejaksaan" dalam RM Surachman, (1996), *loc. cit.,* 69

[51] *ibid*

[52] Erik Luna & Marianne Wade, 2010, *Op.Cit.*, p. 1428

the judge". Undoubtedly, prosecutors in the United States can apply prosecutorial adjudication or prosecution adjudication, so that prosecutors carry out the function of judges. [53]

In cases like this, the prosecutor can resolve using the highest legal umbrella owned as regulated in the Law of the Prosecutor's Office of the Republic of Indonesia Number 16 of 2004 Article 35c concerning the principle of opportunity (opportuniteitsbeginsel) adopted in the Netherlands followed by Indonesia, Israel, Japan, and others. another with the meaning The public prosecutor may decide – conditionally or unconditionally to make a prosecution to a court or not, with only minor offenses (Russia 10 years and under, Netherlands 6 years and under, France 5 years and under, RUU KUHAP 4 & 5 years down; compensation to victims, paying fines to the state; light motives, not recidivist, not in detention.

In the Netherlands, there is already a law for this and it is regulated in Article 167 of the SV (KUHAP). All prosecutors may apply the afdoeningsbuiten process (transaction).

Now 60% of cases in the Netherlands are settled out of court, twenty years ago, only 3%. In Norway, it's 74%. Prisons are loose, and Indonesia is crowded because people are not satisfied if offenders don't go to jail.

So, it is precisely in Europe that the teachings of the Trias Politica Montesquieu are considered obsolete. For judges, rechterlijk pardon (pardon by judges) was introduced, Article 9 a Ned. WvS. "By taking into account the lightness of the case, the condition of the defendant before committing and after committing the offense, the judge can declare that the defendant has been proven to have committed the act which was charged with a nil sentence.

Also known as submission (submissie), a judge can impose a sentence without a trial with the consent of the prosecutor, if the defendant admits to all the acts charged and the sentence cannot be more than 2/3 of the maximum. This is following the principle of the speedy trial (speedy trial: contante justitie), low cost and simple. It is known in the Netherlands and Russia.

Difficulties in Indonesia:

1. Only the attorney general has the authority to sponsor cases
2. The reasons for the public interest are too narrow: for the interests of the state and society
3. There is no law on terms and restrictions on the application of case settlement outside the law (new and RUU – KUHAP)

Internationally "in the public interest" means:

1. The application of other sanctions such as discipline, administrative, and civil is more profitable and more effective
2. The prosecution will be disproportionate, unfair, or ineffective in terms of the nature of the offense (eg the offense does not cause harm and does not need to be penalized)
3. The prosecution is disproportionate, unfair or ineffective, judging by the offender, too old or there is a possibility of improvement through re-socialization.
4. The prosecution would be against the interests of the state (eg state security, peace and order). The attorney general's

[53] *Ibid.,* 1424 by explaining, that the term prosecutorial adjudication, comes from article (Hakim Federal Amerika) Gerard Lynch accompanied by his flattery, that the prosecutor in his country acted as a *"a quasi-judicial role."*

office only mentions this.

5. The prosecution would be against the interests of the state (eg state security, peace and order). The attorney general's office only mentions this.
6. The prosecution would be against the interests of the victim (eg competence already paid)

G. CONCLUSION

Settlement of minor crimes can be taken with a diversion approach, which focuses on the direct participation of perpetrators, victims, and the community by interpreting criminal acts as basic attacks on individuals and society as well as social relations. minor crimes with the involvement of victims, communities, and perpetrators are important in efforts to repair, reconcile and guarantee the continuity of these repair efforts.

REFERENCES

1. Adami Chazawi, Pelajaran Hukum Pidana Bagian 1, Jakarta: Raja Grafindo, 2002
2. Bambang Poernomo. Asas-asas Hukum Pidana. Jakarta: Ghalia Indonesia. 1985
3. Barda Nawawi Arif. Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara. Cetakan ke-4. Yogyakarta: Genta Publishing. 2010.
4. Bernard L. Tanya, Yoan N. Simanjutak dan Markus Y.Hage, Teori Hukum (Strategi Tertib Manusia Lintas Ruang dan Generasi), Genda Publishing, Yogyakarta, 2010
5. Budiono Kusumohamidjojo, Filsafat Hukum Problematik Ketertiban yang Adil, Grasindo, Jakarta, 2004
6. Edger Bodenheimer, Yurisprudence: The Philosophy and Method of the Law; Cambridge, Massachusetts, 1962
7. Francis Fukuyama, The Great Disruption: Human Nature and the Reconstruction of Social Order, Profile Books, 1999
8. Frans Magnis Suseno, Kuasa dan Moral, Jakarta: Gramedia, 1995
9. FX. Aji Samekto. Justice Not For All, Kritik Terhadap Hukum Modern Dalam Perspektif Hukum Kritis, Genta Press, Yogyakarta, 2008
10. Herbert L. Packer, The Limits of Criminal Sanction, California: Stanford University Press, 1968
11. Hidayatullah, Alternatif Penyelesaian Tindak Pidana Ringan Melalui Forum Kemitraan POlisi-Masyarakat (FKPM), Studi Kasus FKPM Di Polres Salatiga, Disertasi, Program Doktor Ilmu Hukum, Universitas Diponegoro, Semarang, 2012
12. I.S. Susanto, Lembaga Peradilan dan Demokrasi, UNDIP, Semarangm 12-13 Nopember 1996
13. Kertas Kerja Pembaruan Sistem Pembinaan SDM Hakim, Jakarta: Mahkamah Agung R.I., 2003
14. Kristian dan Yopi Gunawan, Tindak PIdana KOrupsi, Kajian Terhadap Harmonisasi antara Hukum Nasional dan The United Nations Convention Against Corruption (UNCAC), Refika Aditama, Bandung, 2015
15. Lawrence M. Friedman, The Legal System: A Social Science Perspective, Russell Sage Foundation, New York, 1975
16. Marc Galanter, Justice in Many Rooms; dalam Maurio Cappelletti (ed) Access to Justice and The Welfare State. Italy: European University Institute, 1981
17. Marc Galanter, Why The Haves Come out Ahead: Speculations on The Limits of Legal Change; Law and Society, Fall 1974
18. Murphy and Coleman, Philosophy of Law, California, Stanford University Press. 1990

19. Nigel Walker. Why Punish. Oxford: Oxford University Press, 1991
20. Peter Mahmud Marzuki, Penelitian Hukum, Cetakan Kedua, Jakarta: Kencana Prenada Media Group, Mei 2006
21. Roeslan Saleh, Mengadili Sebagai Pergulatan Kemanusiaan, Aksara Baru, Jakarta, 1979
22. Roni Hanitijo Soemitro, Metode Penelitian Hukum dan Jurimetri, Jakarta: Ghalia Indonesia, 1983
23. Satjipto Rahardjo, Tidak Menjadi Tawanan Undang-undang, Kompas, Kamis, 25 Mei 2000
24. Satjipto Rahardjo, "Hukum dalam kerangka ilmu-ilmu social dan Budaya", dalam Majalah Ilmiah Masalah-Masalah Hukum, Nomor 1 tahun 1972
25. Satjipto Rahardjo, Indonesia Butuh Keadilan yang Progresif, Kompas, Sabtu, 12 Oktober 2002
26. Satjipto Rahardjo, Rekonstruksi Pemikiran Hukum di Era Reformasi: dalam makalah Seminar Nasional Hukum Menggugat Pemikiran Hukum Positivistik di Era Reformasi, Semarang: PDIH-Undip, Angkatan V, Sabtu, 22 Juli 2000
27. Satjipto Rahardjo, Sosiologi Hukum Perkembangan Metode dan Pilihan Masalah, Muhammadiyah University Press, Surakarta, 2004
28. Satjipto Rahardjo, Supremasi Hukum dalam Negara Demokrasi dari Kajian Sosio Kultural; dalam Makalah Seminar Nasional – Fakultas Hukum UNDIP, Semarang, 27 Juli 2006
29. Simanjutak T., Penerapan KNIAP Dalam Proses Penyidikan Tindak Pidana, Dinas Hukum Polri, Jakarta, 1998
30. Soerjono Soekanto & Sri Mamudji, Penelitian Hukum Normatif, Jakarta: Rajawali,1985
31. Soetandyo Wignjosoebroto, Keadilan Komutatif, win-win Solution, dalam Kompas 25 Nopember 2000
32. Sudarto. Hukum Pidana 1: Semarang: Yayasan Sudarto.1990
33. Suteki, Kebijakan Tidak Menegakkan Hukum (Non Enforcement of Law) Demi Pemulihan Keadilan Substansial, Pidato Pengukuhan, disampaikan pada Penerimaan jabatan Guru Besar dalam Ilmu Hukum pada Fakultas Hukum Universitas Diponegoro, di Semarang pada 4 Agustus 2010
34. The Hon. Michael Lavarch M.P., Judicial Appointment: Procedure and Criteria, Discussion Paper, 1993.
35. Wirjono Pradjodikoro, Asas-Asas Hukum Pidana Di Indonesia, Cetakan ke-3, PT Eresco Jakarta, Bandung, 1981