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The Ratio of Instrumental Action to Criminal Laws:

Throwing in language game

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***Abstract*—The use of language as a communication tool in the practice of criminal justice in Indonesia has ruled out the diversity of transcendental values in a person as a complete human being. The process of enforcing criminal law in Indonesia is only based on patterns of reasoning and argumentation using the ratio of instrumental actions. The richness of the language in which it brings transcendental and cultural experience seems to disappear in an instant, when the use of subjective elements and objective elements in legal norms is only directed at patterns of conformity between behavior and elements. This study aims to show that editorial formulation in criminal legislation contains only rational considerations of an act that is determined as a criminal offense but excludes the use of the parole language from the Law Enforcement Officer (LEO) to the Reported / Examined / Suspected. This study uses secondary data in the form of primary legal materials in the form of laws and court decisions, secondary legal materials and tertiary legal materials using a philosophical approach to language, empirical approaches and participatory approaches through a legal semiotic analysis model. Based on secondary data and the analysis model, it is known that Law Enforcement Apparatus (LEO) in verbal communication through the language of speech (parole) has a psychological impact on the Reported / Examined / Suspected, on the other hand, the meaning of written language in legislation also gives rise to feelings injustice to other interested parties. Therefore, the conclusions in this study indicate the use of parole language that is not in accordance with the objectives of criminal legislation. Law Enforcement Officers (LEO) experience being stuck (gowerfen-sein) in the practice of parole which is very detrimental to the Reported / Examined / Suspected.**

Keywords—criminal justice; language game; legal norm; ratio of instrumental actions; syllogism

I. INTRODUCTION

The principle of the rule of law as contained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that "the State of Indonesia is a state of law." Actually, the administration of the state is not only based on the principle of the rule of law. However, the principle of democracy is also an element of the duumvirate in the mechanism of administering a democratic legal state. Both of these principles are interrelated and cannot be separated. On the other side, the principle of democracy provides the basis and mechanism of power based on the principle of equality and human equality [1]. On the other hand, the principle of state law provides a benchmark that those who govern in a country are not human, but law.

In the principle of a democratic legal state, the meaning contained is that democracy is regulated and limited by the rule of law, while the substance of the law is determined by democratic means based on the constitution. As a legal state, all actions of state administrators and citizens must be in accordance with applicable law [2]. JF Stahl, further emphasized, that the Law State which he called the term 'rechtsstaat' included four important elements [3], namely (a). Based on human rights; (b). To protect human rights properly there must be a separation of powers (trias politica); (c). The government must be based on law / law; and D). If in the protection of human rights based on the law there are still violations of human rights, it is necessary to have an administrative court.

In addition to determining the policies of social life, the state shapes the policies of state life. The meaning of organizing the life of the state is the field that has to do with the survival of the state organization. The foregoing includes the establishment of a legislation mechanism as a continuation of the written and unwritten basic laws, investigating the articles, how they are applied, the mystical atmosphere, the formulation of legislative texts, the atmosphere of the creation of the statutory text, statements relating to the process its formation, where all are related to the arrangements contained in the constitution concerning state organization. In this field, it is necessary to note several stages of implementation of provisions concerning state organizations that are affected by

circumstances and time [4]. his activity is known as 'legal politics'.

Based on these legal political activities, we often witness a legal phenomenon - especially what happens in the civil law system, there are changes in legal rules to accommodate the development of society. So, these changes are actually an attempt to try to harmonize positive rules with the spirit of the nation's spirit, which so far has been practically detrimental to the general public against the law. The inequality between das sollen and das sein is more due to incompatibility of values and norms contained in positive law. So, since 1964 a team has been formed several times to draft the Criminal Code Bill, which until now has not yet materialized.

In concreto, changes in law, both erasing, changing meaning, adding meaning, creating new terms, all of which are processes of criminalization and decriminalization, both carried out because there is domestic public pressure and because of international pressure. The process of forming such a law ultimately ends in fulfilling the purpose of the message of the interests of the master. So, relating to how to formulate and design the rules becomes marginalized.

According to Sidharta that at the level of legal practice in Indonesia, especially since the time of the New Order, it shows a situation that is strongly influenced by legal positivism, even positivism law (legism) [5]. Legal practitioners are strongly influenced or appear to adhere to legal positivism. Legal practitioners tend to think positivistic or legistic in carrying out their respective professions. In this positivistic view, the law is only what is explicitly stated in the legal rules (legislation). Under the influence of the doctrine of legal positivism, then the practice of law in Indonesia use of or reference to the principles of the law in a dispute the legal opinion or in sets of legal proceedings have received less attention. Among other things, due to the neglect of reference to legal principles in juridical arguments in the effort to implement various interrelated laws and regulations, the implementation of the concept of the rule of law in practice became far from idealized (the Tempo case). What is realized in practice is the state of formal law, which keeps the law away from justice. Indeed, in a society that is experiencing a very basic moral crisis such as in Indonesia, then all the values and principles of law that are fundamental to the realization of justice can actually distance the "law" from justice or the real legal needs of the real society [5].

The debate in formulating and promulgating a criminal legislation is a debate that has never stopped in the history of human development. The classical flow arises because of its resistance to the authority of the ruler who arbitrarily sets sanctions for an act which is in the view of the ruler to be detrimental. Similarly, other streams, such as the modern and neo-classical schools, which arise because of the influence of the views of academics and scientific studies on the reach of classical schools that are behind the principle of legality exclude other aspects of the life of society.

II. Problem of Statement

The debates, as I mentioned above, only focus on the completeness of the elements that will be stated in a law. The loss of the transcendental element in the life of a human being is none other than the denial of the function of language as the 'big house' used by law. Whereas, the concrete fact is that the Criminal Code was designed and formulated by Language experts [6].

As a legal research that deals with aspects of language, this study uses a normative juridical research method based on secondary data consisting of primary legal material in the form of laws and court decisions, secondary legal material in the form of scientific works of legal experts and tertiary legal materials in the form of dictionaries and encyclopedias. Therefore, the method used is normative juridical, so the data collection method is based on literature studies. One of the advantages of using the normative juridical method is the use of various models of approaches, so I use the philosophy approach of language, because legislation has a form of written language. Another approach used is empirical, because, researchers aside from working as academics, also as practitioners. Thus, a participatory approach model was used in this study. The empirical and participatory approach model is used at the practical level, therefore, the researcher relates directly to *parole* models (speech language) from Law Enforcement Officials (LEO) to the Reported / Examined / Suspected.

So, it is appropriate for us to question "How is the interpretive cognitive activity of criminal legislation by Law Enforcement Officials?"

III. Analysis and Discussion

In the Criminal Law environment, language problems are almost never existentially questioned. Mastery of the legal language, as if it were just assumed to be something that is inherent in every Bachelor of Law.

The infringement of Bachelor of Law in the dominance and hegemony of the civil law system, led to the mastery of written language limited as a legal correspondence, for example in the realm of legislation or in the realm of criminal justice practice [7].

Whereas when referring to the law enforcement concept, as explained by Soekanto, where law enforcement is interpreted as a process, in essence it is the application of discretion which involves making decisions that are not strictly regulated by the rule of law, but have an element of personal judgment [8]. Interference with law enforcement occurs when there is an incompatibility between values, rules and behavior. The disorder occurs when there is an inconsistency between pairs of values incarnating in conflicting rules, and un directed behavior patterns that interfere with the peace of life.

The view above, wants to show that a law enforcement process is a distillation of legal norms that are abstract to concrete facts. This information contains an act that means written language in the laws against criminal acts that occur, or often known as interpretation activities.

The problem is that the meaning cannot be interpreted as something that goes without a paradigm which is the main basis for reasoning and argumentation.

Let us look at one of the legal norms in the Criminal Code, namely Book I concerning General Provisions in Chapter V concerning Participation in Criminal Actions, for example in Article 55 paragraph (1) of the Criminal Code, which confirms the following:

Sentenced as a criminal offender:

- Those who do, who tell to do, and those who participate in doing things;
- Those who give or promise something by abusing power or dignity, by violence, threats or misdirection, or by giving opportunity, means or information, intentionally encouraging others to do things.

The formulation of Article 55 paragraph (1) of the Criminal Code is only intended for a criminal offense committed by more than 1 (one) person. Thus, the formulation and design of an indictment that intends to use Article 55 paragraph (1) of the Criminal Code to link the relationship between one criminal offender and one another, always using the word "together with".

The word "together with" in its written form on an indictment, is not something that is problematic. In fact, theoretically the use of the word "together with" in the indictment of criminal offenses is common. The word 'together with' is a form of *langue* that is understood by every Bachelor of Law.

The meaning of elements in legal norms is, in essence, a subsumed effort (matching) between actions with elements of words in legal norms known as subjective elements and objective elements based on legal evidence according to the law. Interpretive cognitive activities in order to find these meanings, in the realm of criminal justice practices, especially in the realm of Inquiry-Investigation-Prosecution, are based on a paradigm known as Legal Positivism.

The Paradigm of Legal Positivism as the basis for reasoning and argumentation is a paradigm (way of thinking) based on the Logical Positivism Paradigm, which is an extension of the Positivism Paradigm from August Comte.

Logical positivism holds that philosophy must follow the same priorities as science. Therefore, logical positivism must provide strict criteria for determining whether a statement is true, false, or has no meaning at all. A statement, according to Logical Positivism, can be called meaningful if and only the statement can be verified empirically based on its relationship with data or facts and can also be logically accepted [9].

The power of logical positivism lies in the power of verification of meaning based on empirical data that greatly influences legal science. Thus, many legal experts / thinkers experience the 'illusion of ego', that is, beliefs about pure identity, in the form of permanent essence, or the beginning of the great-ego centric. This illusion developed into purification efforts so that birth was known as the process of purification or purification of legal texts, centralism and even racial interpretation. Legal thinkers view certain texts or rules as final because they refer to the explanation of the text, because legal experts argue, it is a form of historical consciousness that is formed through a journey of the past that certain texts or rules have a fixed structure that is preceded by its formation and journey. This gave birth to legal thinkers who were 'centralism', which eventually resulted in the process of fencing legal texts with social reality. That the inside cannot go outside and the outside cannot enter inside, in other words a circle exists between the world of logic, centralism and reciprocity [10].

Based on such logic of reasoning, in order to achieve a legal argument, the method of syllogism becomes very appropriate to be used in Law, especially in the realm of practice.

The syllogism method combines justification and denial between the three terms. If two terms separately justify the third term, it can be concluded that the two terms justify each other. But if only one term justifies the third term, the first and second terms deny each other. This method clarifies and removes the doubts of our thoughts on the basis of the relationship between the three terms. However, in essence, according to Sumaryono [11], there are three weaknesses, namely (1). This method is only able to convince the truth of a statement, but does not compose or give rise to new truths; (2). This method only proves that something is true, but does not specify that the statement is true; and (3). This method only applies to deduction conclusions and does not apply to induction inference. So that only apply laws that are universal in all special matters, but are not able to compile universal laws drawn from special things.

The hegemony of logical positivism that influences legal science so that it becomes legal positivism is given the conclusion given by John Austin for the essence of law is that positive law must fulfill the elements of orders, sanctions, obligations and sovereignty. Beyond that, it is not law, but positive morality. Therefore, proper law is a system that is logical, fixed and is closed (closed logical system). Thus, legal certainty is the ultimate goal of Legal Positivism. Furthermore, Austin explained that achieving legal certainty must be separated from morality [9].

Therefore, Legal Positivism is based on western philosophy which is based on the presupposition of truth on the concepts of nature, subjectivity and progress. For western philosophy, humans are rational beings who have a center of consciousness, so they are able to overcome nature. Thus, humans are considered as subjects and nature is the object. The presupposition of the truth of the concept also occurs in historical subjectivity, that is, humans are masters of history and are able to change their history. So, humans are actors for progress. The concept of modern rationality based on the operation of reason is based on the Natural Sciences [12].

The thought of law based on western philosophy, in the end gave rise to an action which Jurgen Habermas referred to as "The Ratio of Instrumental Action" or also known as "Rational Action Aiming".

The Ratio of Instrumental Action, according to Habermas [12], in the achievement of an influential consensus (*Einflußnahme*) which is based on monologal beliefs that are considered right and right by someone without the knowledge

of others, so rational reasons are not key concepts but effects or consequences of success in this affect action.

Although, the Criminal Law experts emphasized that the Criminal Procedure Law currently adheres to the principle of examination, namely accusatoir based on Communicative Action Ratios, however, at the practical level when law enforcement officers carry out interpretive cognitive activities it rests on western philosophy that rests on Instrumental Action Ratios. As a result, the provisions in Article 117 paragraph (2) of the Criminal Procedure Code which confirms that the information given by the suspect to be recorded as detailed as possible based on the words of the suspect, is interpreted based on the syllogism method with the category of fulfillment of legal norms based on actions. The meaning of "words" in Article 117 paragraph (2) of the Criminal Procedure Code has been reduced as a result of understanding words that have meaning only words that are verified by actions based on elements of legal norms. So, all the wealth of experience in the life of the suspect / defendant disappeared.

Thus, it is not wrong when the Charles Stampford asserted that due to the demand to form into the text, the law has entered a linguistic domain and thus entered a language game [13]. In fact, language games reach the realm of criminal practice.

In this case, the form of criminal legislation - as if, overrides the individual ability of law enforcers to conduct language games in the form of *parole* (speech language), so that the legislators only base the formulation and design of a regulation based on the language agreed upon by the community law (*langue*) only.

IV. CONCLUSION

Based on the descriptions above, a process of establishing legislation in the realm of Criminal Law is still dominated and hegemony by experts in Criminal Law with reference to the language of consensus in the Criminal Law (*langue*) circles. In fact, when langue enters the realm of judicial practice it will turn into *parole* (speech / oral language) which brings with it individual interests. Thus, the interpretive cognitive activities of Law Enforcement Officials will experience a throwback (*gowerfen-sein*) in manipulating words to achieve the goal of fulfilling elements based on legal norms. In the end, law at the practical level actually reduces transcendental elements from the integrity of a human being. Therefore, Law Enforcement Officials will apply Instrumental Action Ratios to Suspects / Defendants to maintain consistency and predictability, in order to achieve legal certainty.

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