

LEGAL PROTECTION FOR VICTIMS OF FAIR TRIAL RIGHTS AS A FORM OF HUMAN RIGHTS PROTECTION IN THE INDONESIAN JUSTICE SYSTEM

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Abstract

In the legal protection of the right of Fair Trial victims in the Indonesian judicial system, the government should refer to and protect the Human Rights that exist in every individual human being even though the person who violates the “Fair Trial right” is a perpetrator of the crime. This study aims to examine the extent of the form of legal protection for victims of Fair Trial rights as a form of human rights protection in the Indonesian Judicial System because cases of violations of Fair Trial rights are often found in various existing cases. The “Fair Trial Rights” violated are the basic value of the criminal justice process covering at least three important components: human dignity, truth, and justice in the process. The first basic value, namely the protection of human dignity refers to the condition that all law enforcement officers at all stages of the judiciary must apply consistently and support the protection of the human dignity of the parties, both suspects, defendants, convicts, victims, and witnesses, the second value is the value of truth, this value requires that law enforcement “must ensure the application of normative provisions before imposing accusations, indictment, or punishing a person”, while the third value is fairness or the value of justice in criminal justice proceedings, which requires that law enforcement must work hard to treat the parties by respecting their rights protected by law and applying the limits of their authority.

Keywords: Fair Trial, Legal Protection, Human Rights, Law Enforcement

1. INTRODUCTION

In the world of law there is a right that must be protected as a form of guarantee for human rights. This refers to the basic principles of our country, namely “Pancasila” which can be known as *Volksgeist* (Soul of the Nation) where the values are taken from *Folkways* (laws or norms that live in society). The value of Human Rights in Pancasila is contained in the Second Precept “Just and Civilized Humanity”, besides being contained in Pancasila Human Rights is also contained in the 1945 Constitution of the Republic of Indonesia contained in article 28 A-J (Hutabarat et al., 2022). If the Human Rights in the 1945 Constitution of the Republic of Indonesia are aimed at the Fair Trial concept it can be seen in Article 27 paragraph 1 which states “All citizens have the same position before the law and government and are obliged to uphold the law and government without exception” and article 28 D paragraph 1 which states “Every person has the right to recognition, guarantees, protection and certainty fair law and equal treatment before the law”. This reveals that the Indonesian government recognizes the presence of equal rights for every citizen, without distinction, and that it is not permitted for law enforcement to violate the principle of fair trials.

The concept of equal rights has existed for a long time in the English language literature, it is often argued that rights based on law (legal rights) are distinguished from

rights arising from other norms (Worthington, 2006). According to Paton, legal rights are usually defined as rights that are recognized and protected by law (Wati, 2017). The same thing was stated by Sarah Worthington (2006) which states that legal rights are often contrasted with moral rights. She gave the example that a person can expect to be paid by his employer, loved by his mother, or given gifts on his birthday. Furthermore, she stated that among these expectations there are rights based on law, namely the right of an employee to get paid by his employer, if not paid the employee can use a formal institution to help the employee get his right to that payment from his employer (Worthington, 2006). Similar to Paton's assertion, Worthington confirmed that the rule of law establishes legal rights. Further, Worthington (2006) added that in countries with a civil law system, legal rights are stipulated in the constitution. On the other hand, in countries with a common law system, rights based on law can be identified from the sanctions imposed by courts for violations committed against those rights. Further, Worthington (2006) emphasized that if the court imposes a sanction, it means that it is related to legal rights and obligations.

These norms, principles and standards have grown gradually since 1948, starting from the development of values through intellectual and social processes (enunciative stage), rights to declarations (declaration stage) of human values, interests and rights that have no binding force (non-legally binding), prescriptive stage in the form of institutionalization of more binding principles, norms and standards within the framework of international agreements, then the enforcement stage through various international conventions, procedural mechanisms or a combination of the two and the criminalization stage in the form of formulation of international crimes as a means of trying human rights violations with a certain gravity.

In the theory of natural rights, John Locke argued that all individuals are endowed by nature with inherent rights to life, freedom and property, which are their own and cannot be transferred or revoked by the state. Even so, Locke also highlight that in order to avoid the uncertainty of living in this world, human beings have entered into a social contract, according to which the exercise of their inalienable rights is left up to state authorities (Ashri, 2018).

Article 5 of Law Number 39 of 1999 concerning human rights, states that every person is recognized as an individual human being, and therefore has the right to receive equal treatment and protection in accordance with human dignity before the law. Everyone has the right to receive fair assistance and protection from an objective and impartial court. Furthermore, is the treatment and protection of vulnerable groups of people with respect to specificities, such as: the elderly, children, the poor, pregnant women and people with disabilities (Prinst, 2001).

It is impossible to have a conversation on human rights in regard to the legal system without also examining the connection between human rights, the rule of law, and democracy. Both the quality of protection and promotion of human rights and the rule of law in a country are two of the many democratic indicators which are indicators of the presence or absence of democracy in a country (Muladi, 2005). The right to a fair or balanced trial includes the following:

- 1) One thing that must still be taken into account in democratic life is an independent judiciary, which guarantees the administration of an honest trial for all persons accused of committing a crime. This guarantee is concretely carried out against individuals who are accused of committing a crime, who claim that

their right to a fair trial has been violated. This is regulated in the Optional Protocol to The ICCPR (1966) (Baldinger, 2015).

- 2) The main basis for setting up a fair trial is contained in articles 10 and 11 of the 1948 UDHR; Articles 14 and 15 of the ICCPR affirm the existence of a person's right to a fair and public hearing by a competent, independent and impartial established by law.

After the world experienced two wars involving almost the entire world where human rights were trampled on, the desire arose to formulate human rights in an international text. This effort on December 10, 1948 succeeded with the acceptance of the Universal Declaration of Human Rights (UDHR) by the countries that are members of the United Nations.

As a statement or Charter, the Universal Declaration of Human Rights is only morally binding but not yet juridically, but this document has enormous moral, political and educational influence. It symbolizes the moral "commitment" of the international world to norms and human rights. This moral and political influence is evident from the frequent mention of it in the decisions of judges, laws or constitutions of several countries, especially the United Nations (Muladi, 2005).

Everyone without discrimination has the right to obtain justice and to obtain it is carried out by filing requests, complaints and lawsuits, whether in civil, criminal or administrative cases. For this reason, cases are tried through an independent and impartial judicial process, with reference to procedural law which guarantees an objective examination by honest and fair judges. The goal is to obtain a fair and correct decision. According to this principle, selling decisions must be avoided in handling cases (Prinst, 2001).

A fair trial is a series of judicial processes from pre-trial, trial and post-trial. In every stage of the trial there are human rights that must be given to suspects, defendants and convicts. Pre-trial rights, namely: (a) Prohibition of Arbitrary Detention; (b) The right to know the reasons for the arrest and detention; (c) Right to Legal Counsel; (d) The right to test the Legitimacy of Arrest and Detention; (e) the right not to be tortured, as well as the right to be treated humanely during detention; (f) the right to be brought before a judge and trial promptly. The rights during the trial period, namely: (a) The right to a fair and open examination; (b) The right to be immediately notified of criminal charges is granted; (c) the right to be tried by competent courts and judges; (d) The right to adequate time and facilities to prepare a defense; (e) The right to defend himself or through legal counsel; (f) The right to examine witnesses; (g) The right to have free translators; (h) Prohibition to force someone to provide information that will incriminate themselves (self-incrimination); (i) the right to be tried without delay. While the rights at trial are: (a) the right to legal remedies, and (b) the right to receive compensation for an erroneous court decision (S. Marzuki, 2011).

Based on the above, the authors are interested in conducting research related to how the legal protection of victims for the right to a fair trial is a form of human rights protection in the Indonesian justice system.

2. RESEARCH METHODS

The type of research in writing this article was the Normative Law writing method. The Normative Law writing method was a legal research method that describes the condition of norms that conflict with norms (*geschijld van normamen*), vague or unclear norms (*vague van normamen*) or empty norms (*leetmen van normamen*). Normative research, namely library law research or legal research based on data, namely secondary data (Soekanto & Mamudji, 2003).

3. RESULTS AND DISCUSSION

3.1 Research Result

In order to understand the concept of fair trial in the Indonesian criminal justice system, we must first examine the origins of law as a social norm aimed at regulating human behavior. The concept of law as a social norm seen from the existence of law in social life can be translated into the classic expression “*ubi societasi ibi ius*” which means law has existed since society existed. Thus, in living in human society there are two aspects, namely the physical aspect and the existential aspect. The physical aspect refers to human nature as a physically living being. The existential aspect relates to its existence which is different from other living things. As a physical living being, to maintain his life, humans need to eat, drink, protecting oneself from the cruelty of nature by making weapons, and procreation, namely marrying and marrying. However, in order to maintain its existence, humans need not only such physical means. If to continue offspring, humans need sexual activity, to maintain their existence, humans need love. To love is to exist in a framework other than physical survival. Gabriel Marcel states that “As long as death plays no further role than that of providing man with an incentive to evade it, man behaves as mere living being, not as an existing being” (Morrison, 2016). These rules are what people refer to as the law. In this case, there are often mistakes in thinking. A frequent mistake is the view that new laws exist, due to the existence of an organized society. Consequently, the law according to this kind of view is a rule called law according to this kind of view is a rule made by those who are indeed charged with making it albeit in its still simple form. Consequently, if the rule grows and develops but is not implemented by a “formal” power, it cannot be called law. Thus, in a society that does not recognize the “formal” power to enforce those rules in that society it is said that there is no law, but only a rule of conduct.

In the Fair Trial Concept, it can be seen from the definition of law, in this case the theory of legal definitions taken from Gray's concept (Ali, 2009) is “theory on the nature of Laws is what the courts, in deciding cases, are, in truth, applying what has previously existed in the common consciousness of the people”. This theory is a theory that views the nature of law as what is decided by the court, is a truth that applies the general awareness of the people that has been before. This theory is a theory adopted by von Savigny, who in the early part of his work entitled “the system *des heutigen roischen rechts*”, Savigny identified law as *Volksrecht* (people's law) as the embodiment of *Volksgeist* (the soul of the nation/people), which is the ‘general awareness of the people’ and is the ‘living intuition’ of the people. Legal definition according to Allot (Ali, 2009) is in the matter of defining law unsatisfactory things have appeared before it, because the definition of law is used in various different meanings in legal writings, regarding the meaning of the word ‘law’ itself. It is impossible for a term to cover all functions without

wrong thinking and analysis. In that regard, Allot suggests three things that distinguish legal typology as:

- a) Law as an abstract concept
- b) Law that exists in the legal system
- c) Law as a rule or special provisions

In analyzing the legal rules and norms in a particular legal system which is a message from the legal communication system, there is a difference between articulatory norms and inarticulate norms. In this case, what Allot meant (Ali, 2009) as ‘inarticulate norms’ are latent (hidden) norms, which in their nature evoke acts of obedience to the law. This is what distinguishes it from ‘phantom norms’ (norms that have never been raised by any authority) and from frustrated norms, namely norms that are presented in a valid form, but only have minimal consequences without even being adhered to at all (zero compliance).

In considering Letter (a) of the Criminal Procedure Code or stating that: “The Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution which upholds Human Rights and which guarantees that all citizens have the same position before law and government and are obliged to uphold that law and government without any except.”

The provisions described above make it very obvious that the state will always uphold its obligation to protect the rights of its citizens. The Criminal Procedure Code, as a guideline for regulating national criminal procedures, must be based on the philosophy/view of life of the nation and the foundation of the state, so the material provisions of the articles or paragraphs should reflect the protection of human rights and the obligations of citizens. The principle governing the protection of the nobility and dignity of human beings has been laid down in Law no. 48 of 2009 concerning Judicial Power. These principles are the principles of the right to a fair trial in the criminal justice system in Indonesia which must be upheld by the Criminal Procedure Code. Examination of cases in court can be carried out using three procedures for examining cases, namely ordinary, brief and fast examinations (Muhammad, 2011). The fair trial principles in question apply to the criminal justice system, including:

- 1) The presumption of innocence, against everyone who is suspected of being arrested, detained, prosecuted and presented before a court hearing until a court decision has obtained permanent legal force (*inkracht van gewijsde*);

The initial stage in the search for a criminal act is the investigation process. Investigation is to examine carefully or monitor the movements of the enemy so that the investigation can be interpreted as a research examination or surveillance (Hamzah, 1986). In examining suspects, investigators must pay attention to human rights, because in every human being there is dignity that must be upheld. The Criminal Procedure Code regulates the rights possessed by suspects, therefore an examination, especially an investigation, does not allow threats or violence.

To protect these rights, the government issued Law Number 4 of 2004 concerning Judicial Power as amended by Law Number 48 of 2009, one of the contents of which relates to the Presumption of Innocence regulated in Article 8 which reads: “Every person who is suspected, arrested, detained, prosecuted, and/or presented before a court must be

presumed innocent before a court decision states his guilt and has obtained permanent legal force.”

The definition of the presumption of innocence according to Nico Keijzer in Mien Rukmini's book is that the suspect is considered innocent in the sense of the actual case. This relates to investigations, arrests and detentions. The definition of the Presumption of Innocence is not related to facts, but related to the main rules and procedures in the criminal justice process. It is said that the suspect/defendant is not or has not been considered guilty and does not have to prove his own innocence, but will be determined by a fair trial, which gives them the opportunity to defend themselves and they must be treated the same as innocent people (Rukmini, 2003).

It is not uncommon for suspects during their examinations to be subjected to pressure and intimidation to admit mistakes that they did not necessarily commit, even in some cases there were wrongful arrests committed by previous officials, the suspect was treated not in accordance with juridical rights under the Criminal Procedure Code, thus the act was not in accordance with embodiment of the Presumption of Innocence. The rights of suspects stated above are guaranteed and protected by law in the process of handling criminal cases, this shows that the Criminal Procedure Code respects and upholds human dignity by providing protection and guarantees for human rights (suspects). Specifically regulating the rights of suspects in the Criminal Procedure Code means that in the process of handling cases, these rights can provide clear or firm boundaries for the authority of law enforcement officials so that they avoid arbitrary actions. From the point of view of criminal procedural law, learning about guarantees and protection for suspects is primarily intended so that law enforcement can truly be based on material truth. As such, the guarantee is obtained that the ultimate goal of the Criminal Procedure Code is to affirm concrete truth and justice in a criminal case (Susanto, 2004).

Apart from having the rights regulated by the Criminal Procedure Code, a suspect or defendant also has obligations that must be obeyed and carried out in accordance with the law. The obligations of a suspect or defendant contained in the Criminal Procedure Code include: 1) Obligation for the suspect or defendant to report himself at the specified time in the event that the person concerned is undergoing city detention (Article 22 paragraph 3 of the Criminal Procedure Code); 2) Obligation to request permission to leave the house or city from investigators, public prosecutors or judges who give detention orders, for suspects or defendants who are undergoing house arrest or city detention (Article 22 paragraphs 2 and 3 of the Criminal Procedure Code); 3) Obligation to comply with the conditions set for suspects or defendants who are undergoing mass suspension, for example, the obligation to report not leaving the house or city (explanation of Article 31 of the Criminal Procedure Code); 4) Must keep the contents of the minutes (derivatives of the minutes of examination) for the benefit of his defense (Article 72 of the Criminal Procedure Code and its explanation); 5) Obligation to state the reasons when submitting a request regarding the lawfulness of an arrest or detention as well as a request for compensation and or rehabilitation (Articles 79 and 81 of the Criminal Procedure Code); 6) If summoned legally and mentioning clear reasons, it is obligatory to come to the investigator unless giving proper and reasonable reasons (Articles 112 and 113 of the Criminal Procedure Code); 7) It is obligatory to be present on the appointed court day. The presence of the accused at trial is an obligation, not a right, the accused must be present at the trial court (explanation of Article 154 paragraph 4 of the Criminal Procedure Code). Even if the accused, after making serious efforts, cannot be presented properly, then the accused can be forced to appear (Article 154 paragraph 6 of the Criminal

Procedure Code); 8). Even though it is not expressly stated as an obligation, the defense of the accused or legal adviser is certainly a must (Article 182); 9) Obligation to respect and comply with court order; 10) Obligation to pay court costs that have been criminally decided (Article 22 paragraph 1); 11) Even though it is not strictly required, it is very logical that a memorandum of appeal needs to be made by the defendant who submitted the request for appeal. Article 237 of the Criminal Procedure Code says that as long as the high court has not examined a case at the appeal level, either the defendant or his attorney or the public prosecutor can submit a memorandum of appeal or counter memorandum of appeal to the high court; 12) If as a cassation applicant, the defendant is obliged to submit his memorandum of cassation, and within 14 days after submitting the application, it must have submitted it to the clerk (Article 248 paragraph 1 of the Criminal Procedure Code); 13) If the defendant submits a request for Judicial Review (PK) then it must clearly state the reasons (Article 264 paragraph 1 of the Criminal Procedure Code) (Waluyo, 2000).

In order to realize an examination and trial in accordance with the law, an obligation is imposed which aims to counterbalance the rights of the suspect or defendant. These obligations must be fulfilled by the suspect or defendant in carrying out his status as a suspected person or person charged with committing a certain criminal act. Application of the Principle of Presumption of Innocence is related to the objective basis and subjective basis above, the suspect is given full rights by law in the detention process where the suspect is not detained beyond the period prescribed by law and during detention the suspect is treated appropriately and reasonably and is not subjected to violence as an innocent person by the investigator, Because even though he is in detention, the suspect is still considered innocent as long as there is no permanent verdict that finds him guilty.

- 2) Equality before the law, there is equal treatment of everyone before the law/judge with different treatment;

The principles of Indonesian criminal justice, such as equality before the law, presumption of innocence, promptness, simplicity, efficiency and effectiveness, and a fair legal process, must always be preserved. This is necessary for the proper operation of the criminal justice system and the realization of the rule of law.

These principles will greatly affect the criminal justice system in enforcing criminal law in Indonesia. Because these principles are the main foundation and guideline for those in the criminal justice system and in law enforcement. Nonetheless, if these principles are not used as a basis, it will be difficult for the criminal justice system to run well.

All elements in the criminal justice system must oversee these principles. Both elements in the sub-system of legal substance, legal structure, and legal culture must adhere to these principles. The sub-system of substance must be made in such a way as to be in line with the principle, as well as the sub-system of legal structure that must be controlled to adhere to that principle and the principle of the sub-system of legal culture must continue to be realized and guided to maintain the principles in the criminal justice system to support the enforcement of criminal law in Indonesia.

The legal principle of equality before the law originates from the recognition of individual freedom in connection with this. Thomas Jefferson stated that “all men are created equal”, especially in relation to basic human rights (Mansfield, 2017). Article 27 paragraph (1) of the 1945 Constitution states that all citizens have the same status in law

and government and are obliged to uphold that law and government without exception. In other words, everyone is treated equally before the law.

The concept of Equality before the Law has been introduced in the constitution, a highest recognition in the system of laws and regulations in the country, this principle means that the meaning of equality before the law is for the same case (crime). In reality, there is no equal treatment, and that causes individual rights to obtain justice (access to justice) to be neglected. Different treatment in corruption causes neglect of individual freedom. In other words, legal certainty is neglected.

In the concept of equality before the law, judges must act in a balanced way in presiding over court hearings, commonly referred to as the principle of *audi et alteram partem*. If indeed the Indonesian state is truly a rule of law (*rechtstaat*) country that exalts and prioritizes the value of equality before the law, everyone is equal before the law, it has no basis in criminal cases, especially corruption cases, the defendants receive special treatment when compared to other defendants, such as not subject to detention.

According to what has been learned up until this point, the concept of equality before the law is not given the serious consideration it deserves; rather, this value is treated as little more than empty rhetoric or empty platitudes (lip services). If this value is applied seriously, discretion will not be given arbitrarily. Discretion has so far been given to certain groups who generally have power, be it in a political, social or economic sense.

Everyone has the same position before the law, equality before the law, has been analogized as an ironic form by society to “only ordinary people have the same position before the law”. Sadly, that sums up the general public's perspective on the issue of law enforcement.

Understanding of the concept of equality before the law is still not fully implemented or properly understood. Indeed, if we read the terms of this anti-corruption law, we will see that both laws employ the word “everyone” in each of their articles. Thus all citizens who commit acts as stipulated in the Act will automatically be bound by these provisions. The law clearly enforces the principle of equality before the law in its provisions, so if anyone argues for differences in treatment on the basis of social status and legal status of a person who commits a crime including corruptors, then there is no legitimacy other than it must be stated that the perpetrators of criminal acts or the corruptor is crazy or underage. Argumentum lainnya adalah mengutip pernyataan Romly Atmasasmita yang menyatakan bahwa jika masih ada Undang-Undang yang memberikan keistimewaan perlakuan maka Undang-Undang tersebut bertentangan secara diametral dengan Undang-Undang Dasar 1945 dan perubahannya yang menyatakan secara eksplisit, hak setiap orang untuk diperlakukan semua di muka hukum (*equality before the law*) dalam posisi apapun juga selama dalam status tersangka/terdakwa/terpidana (Atmasasmita, 2010).

- 3) The principle of legality, to someone who is arrested, detained and prosecuted or tried without reason based on law and or due to a mistake either regarding the person or the application of the law, must be given compensation and rehabilitation from the level of investigation and law enforcement officials, who intentionally or negligence, causing the legal principle to be violated will be prosecuted, punished and or subject to administrative punishment;

The term principle of legality comes from the Latin which reads, “*Nullum Delictum Nulla Poena Sine Praevia Lege Poenali*”, which means no offense, no crime, without

prior regulations. The formulation of *Nullum Delictum Nulla Poena Sine Praevia Lege Poenali* was first put forward by the famous German criminal law scholar Von Feuerbach, who formulated it in a Latin proverb in his book “*Lehrbuch des pemlichen Recht*” (Rusyadi, 2016).

Ansen Von Feuerbach formulated this principle in connection with his famous theory “*vom psychologischen zwang*”. According to this theory, criminal threats are intended to frighten, so that the inner urge to commit criminal acts can be prevented. In order for people to know that there is a criminal threat, it needs to be formulated in law, so there is a relationship between the theory of vom psychologischen zwang and the principle of legality.

The principle of legality is the realization of the theory of vom psychologischen zwang, this principle requires that the existence of a crime must be stated first in criminal legislation. How evil an act is viewed by society, is not a criminal offense, and the perpetrator cannot be convicted as long as the law does not regulate it. In other words, the act is first included in the laws and regulations along with the punishment.

The principle of legality determines what acts are seen as criminal acts, because what makes our laws is that the government together with the House of Representatives, as representatives of the people, it is the duty of the government together with the House of Representatives to wisely determine what acts are seen as criminal acts.

The principle of legality in Indonesian criminal law is stated in Article 1 paragraph (1) of the Criminal Code which reads: “No act can be punished except for the strength of criminal rules in existing legislation, before the act is committed.”

The principle of legality requires that an act can be declared as a crime if there is a law that first states that the act is a crime. Therefore, the principle of legality prohibits retroactive application of criminal law. As such, Article 1 paragraph (1) of the Criminal Code is the basis for criminal law enforcement in Indonesia, especially in relation to legal certainty.

This principle of legality is also regulated in Article 6 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that: “No one can be brought before a court other than what is determined by law”.

The sound of this article reaffirms the desire for the principle of legality for criminal law to be made in writing. Likewise in the 1945 Constitution Amendment II Article 281 paragraph (1) which states that: “The right to life and the right not to be prosecuted on the basis of a law that applies retroactively are human rights that cannot be reduced under any circumstances.”

In Amendment IV, it is stated that: “To uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in legislation”.

It should be realized that WetBoek van Strafrecht (WvS) is a Dutch colonial heritage, hence its implementation requires some adjustments in the Indonesian context. In this case, there are articles that are not enforced and amended by adding articles that are considered lacking. In its development, the policy of amending the articles of the Criminal Code was abandoned by forming a new law, so that what is called a criminal act outside the Criminal Code emerged. Still, it turns out that the regulation of criminal acts outside the Criminal Code forms a separate system that deviates from the general provisions of criminal law as regulated in book I of the Criminal Code. Both in terms of legal principles and criminal provisions.

As a rule inherited from the Netherlands, according to Mudzakkir “The principle of legality then becomes a problem in its application”. The principle of legality is faced with the reality of a heterogeneous Indonesian society. The Criminal Code and criminal provisions beyond it still leave areas of action that are considered by society to be prohibited acts, while written laws do not stipulate such prohibitions (Mudzakir, 2005).

In the history of Indonesian criminal law, the existence of customary courts has made it possible for customary crimes and living laws to be applied even though these customary crimes are not regulated in the Criminal Code. Hence, the principle of legality in practice in Indonesia is not purely applied as required by Article 1 of the Criminal Code.

3.2. Discussion

The concept of Fair Trial in the criminal justice system is the regulation of Human Rights which consists of basic values from the criminal justice process which at least include three important components, namely human dignity, truth and fairness in the process (Lippke, 2019). The first basic value, namely the protection of human dignity, refers to the condition that all law enforcement officials at all stages of the trial must apply consistently and support the protection of human dignity of the parties, including suspects, defendants, convicts, victims and witnesses. The dignity of a person is a fundamental moral right that must be respected by all law enforcement officials at the levels of investigation, prosecution and examination in court. The stipulated rules must be able to limit behavior that has an impact on violations of human dignity. In terms of the area it regulates, the law regulates human behavior outwardly. Ulpianus declared (P. M. Marzuki, 2016) “*cogitatiois poenam nemo patitur*”, which means “no one is punished for thinking”. In Dutch, there is expression “*gedachten zijn tolvrij*” (P. M. Marzuki, 2016) which means that people are free to think as long as they don't say it. The target of legal regulation is human birth behavior, the law will not act if a person's actions do not violate the rule of law even though the person's mind actually wants to do something that violates the law. As can be stated, in a person's mind he wants to kill someone who occupies the position he wants in an institution but he knows that killing is subject to severe punishment. Nevertheless, it cannot be denied that the law also sometimes enters a person's inner realm. Provisions regarding intent in criminal law and good faith in civil law, for example, are provisions that enter a person's inner realm. Even in trials, the defendant's mental attitude is often taken into consideration in imposing sanctions as a mitigating or burdensome factor for imposing sanctions.

The second value is the truth value, this value requires that law enforcers must ensure the application of normative provisions before imposing accusations, indictments, or convicting someone. The first aspect of the value of truth is integrity, namely law enforcers authorized to carry out arrests, investigations, prosecutions and examinations in court must respect and consistently comply with existing procedures and act based on evidence (evidence driven). The second aspect is the implementation of strict procedures (rigor), namely law enforcement must always carry out checks and balances to ensure that decisions taken in the criminal justice process are tested repeatedly, which leads for example in courts where law enforcement must build arguments for the defendant's guilt based on strong evidence (Abidin, 2022). Furthermore, in terms of the origin of its binding power, law has binding power because it is stipulated by the authorities or develops from practices that have been accepted by society. Once again, it can be seen here that the law focuses more on the human aspect as a social being as well as the outward aspect of the

human being. The binding power of law is not created internally within human beings, but is imposed from outside human beings, even customary laws that are not made by the authorities but grow from practices even though they require acceptance by society (opinion *necessitatis*). In opinion *necessitatis* there is an acknowledgment regarding the existence of authority that makes customary law binding. Such aggregation is only permitted by law, because the law stipulates rights in addition to individual obligations in interacting with others in society. Rights cannot be found in other social norms. One thing that needs to be stated here is that the Latin word *ius*, Dutch *recht*, French *droit*, and German *recht* can mean right and law (Sugiarto, 2021). This shows that rights can only be found in legal norms.

While the third value is fairness or the value of justice in the criminal justice process, which requires that law enforcers must work hard to treat parties with respect for their rights protected by law and apply the limits of their authority. This value must be exercised by the police in the early stages of the investigative process and by prosecutors and judges who make decisions about whether to charge someone or convict someone. This fairness value also covers efforts to modify or find alternative justice processes such as restorative justice models or special forms of courts (Abidin, 2022). This shows that the law does not belong to the authorities and people who have power as contained in Pancasila contained in the Second Precept “Just and Civilized Humanity”, besides contained in Pancasila Human Rights are also contained in the 1945 Constitution of the Republic of Indonesia which contained in article 28 A-J. if the Human Rights in the 1945 Constitution of the Republic of Indonesia are aimed at the Fair Trial concept it can be seen in Article 27 paragraph 1 which states “All citizens have the same position before the law and government and are obliged to uphold the law and government without exception” and article 28 D paragraph 1 which states “Every person has the right to recognition, guarantees, protection and certainty fair law and equal treatment before the law”, according to Bertrand Russell said that (P. M. Marzuki, 2016) “Power constitutes the fundamental concept in social science in the same way that energy is the fundamental concept in physics”. He further emphasized that the love of power is a main motive that causes change (P. M. Marzuki, 2016), hence in the criminal justice system of countries adhering to the rule of law (*Rechtsstaat*) principle of Equality Before The Law so that everyone must be treated equally before the law (*Gelijkheid van ieder voor de wet*).

4. CONCLUSION

From the three basic values of the criminal justice process, we are able to understand that the concept of fair trial used to protect human rights has not been fully implemented properly by law enforcement in Indonesia so that the concept of equal rights in Pancasila and the 1945 Constitution of the Republic of Indonesia does not seem to provide certainty and protection as a guarantee of equal rights.

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