

ABSTRACT

The way in which a system in Criminal Judicature operated is supported by the elements or sub system which consists of four elements, such as : Police, Attorney, Court and Correctional Institution (Jail). So far, they conduct their its function gradually.

As a matter of fact, the Criminal Judicature system starts its function when there is information and assumption weather the criminal act will happen, is happening, or happened. Based on that reason the police investigation will be conducted if all the requirements concerning that investigation are fulfilled. The next action is the prosecution process which is followed by the judicature process to determine weather the doer is wrong or right. The doer will be sent to jail if he is wrong.

The process in determining the fault of the doer who conducts the criminal act is the vital process in Court, as mentioned in Law No. 14, 1970 concerning : Ketentuan Pokok Kekuasaan Kehakiman. Based on the Law No.35, 1994 concerning the change of Law No. 14, 1970 (next it is called UU Kehakiman) on article 8 of UU Kehakiman, it is mentioned that : " everyone which is suspected, caught and/or brought to justice, he must not be regarded wrong unless the judge sentences its fault and have the strength of law ."

However, the decision that is taken by the court is not the only decision made by the judge. It is the result of the process of the system mentioned above, that is Criminal Judicature System.

Concerning with the reason above, the position of the court has a strong bounded with the investigation process conducted by the Police and the prosecution process conducted by the Attorney, so that the Court can do its function.

The judiciary institution as mentioned in Law No. 5, 1991 concerning the Republic of Indonesian Judiciary (next it is called UU Kejaksaan) in article 2 (1) is a *government institution* which conduct the authority of country in doing the prosecution (the italic word comes from the writer). In article 8 (2) mentioned that : " in conducting the prosecution, the attorney do the job for and in the name of the country and *responsible hierarchically* (the italic word comes from the writer).

From the two articles above, it can be said that attorney institution is a government institution which conduct its job for and in the name of the country and responsible hierarchically which is in the explanation of the articles mentioned that :

- Article 2, judiciary is the only government institution which has a duty and authority to conduct the prosecution in holding the law and justice enforcement surrounding the general judicature;
- Article 8 (2), in conducting its function in prosecution field, the attorney acts as representation of the country and still pay attention to the interest of people and government.
- Article 9, chief attorney general is pointed and dismissed by and responsible to the President.

The existence of a judiciary institution in the criminal judicature system can be compared with the position of the judge which is pointed and dismissed by the head of state (according to article 31, UU Kekuasaan Kehakiman).

Structurally, both of those institution- including the Police institution are pointed and dismissed by the President, but the difference of their structure causes the difference of the philosophy too, such as : authority of judicature in taking the decision is the independent decision whereas the judiciary is stated as the authority of the country which conducts the function of government and responsible hierarchically.

However, the word " we might define a system as any group of interrelated components or parts which function together to achieve a goal,' can be used as an approach of the system above.

Therefore, all the components of criminal judicature which work in a system effort to reach the goal of that system by creating the judicature which can hold the law and justice enforcement and to prevent the people from criminality action.

The judiciary as an institution is the activator in criminal judicature process through delegating the prosecution to the court should not have difference base with the court as a judicature.

The position of judiciary as a government institution on a certain point may increase a dilemma situation, because according to the explanation of UU Kejaksaan that judiciary must pay attention to the interest of the government so that judiciary as a part of criminal judicature will got many hindrance.

