

Creating Legal Certainty and Justice in Avoiding Legal Paradox in Criminal Law Enforcement in Indonesia

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Abstract

*This work is aimed at formulating strategy in avoiding legal paradoxes in criminal law enforcement in order to create justice-based legal certainty as constitutional goals in legal enforcement. Constitutionally, this goal is stipulated in Indonesia Constitution 1945, article 28. Therefore, all efforts should be dedicated to manifest the justice-based legal certainty. In detail, this work elaborate and discuss several factors that causes the legal paradoxes in criminal law enforcement, such as gap or discrepancy between theory, norms and practices, either at legal interpretation or legal implemantation. More detail, the paradoxes has been deteriorate by incoherence of legal enforcement at all levels, such as investigation, examination, decision making, and execution level. Avoiding the legal paradoxes is increasingly crucial in the light of these legal paradoxes in criminal law enforcement as caused legal uncertainty. Therefore in creating legal certainty, the government should consider several aspects by improving : (i) legal enforcement system; (ii) legal infrastructure; (iii) legal awareness of society; (iv) legal education; (v) religion awareness and political commitment government in strengthening legal enforcement system.****

Keywords: legal paradoxes, criminal law enforcement, justice, legal certainty, legal enforcement.

1. Introduction

Paradoxes in Criminal Law are opposite or conflict or contradiction in legal enforcement . Whereas, the law works as a protection of human interests, but in fact, in the legal enforcement, (Police, Civil Servants, Prosecutors, Corruption Eradication Commission and Judges) on their duties are very often contrast or contrary with the rule d of law, so that the legal certainty and the sense of justice are far away from the expectation. These are able to be seen from two criminal incidents that happen in Ambon City and Medan City¹. From those cases why they can appear to the court and be sentenced, where the conscience and honesty of the legal upholders are as the legal apparatus (Police, Prosecutors, and Judges), it caused no trust of public against the justice Institutions.

Paradox in the legal enforcement also happened in the case of illegal logging, taxes, immigration, crime marine and others, who does have the authorities to investigate the cases According to law ? In article 6 verse 1 UU No 8 in 1981 about Criminal Code (KUHP), it is clearly stated he who has the authority as an investigating officers are :

1. Police
2. Civil Servant (PPNS)

If it is watched watchfully in that stipulation that all the criminal cases which is conventional are belonged to the police of investigating officers, meanwhile, in the special cases such as: Illegal logging, taxes, immigration, criminal marine belong to the civil servants (PPNS) but it is not the Police.

¹.**The First example (1)** : Hermanus Raipasha 's case in Ambon that is accused to kill, whereas he Never killed, alibis which are raised during the trials until the court sessions are never responded and finally sentenced to sixteen years, the real murderer (Maxi Mandupesi), has admitted that he is a murderer and has been sentenced to twenty years.

The Second example (2) : The Blindness man's case in Medan that was sentenced to fifteen years In Tanjung Gusta Medan in case of selling the marijuana, we trust that this blindness man is not able to see the marijuana and does not know where to have to buy and sell the marijuana, and to whom it should be, but he was sentenced too by the court.

The police come into those cases on their capacities just as to help the Civil Servants to uncover the cases with any reasons and considerations, for example, lack of the experts, or facilities required. Indonesia is one of The Rules of Law right now who incessantly eradicates the corruption, but in its legal implementation is still discriminated. Like a knife, which its blade is sharp down, but blunt up. It means that who is closed to the authority or the men behind the guns law become stagnant or sometimes does not run well because of the political nuance is more dominant than the legal enforcement itself, but if the ordinary people commit the crimes so the law is really upheld because of no political nuances.

The chronology of contrary in criminal law of legal enforcement process in Indonesia are done by the legal apparatus like investigating officers of criminal cases are the ones who are very expert on the criminal law aspect, not all the law of degrees could become the investigating officers on the criminal cases, and even, in the practice, the politicians talk about crime, the civil law experts talk about crime, the economists talk about crimes, end even, the one who becomes the legal expert witness admits as a criminal expert on the other hand, he is not the criminal expert, so in the criminal legal enforcement happens the paradoxes to the law itself because it is contrary to the real ones.

Therefore, in the frame of creating the legal certainty in avoiding paradoxes in the criminal legal enforcement in Indonesia so the government could create the accurate legal system in the future that could be made as a measurement in upholding the criminal legal enforcement. In creating the legal systems there are several substances of systems that should be improved such as: 1. Legal structure (Police Institutions, Attorney Institutions, Corruption Eradication Commission, Judiciary Institutions), 2. Legal substances (substances of the valid legislations required to improved), 3. Legal culture (this culture is reflected from the legal apparatus' behaviors themselves, so that's why, the government must create or improve the legal systems comprehensively in order to avoid paradoxes in criminal legal enforcement in Indonesia.

2. *The Nature of legal paradoxes in criminal legal enforcement.*

There are two of natures of legal paradoxes in criminal legal enforcement, such as :

1. Gap or discrepancy between norms and practices in criminal legal enforcement .
2. Incoherence of legal enforcement in criminal context.

2.1. *Gap or discrepancy between norms and practices in the criminal legal enforcement.*

This causes for:

2.1.1. *In Legal Interpretations*

The gap or discrepancy between norms and practices of criminal legal enforcement happen because of being a fault legal interpretation in criminal legal enforcement in Indonesia. For example: In upholding the law enforcement in Indonesia there are three elements must be paid attention by the legal upholders (Police, Civil Servants, Prosecutors, Corruption Eradication Commission, Judges),² :

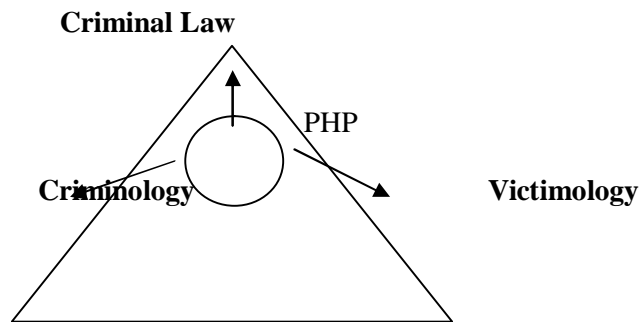
1. Justice (Gerechtigkeit)
2. Legal certainty (Rechtssicherheit)
3. Benefits (Zweckmassigkeit)

The three elements must be applied in the criminal cases; the legal upholders (Police, Prosecutors, Judges) in upholding the law against the criminal cases (for example – corruption case, illegal logging), the three elements must be upheld altogether. The legal upholders cannot uphold the justice and the legal certainty but its benefit is left or for the sake of the legal certainty, the justice and benefit are left, on the other hand, for the benefit and legal certainty the justice is left. The nature of legal paradoxes in upholding the law enforcement happen because the legal apparatus do not apply the three elements above altogether, so there is no concrete measurement in interpreting the law itself or the Acts in the implementations either in interpreting law as a language, sociology, systems, history, comparison, future, restriction or its existence. By being a gap in interpreting the acts, the legal upholders in Indonesia, here happening the nature of paradoxes in upholding the law.

² Sudikno Martokusumo, 2002, *Introduction to Law, and introductory*, Publishing of Liberty, Yokyakarta, Page 145.

2.1.2. In Legal Implementation

The second nature of happening legal paradoxes in the criminal legal enforcement in Indonesia generally by having the research by the write, there are three elements of sciences that are not applied in the criminal legal enforcement, they are:



Notes: PHP (Criminal Law Enforcement)

The three of arts above happen paradoxes because there is a gap between norms and its practice in criminal legal enforcement in Indonesia because the legal upholders (Police, Prosecutors, Judges, and The Corruption Eradication Commission) in upholding the legal enforcement against the criminal cases that happen, the three of arts never applied in balance. Upholding the criminal law (**ius pionale**) that consists in a number of regulations that inside lies the criminal cases and the threat of sentences, so everyone who transgress the criminal law, the one could be borne with sentences or criminal sanctions after the man is processed through the trials and he is proofed to be guilty and the causes factors from his guiltiness so without being a help of criminal art that one could not be sentenced. Because criminology is a science which studies about crime from one criminal action, and questions what causes that he does it, until the criminal law could be applied to the prison. But if the criminal cases are analyzed concretely without considering the victimology (the art of victims) so the criminal law must be able to apply concretely. Based on the writer's research as long as in the criminal law exercises the legal upholders (Police, Prosecutors, Judges and Corruption Eradication Commission) never consider the victims' interest. Upholding the criminal law just to see to the art of criminology and criminal law, meanwhile the victimology never considered, for example: A commits a murder to B and then it is processed by the legal upholders, so A is sentenced in prison while The B's family never considered in the decision, here the paradoxes happen in upholding the criminal law, and the legal upholders should consider the victim's family interests. If the legal upholders in exercising the criminal legal enforcement only impose the sentences to the perpetrators who transgress the criminal law so the nature of law is still abstract, meanwhile the law is concrete. Law is concrete. Besides imposing the sentences to the perpetrators also considering the victims' interests by ordering to pay the compensation to the perpetrators.

2.2 Incoherence of Legal Enforcement in Criminal Context

Incoherence legal enforcement started:

2.2.1. In Investigation

Investigation is a series of questioning by the investigators based on the things and the procedures which are arranged in the Acts to look for and compile the evident by having them become clear to find out the prisons.

The Incoherence of criminal legal enforcement in Indonesia by the investigators (Police, Prosecutors, The Corruption Eradication Commission) without enough evident related to the case, the legal upholders have caught and determined the suspect as a prison, so, consequently, this suspect is harmful by arbitrary actions of the legal upholders and even, at last the prison in fact is not guilty and enough less of evident. For example, the case of Budi Gunawan, in the beginning, will be appointed to be the head of Police of Indonesia, because of the fault information he was failed to be the Head of Police and then that case was raised to the courts for the pre-trial and in the decisions is enough less of the evident to determine as a prison.

2.2.2. In Examination

Examination is the result of investigation, questioning by the Police or the Attorney or the Corruption Eradication Commission then processed by the judges in the court.

The Incoherence of criminal legal enforcement context especially in trial that based on the invalid evident so there happening the mistakes by the Police, Prosecutors, The Corruption Eradication Commission, or the Judges, as a result, many people who are not guilty in the trials have been imposed as prisons.

2.2.3. *In Making Legal Decisions*

In making legal decisions in a court, the judges are given the authorities fully because the judges are the court officers state who get the authorities by the Acts to judge. Judging is a series of Judges' duties to accept, examine and to decide the criminal cases based on the free principles, honesty and balanced in the court sessions according to the regulated Acts. But in fact, there are many mistakes done by the judges. Incoherence of criminal legal enforcement in making a decision by the judges on the fault convictions so the people who are not guilty are sentenced. For example, Sengkong Karta's case. They are accused to kill and be in prison for twelve years and when he will be executed for long lives in fact, he is not the real actor, at last by having a long process and because of being arrested the third party (the real actor), finally Sengkong Karta was released. But for the judges who took the wrong decisions there was no legal sanctions.

2.2.4. *In Legal Executions*

Incoherence in legal execution to the judges' decisions who have a legal binding, but in practicing of criminal law recently happens, in a death executing against the brain actor of marijuana, where the main actor is a Filipin. Meanwhile the Indonesian who only involved in helping those crimes was imposed a death sentence, this is one of the incoherence of criminal legal enforcements in Indonesia.

3. *Root Causes of Legal Paradoxes in Criminal Law Enforcement*

The causes of paradoxes in criminal legal enforcement in Indonesia are herewith:

1. Legal substance factor
2. Legal Institutions factor (Police, Prosecutors, Civil Servants)
3. Legal Infrastruktur factors
4. Legal culture : Society
5. Political Conspiracy and maneuvers
6. Governmental Conspiracy and maneuvers

3.1. **Legal Substance Factor**

Legal substance is a regulation, norms and **behaviors** of human being in a system. Substance is also a product that includes a decision or a regulation that are produced by the men in those systems.

The legal substance related to the valid regulation and have a legal binding force and become the guidance for the legal upholders so that produce a legal product, including a decision that was issued, the new regulations were arranged by them. The regulations are the parts of law that are made by the state of institutions with the certain reasons and goals. The goals and the reasons of the regulations are called as legal politics. In making the regulations, the role of legal politics are very important. First, as a reason why is needed the regulation making. And second, to determine what will be interpreted through the formulation of articles are the bridges between the legal politics and the implementation of regulations made³. Although many regulations are made, but the people consider that the regulations do not speak for them or protect their interests, so the regulating made does not reflect their effectiveness yet at all, because the substances are too symbolic without the instrumental destinations, the formulation of unclear regulations cause the difficult implementations on the field, and even many cause the inconsistency interpretations⁴.

3.2. **Legal Institutional Factors**

The legal Institutions that relate to the process of criminal legal enforcement by the Police, Attorneys, Courts and the legal practitioners that only having the important roles in making successful law enforcement among the society. The law enforcement could be done whether the legal upholders are the professional ones, a strong mentality and have the moral integrity with high ethic.

³. Hikmahanto Juwana, 2003, "*Legal Politics of Economic Acts in Indonesia*", in *Opinions and Views about National Legal Reformation*, Vol.II Judiciary Departement and Human Right of Republic of Indonesia, Jakarta, Page 1.

⁴. Chaeruddin, dkk, 2008, *The Prevention Strategy and The Legal Enforcement of Criminal Corruption Actions*, Bandung : Rafika Aditama, Page 60.

If the legal Institutions commit the paradoxes in criminal legal enforcement until inflict the others, up to now, there is no a strict sanction to the legal upholders, even though, according to the article 9 verse (2) Acts No 4. In 2004 Jo. The Acts No. 48 in 2009 about the power of Judiciary which stated that each officers who have the one caught, arrested, prosecution or justification not according to the regulations or finding a mistake in upholding the law could be sentenced and prosecuted for the compensation, but in the criminal law practice in Indonesia that article seldom used.

3.2.1. *Authoritative Tension and Conflict among the Constitutional Investigators.*

3.2.1.1. *Police*

Police is anything that relates to the function and institution as to the regulations and Acts. The Police have a duty to investigate the conventional crimes as are arranged in the Criminal Codes (KUHAP), meanwhile, out Criminal Code, the Police as investigators are as under assistances. The main the duties of the Police are : 1. To maintain the general securities and orders; 2. To uphold the law enforcement; 3. To give the protections, guardians and services to the public. In upholding the Criminal Law, the first questions start from the police and then surrender to the Attorney, then the Attorney prosecute the suspected to the court. The paradoxes of criminal legal enforcement happen on the questions, where the investigators are Police of Indonesia with the rank of second lieutenant officers (Article 2 verse 1 (a) the Government Regulations of Indonesia No. 27 in 1983, it means that the investigators are professional ones, but in upholding the Criminal Legal Enforcement especially in the investigations, the investigators who have the examinations to the suspected generally the Police who have rank second sergeant officers, these second sergeant officers are allowed if the second lieutenant officers are not on duty, how much do these second sergeant officers understand about the Acts or what there are in Criminal Code (KUHAP), so here the paradoxes happen and they do not know that the law is a system and they just know that the law is only the Acts or something inside the Criminal Code (KUHAP). Meanwhile the legal resources consist of formal and material. Here puts the tension of conflicts among the investigators in the legal institutions and even in the law enforcement always do some intimidations to the suspected and the victims so what the main duties of the Police are not carried on correctly anymore.

3.2.1.2. *Prosecutors*

The Prosecutors are the authoritative officers who have been given the authorities by the Acts to be general prosecutors and carried out the court decisions Which have the final binding power.

The general prosecutors are the prosecutors who have been given the authorities by the Act to carry out the prosecutions and to carry out the Judges' decisions. The duties to prosecute and delegate the case to the courts and after the dossiers of the suspected examined by the Police and then are continued by the courts To be processed and decided in the Court Sessions. According to the theories of Criminal Jurisprudence there are two models (The Due Process)⁵ that must be applied By the Prosecutors in their prosecutions:

1. *Procedural Rights Model or (France Civil Action System).*

In this model stress on the active roles of victims in the criminal court sessions such as : helping the general prosecutors and involving in every level of cases and also are obliged to hear their opinions if the prisons are prosecuted. Strictly in every trials, every prosecutor who wants to prosecute the prisons firstly they have to consult with the victims whether the demand of the prosecutors are satisfied enough for the victims, but in fact, the prosecutors precisely ask their superiors to decide a type of demand but not to the victims. Meanwhile, according to the criminal legal theories, large or little type of demand that should be prosecuted to the prisons have to be consulted with the victims.

2. *The Service Models*

This model stress on the compensations in compensations and restitutions and restoration of the victims who have trauma and hurts of the crime effects. In practice of upholding the criminal law it should be, the prisons and the suspected also prosecuted to pay the compensations for the victims, but in practice, it is never carried out by the Attorneys, so that, the decision which is imposed by the judges in essence, it is abstract but not concrete.

⁵. Muladi dan Barda Nawawi Arief, *Bunga Rampai of Criminal Law*, Alumna Bandung, 1993, Page, 79

3.2.1.3. Civil Servants

The Civil Servant as an investigator are the civil officers that based on the regulations are appointed as an investigator and have the authorities to hold the criminal investigations on their own duties. These Civil Servants as to the Acts No. 8 in 1981 about the Procedural of Criminal Code are arranged in Article 6 verse 1 (b). These Civil Servant officers in their practice do not work well, because their authorities have been substituted by the Police. For example in the case of illegal logging, the marine cases, immigrations, industry cases, taxes and others that according to the Acts they belong to the Civil Servants' authorities to hold the investigations

3.3. Legal Infrastructures Factors

Without enough means and the pre-means, it is impossible to apply the criminal legal enforcement well, the means and facilities where the law enforcement will be upheld such as : at the Police' office, Attorneys and Courts inside are not comfortable included : the securities factor, apparatus skills,, so that equipments and finance. Process of trials in the courts run very slowly, likewise the trial process in Supreme Court and up to now thousand of cases still pilling up. This is caused the number of judges are not balanced with the number of cases that should be examined and decided because of lacking the means and pre-means there to support the good trial process. And also the Police, Attorneys, they do not have sophisticated instruments to detect the crimes among the society. Unavailable modern means cause many crimes in the society can not be disclosed, for example, robbery, murder and others.

3.4. Legal Culture : Society

The legal culture also could influence the law enforcement itself, because the law enforcement comes from the society and has a goal to achieve the peace in the society. The most important thing is the legal awareness of society is getting higher. The more they get the more law enforcement will come true. On the other hand, The less they get the less law enforcement will come true.

The meaning of legal awareness are : knowledge of law, comprehension of the legal functions, obedience to law⁶. The legal awareness is the legal view for the society about law. That view is developed and influenced by many factors such as : religions, economics, politics, and others. Those views are changed because the law is also changed. Some decisions on the legal cases about raping, by the society it is felt not to satisfy the sense of justice, because those decisions just fulfilled the formal requirements. This is opposed to the law. If the law enforcement is not paradox so the legal apparatus not only depend on the formal interpretations, but also must consider the senses of justices in the society. Instinctively the people have the senses of justices. The senses of justices go in line with the principles of the Rule of Law and these principles must develop and describe and applied through the courts in shape of decisions, so that is why, it is needed the legal awareness and legal knowledge. Those are the background and the movement of legal society.

3.5. Political Conspiracy and maneuvers

Indonesia is the Rule of Law as to the Constitution 1945 in Article 1 verse (3), it means anything must be on law, but In the real practice some political interests more distinct in the law enforcement because many the political parties have conspiracies to topple their political opponents, so the policies which are decided could be changed for the certain politics, for example, standing back of the House Speaker (DPR) that was accused who transgress the political ethics, juridical, there is no proof that he transgresses the law but because of some ethic mistakes in the politics so that, some political parties have conspiracies and maneuvers to stop him as a house speaker Meanwhile, according to the criminal law the one who is fired from his duties should be able to prove that he has transgressed the criminal law. Here with the root of legal paradoxes happened in Indonesia. Actually politics should be based on the law but not upside down, the law is based on the politics.

3.6. Governmental Conspiracy and maneuvers

In the criminal case decisions in Indonesia there are more or less than sixty people from any countries who have been imposed the death sentences on the case of drugs and narcotics, but because there is a conspiracy between the government and the other countries so the death sentences with a final binding is delayed because many countries have some maneuvers to the Indonesian Government in order to delay those death sentences. Because some of the countries warned to close their embassies in Indonesia. So the Indonesian Government takes some policies to delay the death sentences for the time being.

⁶ . Ibid, Halaman 214.

4. Strategy in Preventing Legal Paradoxes in Criminal Legal Enforcement

Based on the things above the strategies in avoiding the legal paradoxes in criminal legal enforcement could be done as hereby:

- 4.1. Improving and refining systems in criminal law enforcement
- 4.2. Strengthening integrity of legal apparatus
- 4.3. Improving legal education systems
- 4.4. Improving religious awareness
- 4.5. Political commitment of Government in supporting criminal law enforcement

4.1. Improving and Refining Systems in Criminal Law Enforcement.

In improving and refining the criminal law enforcement in this case firstly Is needed to improve the systems themselves.

The highest systems in Indonesia are Constitution 1945., but the presented arrangements are not oriented fully to the Constitution 1945 that becomes the highest legal resources as ordered in Article 7 Acts No. 10 in 2004, by that means, the Criminal Codes for the Acts of Corruptions, Acts of Terrorisms, and others should be renewed to support to interpret the law in their context. For example, the definition of corruption. According to Acts could harm the state, by using the word “could” it is able to interpret meaningfully by the legal apparatus, because the word “could” is able to happen or not, so very often, we see the legal apparatus on the criminal cases of corruptions, arrested first and found out the evidence. But based on the Constitutional Court of Republic of Indonesia No. 003/PUUU/IV/2006 dated on 26 July 2006 the word ‘could’ is declared that it does not mean binding legally because it is contrast with the Article 28 D verse (1) Constitution 1945 that declares : any one has a right on recognition, guarantee, protections, and the legal certainty fairly and the treatment before the law. Likewise about the word ‘terrorism’. Normatively the one could not be said that he has committed the terror⁷ before there is no court decision to impose him as mentions on the Article 8 Acts No. 4 in 2004. Jo. Acts No 48 in 2009, never suspects someone as a terrorist before being a clear decision on him. If it is not true, concretely his family and the state become the victims.

To Improve and refine the criminal systems there are three elements, which are working as a system: 1. Structure, 2. Substance, 3. Legal culture. The three elements could not be separated each other. The structures of that system are design of frame, the fixed shape, the body of institutions. For example, in Indonesia there are found five types of legal Institutions: General Courts, Religion Courts, Military Courts, Trade Courts and Administrative Courts. Each court has the own hierarchy that all of them culminate to the Supreme Court. Each court is bound to its own jurisdiction either it is absolute or relative. How are the relationships among the Police, Prosecutors, Judges, prisons and lawyers who show us a legal structure system? Therefore, those systems relate each other in finding the truth and justice of law. Meanwhile the substance of legal systems those are the valid norms, which govern how the legal apparatus and society properly act. These legal substances could be found in the legal resources, these are called ‘Law in book!’

In Indonesia the resources of legal formal do not run well as long as before, the values cal in the legal norms have to face with the values and systems that are staying in the legal norms individual and society that to be the objects of the legal norms. The results of interactions that are coming from individual and society and the values from the legal norms are the living law. The third element of a system is legal culture. Through this culture we can see how the legal apparatus’ behaviors in executing the law well. The legal culture also reflects how the systems actually will be endeavored, in other words, culture is trigger or the gasoline of the criminal juridical systems. For example, how could the legal upholders execute the law in the courts? The legal culture is so much related to the legal upholders’ behaviors when upholding the law among the society. For example, in solving a case of corruption, illegal logging, money laundering, and others. The legal upholders’ mentality is tested in the frame of upholding and deciding the sentences that will be imposed to the suspected.

⁷. The crime of terrorisms, every one intentionally uses a violence or threat that raises up the terrors or the fears against the people broadly or causes the victims globally, by seizing the freedoms or loosing of one’s soul and properties or damages, the destructions to the vital strategy objects or the living environments or to the public facilities or the international public (Article 6 Acts No. 15 in 2003 about terrorists.

The strategies of avoiding the legal paradoxes are necessary to be done by improving and refining the criminal legal juridical systems and also upholding the three elements of a system. According to me, the elements of that system are the requirements that should be understood firstly by the criminal legal upholders in analyzing and solving the criminal cases concretely and correctly in order not to be happened the paradoxes in upholding the criminal legal enforcement in Indonesia For example, the cases of taxes are able to see first their structures, weather their substances are correct or not because these are related to the legal culture and also improve the legal upholders' mentality themselves so that their decisions consist in the justice Values, benefits, and legal certainties⁸.

4.2. Strengthening Integrity and Legal Apparatus

In strengthening the legal upholders' integrities could be related to the morals and ethics, because moralities are quality contents that stayed in the legal upholders inside, by seeing them we can judge whether they are right or wrong, good or guilty. Moralities could be done by spreading the religious values and good moral of Legislations and other means⁹ to elves enforcement virtually happen because of being the legal apparatus' moralities and ethics are low. These are restored firstly.

Moralities cover the broad aspect of human is behaviors either it is personally or social. Moralities also include the human's action that does not have a sense of care enough in responsibilities that related to the legal upholders. The values of moralities are principle while law has tendentiously to follow the people' aspirations and change gradually as to the people' awareness¹⁰. If the legal upholders want to uphold the true law well, those are not separately from the morals. So all the criminal legal enforcements efforts are not separately from their legal apparatus' moralities themselves.

Then, besides morals also need ethics, because the legal apparatus' ethics are very important, because every legal upholders certainly have morals but, not automatically every legal upholders want to criticize their morals. The critical thoughts about morals are called y will ethics¹¹. A legal apparatus is judged by his superior has a goo moral, for example he is always fine to his superior. All his deeds and actions are excellent before his superior. In this case, the superiors should be cautiously because who knows, the fine deeds of their subordinates are only the lips-services or merely expressions from the subordinates against their superiors meanwhile those are contrast to their hearts.

The legal upholders never judge how many the views and their superiors' orders are suitable with their dignity and rank. The good apparatus are not only enough moralistic but also ethical. By doing some critical thinking to their morals, they are not easily inconsistent if once upon they will be shining examples. It could be imagined how if they have lost their luster, we could imagine a legal upholder who is honored by his subordinates actually is a corruptor, the question now is, whether he respect to his superior anymore? Because ethic criticizes to the morals so that, it is said that the moral is the material study of philosophy called ethic. Ethics always put themselves at the neutral corner. It does not speak for the one of certain type, by doing that the ethic will try to describe each character of morals, which is studied, and then it is depended on the individual and society to choose it.

4.3. Improving Legal Education System

Improving the legal education systems are very important because the knowledge is power. Without any being of knowledge, upholding law will be nothing and the paradoxes happen. This happen because of the legal upholders' legal educations is low, because the legal upholders interpret that law as regulations, whereas the law is a system. Law as a system is a complex series that consists of the parts related one another. There are still many legal apparatus do not understand law as a system, so that is why the legal educations are very important to the legal upholders, because that law is dynamic not static, the static ones are the legal apparatus in applying the law as a regulation that is made a guidance. Legal educations should be started when they start to learn law in the universities, and then in the universities they should learn law in linear but not jig-jag. For example, he learns about Criminal Law, so that is why, there will appear a degree of law.

⁸ . Satjipto Rahardjo, Legal Jurisprudence, PT. Citra Aditya Bakti, Bandung, 1991, Page 20.

⁹ . Soedjono. D, Crime of Prevention, Alumna Bandung, 1976, Page 35

¹⁰ . E. Sumaryono, The Legal Ethic Professions, Norms for the Legal Upholders , Kanisius, Yogyakarta, 1995, page 39

¹¹ . Darji Darmodiharjo dan Shidarta, Op Cit, Page 33

Next up, when they learn in Post Graduate School for strata 2 and 3 it should be in linear that is Criminal law too. Likewise, to the legal upholders should have the capabilities or skills that are matching to their experts? For example, in upholding the criminal cases the legal upholders must be criminal experts, but not the inexpert ones, whether it is starting from the Police questions, Attorneys' investigations, up to the courts trials. So that it is valid for their own aspects. If it is contrary to the things mentioned above, this causes the legal paradoxes in the criminal law enforcement among the society, because the ones who process it, they are not experts, so that causes the Criminal Legal Enforcement is not properly and responsibly.

4.4. Improving Religious Awareness

Improving the religious awareness are the main elements in the human's lives, because they are spiritual needs. Everything that is lined by the religion can guide the humans to the right lines and can show the right and the wrong things. Therefore, if the legal apparatus earnestly deepen their religions they will certainly commit to the right deeds, never commit to the divergent things from the regulations, and avoid the crimes.

Religions are the main social controls. The religion could determine the human's behaviors as to their believes¹². In the criminology views, the religion could be functions as containers for spiritualisms. The people who have the high realization of religions will never like us to commit the paradoxes to the valid legal systems. The religious values fill the human's heart inside; include the legal upholders in upholding the law among the society¹³. So that, the more we have realization of religion, the more the legal upholders have the g awareness in upholding the law itself.

4.5. Political Commitments of Government in Supporting Criminal Law Enforcement.

Strategies of prevention to the legal paradoxes in upholding the criminal law need a political commitment from the government to uphold the criminal legal enforcement as to the procedures that have been made by the Ho use of Representatives and the Government itself. Law is not running well in his enforcement among the society without a strong political supports from the government in executing the law itself. The government are hoped not to play a conspiracy in upholding the criminal law enforcement in order not to be paradoxes in upholding the law. In its practices before the causes of legal paradoxes happen, one of them is lacking of the political commitment from the government, so the cases that have been decided by the courts are blocking in their executions. For examples, the case of the death sentence and the other executed cases. Creating the legal certainty the government have to consider several aspects : 1. The legal systems, 2. The legal infrastructures, 3. The government has to improve the society' awareness to the law, 4. The legal educations, 5. The realization of religions.

The things above are done in the frame of the government's commitments to support the criminal legal upholding systems themselves.

5. Closing Remarks

5.1. Conclusion

In creating the legal certainty and the sense of justice by avoiding the legal paradoxes in upholding the criminal law enforcement in Indonesia the government needs to improve the criminal legal systems, because in the Constitution these goals have been declared on the Article 28. Because of that, all the powers are directed to show the sense of justice which are based on the legal certainty. The nature of legal paradoxes in upholding the criminal law because there is a gap or discrepancy between the norms and the practices. Incoherence of criminal law enforcement is started from the legal substances, legal institutions, legal infrastructures, people' cultures, conspiracy and political maneuvers and also the government's conspiracy and political maneuvers

According to the facts above, so the strategies of prevention to the legal paradoxes are : 1. To improve and refine the criminal legal systems, 2. To strengthen the legal upholders' integrities , 3. To improve the legal education systems, 4. To improve the realization of religions, 5. the government's political commitments are supporting the improvement of criminal law enforcement. In detail, these paradoxes have been deteriorated by the incoherence of legal enforcement at the whole of legal institutional levels. Avoiding the legal paradoxes which are getting increased crucially in the frame of legal paradoxes that are caused by the legal uncertainties, the government should consider some aspects by improving :

¹². H. Hari Saherodji, *The Principles of Criminology*, Aksara Baru, Jakarta, 1980, Page 37

¹³. H. Mastra Liba, *14 Obstacle of Legal Enforcement*, Publishing Yayasan Annisa, Jakarta, 2002, Page 37

1. The legal upholding systems, 2. Legal infrastructures, 3. The people' awareness to the law, 4. The legal educations, 5. The awareness of religions. These political commitments are very important to be done by the government in strengthening the legal systems themselves in Indonesia.

5.2. Recommendations

In order not to be paradoxes in upholding the criminal law enforcement needs the restorations of legal systems and the legal upholders' behaviors comprehensively by considering the legal protections for the victims to rebuild the people' trusts against the legal upholders in Indonesia.

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