Symbolic Dominance in the Criminal Law Enforcement Indonesia: Convergence Between the Trinity of Power and Truth-Games

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ABSTRACT
Law enforcement, in essence, is an effort of legal discovery - through interpretation, which is carried out by law enforcers based on a series of powers and discretion in giving meaning to a concrete fact-based on legal norms, which raises the attitude of the Law Enforcer on how to carry out the examination process at the criminal case. The problem of attitudes of law enforcers is the main focus of studies in criminal procedural law in order to exercise power and authority. Nevertheless, law enforcement often produces knowledge as a *doxa* that dominates symbolically-through speech of act, to someone who is examined either as a suspect or defendant. Thus, the suspect and defendant must come face to face with a grand narrative - as a myth of modernity, without sufficient legal remedies from the Criminal Procedure Code to fight back. Therefore, this study aims to try to identify *doxa* models as symbolic domination as a result of truth games based on the trinity of power of law enforcers. Thus, it becomes important to question the "how to work with a *doxa* that functioned as a symbolic domination in the criminal justice process?" This study uses a socio - legal research model with two approaches, namely the legal science approach and the social science approach. The results of this study indicate the existence of *doxas* which are produced as knowledge through a rationalization process to hide the ideological aspects (interests) of law enforcers, thus giving rise to a minimalist form of legal remedy from the suspects and defendants.
Keywords: *Symbolic Domination, Truth-Games, Trinity of Power, Criminal Law Enforcement.*

1. INTRODUCTION

The enforcement of criminal law has been expressly stated as an effort to implement the legal rules established through a process of democratization and the organization of functional government positions that are temporal in nature [1]. The teachings from Padmo Wahyono mean that every legislative activity is not just an effort to formulate and enact a legal norm, but in every legislative act, it also contains a thought related to the implementation nature of the legal norm and to the thought of the workload, which organization in a state power structure. That is, an act of legislation is not only thinking about how to formulate and design a rule of law properly but also simultaneously the emergence of thought about 'how to' apply the rule of law and is charged to which government institution is the implementer.

The process of 'how to' apply a rule of law is known as the concept of law enforcement. Enforcement of this law thus has a close meaning with the ability of government agencies that serve as law enforcers, to translate every set of words in the rule of law into material for applying the law, namely concrete facts. Law enforcement itself is a continuation of legislative action – within the framework of legal political thought, in the form of efforts to interpret legal norms against concrete facts through the actions of their officers based on their free authority (discretion) in making final decisions [2]. The final decision is a manifestation of the attitude of action based on discretion towards the two objects of study, namely legal norms, and concrete facts.

Interpreting activities are activities to produce knowledge by someone who has a legal position based on his power and authority. The result of this interpretation activity is an enforceable monopoly of public authority [3]. The production of knowledge will

thus have a legal impact on other parties when efforts to produce knowledge through interpretation instruments based on power and authority are legal decisions. Regarding law enforcement, especially in the scope of Criminal Law, it is a collaborative process between the use of power, authority, and discretion over values and norms or is called the concept of the trinity of power.

On the other hand, through a study in the concept of the Relational Trichotomy [4][5][6], the pattern of the movement of the trinity of power serves as legitimacy and juridical justification for the apparatus to produce their own knowledge as a result of reading within themselves the values in the norm and manifesting it to the public in legal action (attitude). A legal decision, thus basically, is a rationalized demand for truth play based on the working pattern of the trinity of power through the framework of the Relational Trichotomy. As a result, it has an impact on the truth game to legitimize and justify a legal decision that takes sides.

The absoluteness of a truth game as a legal decision becomes a continuity that is deliberately designed in such a way in a non-emancipatory legal system, through limiting legal remedies against the stipulation of a legal decision in every attitude of law enforcement officials. Pierre-Felik Bourdie, a sociological philosopher at the School of Critical Theory, who views this situation as an attempt to establish symbolic dominance (violence) through the spread of doxa. The working pattern of the construction of the truth game through the instrument of the trinity of power in the concept of the Relationship Trichotomy is not a doxa formation by putting aside the element of intentionality. The process of knowledge production by the authority holder also comes from social praxis actions that are constructed through the absorption of values (habitus) that become one in his understanding of his consciousness. Self-awareness through habitus is an attitude of action in an arena (field) based on the capital of each agent (apparatus).

In such a position, in Bourdieu's perspective, there is a discourse or dialectic between the structure and the agents, in this case to represent law enforcement officers, practice is neither objectively determined nor a product of free will. Reflecting on his interest in the dialectic between structure and the way people construct social reality. Bourdieu labels his orientation with the concept of constructivist structuralism, structuralist constructivism, or genetic structuralism, which is defined as an analysis of objective structures located in different arenas, inseparable from the analysis of genesis, in the biological individual, from mental structures which are to some extent is the product of a combination of social structures; which is also inseparable from this analysis of social structure: social space, and the groups that govern it, are the product of historical struggles (in which agents participate according to their position in the social space and according to the mental structures they use to make sense of this space) [7].

Habitus—in social praxis, is thus a mental construction formed through social relations in the same arena, and self-awareness of the capital used by these social relationships. Habitus is therefore not something natural or innate. To be a product of history, that is, of social and educational experience, means that it can be changed by history, i.e. by new experiences, education, or training (which applies aspects of what remains unconscious from the habitus can be partly formed consciously and explicitly). Dispositions are long-term. They tend to preserve, reproduce themselves, but they are not immortal. They can be created by the history of intentional action and awareness and using pedagogical tools. A language habitus, for example, is a product of primary education and cannot be completely corrected even if one tries. This is the same as anethical habitst. Each dimension of the habitus is very difficult to change, but it can be changed through the process of awareness and pedagogical efforts [8].

In addition to the concept of habitus in constructing Social Praxis Theory, is the concept of capital (capital). This concept is important to discuss because the trilogy of concepts in the form of habitus, capital, and arena (field) cannot be separated to arrive at Symbolic Domination which is a component in the theory initiated by Bourdieu. This distinctive perspective then makes Bourdieu's thoughts can be used to explain various phenomena, or to be more precise, it is used to dismantle or expose the domination (the practice of power) that exists in various domains, ranging from politics, culture, academics, literature, arts, journalism and so on. The perspective developed by Bourdieu was then even able

to reveal the dominant interests behind the so-called ideology of cultural talent and taste[9].

The third concept of Social Praxis Theory is a field or arena, which Bourdieu explains, is a social space or competitive space that contains a variety of interactions, transactions, or events. In an analogy, the arena is like a football game because it has rules, history, excellent players, legends, and knowledge. In the social arena, there are positions of social agents (humans or institutions), there are limitations on what is allowed/not, there are doksa (rules that are not questioned because they are considered natural). In the social arena too, there are competitions such as football games. Social agents use a variety of strategies to maintain or improve their position in relation to habitus and capital [10]. The key concept that contributes to the existence of 'symbolic domination' is the concept of *doxa*. That is, the symbolic dominance will control the habitus, capital, and field [11].

The concept of *doxa* as an unquestioned shared belief forms an arena, underpinning the idea of connecting to symbolic power, particularly relevant to the understanding of social relations in modern society. In this context, *doxa* takes its form as symbolic domination that mediates various forms of capital accumulation (cultural, economic, social). This domination is carried out through customs, mechanisms, differences, and assumptions, its power and legitimacy lie in the misrecognition of the arbitrary character of historical social emergence and reproduction. Symbolic (power or violence) dominance stems from recognized institutions along with institutionalized social relations (education, religion, art) that have the power to categorize and allocate distinct values within symbols and which further legitimize themselves in the process. *Doxa* in this case is a form of symbolic domination (power) [12].

Bourdieu's description of *doxa* reminds us of another identical concept, namely the concept of myth. Myth is a concept of self-avoidance in the process of conceptual discourse. The emergence of a myth begins with a sense of fear in oneself that imagines the occurrence of a deviation from a predetermined truth. Thus, raises a false awareness in him to feel satisfied with what is [13]. The false consciousness that is in him drives a person to always help his mindset. In addition to the views above, Roland Barthes also put forward the same concept, namely 'myth' to describe a situation (sign) which has been given a connotative meaning that has the function to express and provide dominant values that apply in a certain period [14] [15].

Such circumstances, both in the form of *doxa* and in the form of myth/mythology, have a function to dominate other parties, with the aim of leading and directing based on the ideological aspects of the law enforcement institutions concerned. Therefore, this article aims to dismantle legal actions in the Criminal Justice System that function as 'symbolic domination'. Thus, it becomes appropriate to ask questions about "how does a *doxa* function as a symbolic domination in the criminal justice process?"

2. METHODS

In this study, we use socio-legal research methods, using two approaches, namely a Law-based approach and a Social Science-based approach, using the Social Praxis Theory from Pierre-Felik Bourdieu and the Concept of Relationship Trichotomy. In the realm of legal research, it is still very rare to find research based on socio-legal within the scope of criminal law. If there is a socio-legal research, it is associatively embedded in the sociology of law research and sometimes does not show the use of an approach from the Social Sciences. Thus, what makes this research different from other research in the field of Criminal Law is the use of two approaches from the realm of Linguistics, namely Rolland Barthes Semiotics and the realm of Sociology, namely the Social Praxis Theory from Pierre-Felix Bourdieu.

Regarding the topic of this research, it is also unique as a result of the use of socio-legal research methods. That is to reveal the myths which are a *doxa* in the practice of criminal justice. Therefore, to maintain the state of art of this research, we present several studies that have similar research objects. There are several studies that have similarities with the object of writing regarding "legal remedies for petition for review". First, research from Fildo M.S.A. Mansay with the title "Protection of the Convict's Rights in Legal Efforts for Judicial Review", which conveyed the conclusion in his research that in protecting the rights of the convict in submitting a Judicial Review which has been regulated in Article 263 paragraph (1) The Criminal Procedure Code.[16]

Second, research from Ani Triwati with the title "Reconsideration Legal Efforts in Criminal Cases After the Decision of the Constitutional Court", which conveys her conclusion that extraordinary legal remedies aim to find justice and material truth without being limited by time constraints. Thus, the limitation of reviewing only one time has significantly limited the search for justice (by the convict) so that it is contrary to the principle of justice which is upheld by the perpetrators of judicial power based on Article 24 of the Indonesia Constitution.[17] The difference between this study and the two previous studies is that this research focuses on multidisciplinary studies through social theories on the behavior of law enforcement officers who function as symbolic domination.

3. RESULT AND DISCUSSION

In the realm of criminal justice practice, there are many speech acts that are deliberately produced and disseminated to limit the space for other parties to struggle to obtain legal rights and respect for their human rights. The similarity in the characteristics of *doxa* which functioned as symbolic domination (violence) is the absence of legal remedies from language actions in law in Indonesia. This symbolic domination has become a 'myth' as a single meaning (grand narrative) which has been removed from the conceptual debate. The *doxas* that function as symbolic domination in the realm of criminal justice practice are as follows:

I. IN THE REALM OF PRA-INVESTIGATION AND INVESTIGATION

1) Don't use a lawyer, the punishment will be higher

This *Doxa* was discovered by Legal Aid (LBH) Public who conducted counseling to detainees, as the answers collected indicated that there were speech acts from the investigators to those detained so as not to use legal counsel/advocates. The reason put forward by the investigators is that if they use a lawyer/advocate, it will increase the punishment for him.[18] In fact, there are also behaviors that have become habitus, namely by not notifying the right to legal aid [19]. In fact, conceptually, the problem of serious and light criminal penalties is the absolute competence of the judicial power, in this case, the Panel of Judges at the first level of court. Thus, there is no juridical legitimacy for investigators to be able to determine how heavy or light the criminal sentence is. Therefore, absolute competence for investigators only reaches the stage of determining and establishing a person as a suspect (see Article 1 point 2 of the Criminal Procedure Code).

2) Lawyers/Advocates are passive in the Investigation Process.

In fact, the Criminal Procedure Code, which is designated as a masterpiece, has been deliberately formulated and shaped as symbolic domination for the community. All criminal law scholars, through the mechanism of hegemony (persuasion) and community discipline, are indoctrinated to the view that the Criminal Procedure Code adheres to the accusatory principle which respects everyone being examined as a subject, and not an object.

The public is given the legal right to be able to obtain legal assistance from a legal attorney/advocate, in order to protect the interests of someone who has been designated as a suspect (see Article 54 of the Criminal Procedure Code). However, the existence of a Legal Counsel to maintain a quality investigative examination process by referring to the principle of freedom from pressure (see Article 52 in conjunction with Article 117 paragraph (1) of the Criminal Procedure Code) [20], turns out that legal norms are deliberately created that limit the normative rights of legal counsel based on Article 115 paragraph (1) of the Criminal Procedure Code, namely the Legal Counsel in participating in the investigation examination process must be passive. This means that an attorney cannot file a protest against the models of questions that are detrimental to his client.

3) The suspect is not entitled to a copy/derivative of the Minutes of Investigation of the Suspect

Investigator as a functional position within the Indonesia National Police (POLRI) institution is one of the implementers of government functions in carrying out law enforcement (vide Article 2 of Law No. 2/2002). Therefore, someone as an investigator has a trinity of power to produce knowledge that can be forced on others. At this point, it is clearly seen that the investigator, based on the trinity of power attached to his position, in order to protect his interests in carrying out his functions, has rationalized through an interpretation model which

was detected as a fallacy. The result of the interpretive-cognitive activity of the Investigator is a legal action based on the law. Therefore, the interpretive-cognitive activities are still within the scope of his position. However, the Investigator has appeared in him a false consciousness that arbitrarily produces knowledge in the form of connotative meanings against the Consideration letter c of the Criminal Procedure Code, which deviates from its conceptual meaning.

4) Fulfillment of evidence depends on the needs of the investigator

One form of symbolic dominance, which often occurs in investigations, is the determination of the attitude of the Investigator to whether or not mitigating evidence is needed for the suspect in the investigation process? When referring to the instrumental communication model in the investigation process—as has been emphasized by Waljinah above, the impact is that investigators have an interest in protecting the results of their hard work, so that binary contamination does not occur in the case file.

II. IN THE REALM OF PRE-PROSECUTION AND PROSECUTION

As is the case in the realm of investigation, the same is true in the realm of the prosecutor's office, namely the realm of pre-prosecution and prosecution led by a prosecutor with a functional position as a public prosecutor. The issue of maintaining the interests of winning a prosecution—as is the case in the realm of investigation, is an important thing to achieve as a consequence of the absorption of the state budget and its correlation with the establishment of a target system in prosecution as a performance indicator of the Public Prosecutor [21]. As a result, a prosecutor who has a functional position as a public prosecutor is also based on the trinity of power to produce knowledge by interpreting a legal norm.

The Trinity of power is a *habitus* that is absorbed by a Public Prosecutor through a dialectic with arena and capital so that every decision made is a truth-games in order to provide juridical legitimacy to the ideological aspects (interests), both in the form of institutional and social interests. The personal interest of the Prosecutor himself.

Knowledge production through the mechanism of interpretation of legal norms to the connotation stage (arbitrarily), as demonstrated by the decision of the Public Prosecutor to refuse to apply Article 143 paragraph (4) of the Criminal Procedure Code, in order to hinder the interests of the defense of the defendant in the trial [9]. Thus, a *doxa* emerges that the derivative of the case file is not required to be given and is a state secret, even the interpretation of the Public Prosecutor has reached an arbitrary connotation stage, namely there is no regulation in the Criminal Procedure Code.

In fact, Article 143 paragraph (4) of the Criminal Procedure Code is clearly a norm that contains the normative rights of the Defendant which must be fulfilled by the Public Prosecutor, so that the Defendant in the trial process is able to hold a defense. Therefore, the concern of the Public Prosecutor to lose will have an impact on the action in law based on speech acts to frame the interests of the Defendant, in order to save the achievements and performance of the Prosecutor as a Public Prosecutor.

III. IN THE REALM OF EXAMINATION IN COURT

The judge, as the holder of judicial power, is one of the components of the Indonesian Criminal Justice System. In terms of the implementation of the judicial function, it is not different from the attitude of action of the other components of the SPP. In fact, the behavior of truth-games based on the trinity of power as a habitus in the arena of judicial power that gives false awareness of the position of judges which is social capital has also become a producer of knowledge through connotative meanings of legal norms. Thus, judges also participate in symbolic domination through the spread of *doxa* which harms the interests of justice seekers.

In the end, the nature of the *doxa* becomes a symbolic violence factor that makes justice seekers—especially in cases of corruption, appear resigned to any legal remedies. In fact, Investigators, Prosecutors, and Judges are ordinary people who are very likely to have errors in examining, judging, and deciding. In particular, in every decision that is based on a concept of “civic mindedness”, namely seeing something as good for the common good. The negative impact of *doxa* submitting legal remedies will be higher

penalties, in fact, it has spread to other areas of criminal law. It is as a warning from President Joko Widodo to the Prosecutor in order not to frighten the employers [22][23][24]. This means that the *doxa* no longer dominates the defendants in corruption cases, but has been used by prosecutors to frighten other community groups. This is what the Supreme Court did not think of as a result of the creation of these *doxas*.

4. CONCLUSION

Every law enforcement officer, whether Investigators, Prosecutors, and even Judges, has a habitus that attaches to him power and authority that is manifested through discretion (trinity of power), so that he has juridical legitimacy to produce knowledge through legal discovery mechanisms. Self-awareness (habitus) of juridical ability-as a social capital, moving in the arena that is the scope of his position, makes every law enforcement officer play truth-games. The truth games are then realized in the form of doxas which are functionalized as symbolic domination so that the ideological (interest) aspects based on the understanding of "civic mindedness" are maintained.

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