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IMPLEMENTATION OF THE LAW OF EVIDENCE: COMPARATIVE COUNTRY OF INDONESIA WITH THE UNITED STATES OF AMERICA

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ABSTRACT

This research examines the Implementation of the Law of Evidence: Comparative of the State of Indonesia and the United States of America. This study aims to analyze the application of evidence in Indonesia and the United States. This study uses normative research methods. The results of this study explain that there is a comparison between the application of evidence before and during the process in trials between the two countries, but over time and Indonesian law has implemented several processes in evidence that were previously used by the United States. It is hoped that lawmakers in Indonesia will be able to quickly find a new law that will not hinder the process of proof, and will not complicate the judiciary.

Keywords: Comparison. Proof. Indonesia. United States of America

1. Introduction

Law is a product of state regulations in which the legislative process, starting from its creation to its interpretation, is not influenced by morals, religion or political interests. It means "the law stands alone and cannot be mixed up with the others."[2] The legal system in the world recognizes two groups of laws that are adhered to by each of the Common Law and Civil Law countries. Countries that adhere to the common law system "was initially implemented in England on the whole continent, while countries that adopted the civil law system were developed in mainland European countries such as Russia, Japan, the Netherlands."[3] Countries that were former colonies of Continental European countries also adhered to a civil law system. Along with this, English-speaking countries which are former British colonies

[1] **Submission:** 23January 2023 I **Review-1:** 26 January 2023 I **Publish:** 19 April 2023

[2]Endra Wijaya, "Partai Kaum Buruh Di Indonesia (Historical And Legal Policy Approaches To The Existence Of Labour Party In Indonesia)," Dari Redaksi, 2016, 309–20,

[3]Agus Suprayogi, S.H., "Perbandingan Sistem Hukum Common Law Dan Civil Law Di Bidang Hubungan Indurtrial."

adhere to common law. However, "the United States as a former British colony developed a different system from that in force in England even though there was still a mixture of common law systems."[4]

The term rule of law in Indonesia can be found in the elucidation of the 1945 Constitution which reads: Indonesia is a state based on law and not based on mere public power. and the nation's outlook on life. So of course law enforcement will not reach its target. "The state provides legal protection for citizens through the institutionalization of a free and impartial judiciary and guarantees human rights (HAM)."[5]

In practice and its development, several judges in Indonesia make a law to fill the void like a judge in a Common Law country. Thus, the judiciary in Indonesia is no longer fully in line with the Civil Law legal system because it already has and applies several characteristics that are identical to the common law judicial system. "For example, a judge's decision renews the law, even though the criminal law adheres to the principle of legality."[6]

> Proof is
> "Provisions that contain outlines and guidelines regarding ways that are justified by law to prove the guilt of the accused. Evidence is also a provision that regulates evidence that is justified by law, including: witness statements, expert statements, letters, instructions, statements of the accused." [7]

Evidence in court plays a very important role because evidence determines the existence of the elements in question. Proof is a process of trial that determines the existence of facts obtained through appropriate measures with human logical thinking on facts in the past that were absurd in criminal cases.

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[4]Marzuki, Pengantar Ilmu Hukum. Hal 223-224

[5]Ibid, Hal. 239

[6]Choky Ramadhan, "Konvergensi Civil Law Dan Common Law Di Indonesia Dalam Penemuan Dan Pembentukan Hukum," Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada 30, No. 2 (2018): 213.

[7]Wijayanti, Pujiyono, And Baskoro, "Perkembangan Alat Bukti Dalam Pembuktian Tindak Pidana Berdasarkan Undang Undang Khusus Dan Implikasi Yuridis Terhadap Kuhap."

According to Yahya Harahap, proof is "provisions that limit the trial in seeking and defending a truth."[8] Through the theory of proof contains four theories that exist in modern law. Proof based on the law positively (Positief Wettelijk Bewistheorie), Proof based on the conviction of the judge (Conviction Intime), Proof based on the conviction of a logical judge (Conviction Raissonnee), and Proof based on the law negatively (Negatief Wettelijk"). In Article 183 The Criminal Procedure Code states "there are four requirements for evidence in criminal trials including: Witness statements, expert statements, letters and statements of the accused."[9]

The evidentiary trial process in the United States continued with

1) "Selection of the Jury;
2) Opening Statement;
3) The Prosecutor's Legal Reasons;
4) Legal reasons for the Defendant/Attorney;
5) Judge's Instructions;
6) Jury Decision." [10]

Exclusionary Rules is a term known in American law that originates from the Fruit from the Poisonous Tree doctrine, which means that evidence obtained illegally cannot be used. Exclusionary rules in evidentiary law. Basically Exclusionary rules is "one of four proofs. The four pieces of evidence are relevance, admissibility, exclusionary rules and strength of evidence."[11]

With the possibility that Indonesia cannot apply the exclusionary rules of proof system because Indonesia itself adheres to the civil law legal system and not only that, Indonesia also applies Article 189 paragraph (2) of the Criminal Procedure Code regarding defendant's statements outside the trial.

[8]Prastyo, Hendy. *Eksistensi Normatif Saksi A De Charge Dalam Penyelesaian Perkara Pidana (Analisis Yuridis Putusan Pengadilan Negeri Surakarta No. 41/Pid. B/2009/Pn. Ska)*. Diss. Universitas Muhammadiyah Surakarta, 2012.

[9]Kitab Undang-Undang Hukum Acara Pidana Pasal 183

[10]Soedirо, "Perbandingan Sistem Peradilan Pidana Amerika Serikat Dengan Peradilan Pidana Di Indonesia," *Jurnal Kosmik Hukum* Vol. 19 No (2019): 61.

[11]Ramadhina, Raja Yuhaini Auliya, Dewi Haryanti, and Ayu Efritadewi. "Exclusionary Rules Dalam Tahap Pembuktian Di Pengadilan Guna Memperoleh Alat Bukti Yang Sah." *Student Online Journal (SOJ) UMRAH-Ilmu Sosial dan Ilmu Politik* 3.1 (2022): 838-847.

In the United States real evidence is evidence that is considered the most valuable compared to other evidence, while in Indonesia this kind of evidence has no evidentiary strength. Based on the explanation of the background of the problem above, the formulation of the problem in this study is how to implement the application of comparative law of evidence in the criminal justice system in Indonesia and the United States.

2. Research Method

This research is normative research, namely research that is focused on examining the application of the rules or norms in positive law. Normative legal research uses normative legal case studies in the form of legal behavior products. The main subject of the study is law which is "conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior." [12] The approaches used in legal research are statutory approaches and comparative approaches.

3. Discussion and Research Results

3.1. Overview of Evidence

Juridically, proof is "a process to determine the substance of the facts obtained through proper measurement with logical thinking on past facts which clearly become facts in criminal law cases."[13] "Valid evidence is: Witness statements, expert statements, letters, instructions, statements of the accused." [14]

The purpose and use of evidence for the parties involved in the trial examination process are as follows:

a. "For the public prosecutor, proof is an attempt to convince the judge, namely based on existing evidence, to declare a

[12]Soekanto, Soerjono. *Pengantar penelitian hukum*. Penerbit Universitas Indonesia (UI-Press), 2006. Hal. 10

[13]Prastyo, *Hukum Acara Pidana*. Op.Cit Hal. 101

[14]Kitab Undang-Undang Hukum Acara Pidana, Pasal 183 & 184 (1)

defendant guilty according to a letter or record of the indictment;

b. For the defendant or legal advisor, proof is an attempt on the contrary to convince the judge, namely based on existing evidence, to declare the defendant acquitted or released from lawsuits or reduce his sentence. on his part, Usually the evidence is called the opposite;
c. For the judge, on the basis of this evidence, that is, with the evidence available at the trial, whether it comes from the public prosecutor or legal counsel/defendant, the basis for making a decision is made."

The evidentiary system is the regulation of the types of evidence that may be used, the breakdown of evidence, and the ways in which the evidence is used and the way in which judges must form their convictions before a trial court. Proof in criminal procedural law is very important in the process of examining criminal cases in court. Proof is seen as very important in criminal procedural law because "what is sought in the examination of criminal cases is material truth, which is the aim of the criminal procedural law itself." [15]

The evidentiary system in the Indonesian judicial system adheres to a statutory evidentiary system in a negative way. Unlike Indonesia, the United States criminal justice system adheres to a conviction-in-time system. Indonesia as an adherent of the civil law legal system in which this legal system has three characteristics, namely the law being the main source of law, codification, and the judicial system is inquisitorial.

The United States adheres to a common law legal system which has three characteristics, namely, jurisprudence is seen as the main source of law, stare decisis, and adversary in the judicial process.

[15]Alfitra, S. H. *Modus Operandi Pidana Khusus di Luar KUHP: korupsi, money laundering, & trafficking*. Raih Asa Sukses, 2014.

P.A.F Lamintang stated that the evidentiary system in the Criminal Procedure Code is called:

a. Wettelijk or according to the law because it is for proof that the law determines the type and amount of evidence that must be available.
b. Negative, because the types and amount of evidence determined by the law have not compelled the judge to impose a criminal decision on a defendant if the types and number of evidences have not created confidence in him that a crime that has actually occurred and that the defendant has been guilty of committing the crime.

Article 183 of the Criminal Procedure Code in relation to the judge's conviction in evidence, must be established on the basis of legal facts obtained from at least two valid pieces of evidence. The judge's conviction that must be obtained in the verification process to be able to impose a sentence, namely:

a. “Belief that a crime has been committed as charged by the public prosecutor, meaning the facts obtained from the two pieces of evidence (objective ones) form the judge's belief that the crime charged has actually occurred. In practice, it is stated that the crime charged by the public prosecutor has been legally and convincingly proven. Legally means using evidence that meets the minimum requirements, namely from two pieces of evidence. Confidence that a crime has been proven as charged by the prosecutor is not enough to convict, but two other convictions are also needed;
b. Belief about the defendant who did it, is also a belief in something objective. These two beliefs can be called objective things that are subjective. Confidence is something subjective that the judge gets for something objective. Beliefs about the guilt of the defendant in terms of committing a crime, can occur

towards two things/elements, namely the first thing that is objective is the absence of justification for committing a crime." [16]

The emergence of arrangements regarding special pathways in the Draft Criminal Procedure Code is a new step in reforming the Indonesian criminal justice system. Arrangements regarding special pathways are only regulated in one article, namely in article 199 of the Draft Criminal Procedure Code. Meanwhile, Article 199 of the Draft Criminal Procedure Code reads as follows."[17]

Part Six Special Track Article 199

(1). When the public prosecutor reads out the indictment, the defendant admits all the actions he was charged with and admits guilty of committing a crime that carries a criminal charge of not more than 7 (seven) years, the public prosecutor may refer the case to a brief examination session.

(2). The confession of the accused is set forth in the minutes signed by the accused and the public prosecutor.

(3). The judge must:

a. notify the defendant regarding the rights he has relinquished by giving the confession as referred to in paragraph (2);
b. notify the defendant regarding the duration of the sentence that may be imposed; And
c. ask whether the recognition as referred to in paragraph (2) is given voluntarily.

(4). The judge may reject the confession as meant in paragraph (2) if the judge is in doubt about the veracity of the defendant's confession.

(5). Excluded from Article 198 paragraph (5), the sentence imposed on the defendant as referred to in paragraph (1) may not exceed 2/3 of the maximum sentence for the crime for which he is charged.

In the Proof Process, several judicial institutions have their own duties and responsibilities before finally entering into a verdict by a judge. This is interesting because the comparison between the police and

[16]*Ibid.* Hal. 26

[17]Bagaskoro, Ladito R. "Rekonseptualisasi Jalur Khusus Dalam Rancangan Kuhap Sebagai Bentuk Reformasi Sistem Peradilan Pidana Indonesia." *Arena Hukum* 14.1 (2021): 190-206.

the judiciary plays an active role. Comparison of Police Agencies in the verification process between Indonesia and the United States:

The structure of the Indonesian Police is in the form of an organization while the Police in the United States are Non-Departmental. The main function is related to the Indonesian criminal justice system is Investigation. For the United States Alone Regarding the system of criminal evidence a) Investigation and b) Judge at trial for minor cases in several states.

The relationship between institutions in carrying out the evidentiary function in Indonesia Coordinating with the prosecutor's office and the judiciary is in contrast to the United States, which coordinates with the prosecutor's office in conducting investigations. And finally "the type of Indonesian police which is only at the City/Regency level, in comparison with the United States which a. Federal police (example: FBI, DEA, and INS) b. State police."[18]

The police as a component of criminal justice has a very close relationship with other components of the judiciary such as the judiciary. The Attorney General's Office of the Republic of Indonesia is a government institution that exercises state power in the field of evidence. The police immediately take preparatory measures to prove the existence of a crime by studying and examining whether the person or object referred to in the results of the investigation is appropriate or meets the evidentiary requirements.

The police are the main door or entry point in the American criminal justice system. The police are generally the first to come into contact with a suspected criminal and are forced to make an important decision about the continuation of the suspect. The most important decision made by a police officer against a suspect is when deciding

[18] Rudi Setiawan "Perbandingan Sistem Peradilan Indonesia Dan Amerika Serikat" https://www.scribd.com/doc/87603818/PERBANDINGAN-SISTEM-PERADILAN-INDONESIA-DAN-AMERIKA# di akses pada 15 Januari 2023

whether to make an arrest or not, which results in the suspect's journey through the United States criminal justice system.

This verification process is the authority of the police and prosecutors in Indonesia, as well as in the United States. Indonesia's executive branch has full authority in making indictments, whereas in the United States, indictments are obtained after the United States prosecutor shows evidence and testimony in a criminal case to the Grand Jury, then the Grand Jury issues an indictment after being approved by at least 16-23 Grand Juries. jury.

The main difference between the prosecutor's authority in Indonesia and the United States is the authority to settle cases outside the trial related to evidence, namely by implementing Plea Guilty.

In Indonesia, the courts are under the Ministry of Law and Human Rights (HAM). This is the same as the judiciary in the United States. What is odd is that, even though it carries out a judicial function, the accountability and policy-making of the judiciary is under the executive branch.

Indonesian courts are divided into jurisdictions based on province (high court) and based on district (district court). The United States does not have divisions based on these regions. The United States has an equal division with prosecutors, namely state courts and federal courts. Both Indonesia and the United States have the highest court institution, namely the Supreme Court which is the cession of every criminal case that is examined starting from the first level and appeal. "In determining whether a defendant is proven or not proven to have committed the crime he was charged with, this process is called the evidentiary system."[19]

The division of courts based on Indonesia's special jurisdiction is

(1). General courts;

(2). Religious courts;

[19] Sasangka, Hari, and Lily Rosita. *Hukum Pembuktian dalam Perkara Pidana: untuk mahasiswa dan praktisi*. Mandar Maju, 2003., Hal. 15

(3). Administrative courts;

(4). Military courts.

Whereas for America

(1). Legislative courts, including: the US military appeals court, the tax court United States, and veterans' courts of appeals;

(2). Constitutional Courts include: supreme court, court of appeals, and federal territory courts).

"Indonesian evidentiary system (Based on minimum evidence determined by law and conviction of judges (negative system), For the United States (based on sheer conviction (conviction in time))."[20]

3.2. Application of evidence in Indonesia and in the United States

In the initial concept, the change in procedural law from the HIR to the Criminal Procedure Code was motivated by the idea of the importance of protecting the rights of the accused in the criminal justice process, because the suspect had not received adequate and humane legal protection for a long time. The logical consequence of protecting the rights of suspects or defendants is the existence of a strict procedural law, as a guarantee that the rights of suspects and defendants will not be violated. With the creation of the Criminal Procedure Code, "for the first time in Indonesia, a complete codification and unification was carried out in the sense that it covered the entire criminal process from the beginning (searching for truth) to cassation at the Supreme Court, even including review (herziening)."[21]

According to Herbert L. Packer, several models have developed in the United States in the context of administering criminal justice. In the "crime control model based on the assumption that the administration of criminal justice is solely to repress criminal behavior (criminal conduct),

[20] Tolib Effendi, S. H. *Sistem Peradilan Pidana: Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Beberapa Negara*. MediaPressindo, 2018. Hal. 162

[21] Hamzah, Andi. *Hukum Pidana Indonesia*. Sinar Grafika, 2017.

and this is the main goal of the judicial process, because the priority is public order (public order) and efficiency."[22]

The fifth amendment to the American constitution, which is part of the Bill of Rights, stated: No one shall be held liable for a capital, or other high-profile crime, except at the presentation or indictment of the Grand Jury, except in cases arising in ground or naval forces, or in the Militia, when in actual service at the time of War or public danger; also no person who is subject to the same offense twice is in danger of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor shall he be deprived of life, liberty, or property, without due process of law; nor should any private property be taken for public use, without just compensation.

Evidence in Indonesia is regulated in the Criminal Procedure Code: Witness statements, expert statements, letters, instructions, statements of the accused. Whereas the Criminal Procedure Code regulates United States evidence: Real evidence. Documentary evidence (documentary evidence). Testimonial evidence (proof of testimony). Judicial evidence (judge observation).

The burden of proof is a determination by law about "who has to prove a fact that is in question in court, to prove and convince any party that the fact really happened as stated, with the legal consequence that if it cannot be proven by the other party burdened with proof, the fact is deemed to have never happened as disclosed by the party submitting the fact in court."[23]

The principle of reversing the burden of proof aimed at people's mistakes. Chronologically, the reversal of the burden of proof begins with the evidentiary system known to adherents of the Anglo-Saxon

[22] Sabuan, Ansori, Syarifuddin Pettanasse, and Ruben Achmad. *Hukum Acara Pidana*. Angkasa, 1990.hlm. 6.

[23] Fuady, Munir. "Teori Hukum Pembuktian (Pidana dan Perdata)." *Bandung: Citra Aditya* (2006). Hal. 45

country, which is limited to "certain cases", especially against criminal acts of "gratification" or gifts that are correlated with "bribery". bribe).

The stipulation of a reversal of the burden of proof is “the shifting of the burden of proof from the Public Prosecutor to the accused. However, even though reversing the burden of proof is prohibited against the mistakes/actions of people and the whole offense.”[24]

Proof is carried out to provide certainty to the judge about the existence of an action or deed committed by someone so that evidence can be used as the basis for making a decision by the judge. The difficulty of proving in certain cases makes it difficult for these cases to be submitted to the courts and only settles in the police report.

Evidence outside of specific criminal cases in Indonesia is regulated by the Criminal Procedure Code. Proof in the Criminal Procedure Code adheres to a system or theory of proof based on negative laws (negatief wettelijk). As stipulated in Article 183 of the Criminal Procedure Code that a judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains confidence that a crime has actually occurred and that the defendant is the one who is guilty of committing a crime.

According to Wirjono Prodjodikoro, negative proof based on law should be defended based on two reasons:

a. “Indeed, it is appropriate that there must be a judge's conviction about the guilt of the defendant in order to be able to impose a criminal sentence, the judge should not be forced to convict someone while the judge is not sure of the defendant's guilt;
b. It is useful if there are rules that bind judges in compiling their convictions, so that there are certain standards that must be followed by judges in conducting trials.”[25]

[24] Mulyadi, Lilik. "Asas Pembalikan Beban Pembuktian Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Pidana Indonesia dihubungkan dengan Konvensi Perserikatan Bangsa-Bangsa anti Korupsi 2003." *Jurnal Hukum dan Peradilan* 4.1 (2015): 101-132.

[25]Prints, Darwan. *Hukum acara pidana: suatu pengantar*. Djambatan, 1989.Hal. 107

Indonesia is a constitutional state as stated in the elucidation of the Constitution of the Republic of Indonesia. 1945. Thus, the principles and principles of a rule of law must be upheld and cannot be defeated by momentary needs, circumstances or thoughts at any time. In a rule of law, the law that holds the highest authority is law, which is universally called the "Rule of Law" with “one of its elements, namely the presumption of innocence, as contained in Article 66 of the Criminal Procedure Code that a suspect or defendant is not burdened with the obligation to prove.”[26]

The Anglo Saxon country is very developed, this is influenced by the Anglo Saxon legal system which makes judges the main center of legal development through their decisions. the Res ipsa loquitur doctrine is directly related to the burden of proof.

The application of this doctrine does not apply automatically, only in certain cases. In certain cases the expert's mistakes are clearly visible so there is no need for further proof because even ordinary people can already know that there was a negligence so that there is no need for evidence from expert witnesses. These are certain cases that can use the Resipsa loquitur doctrine.

In Anglo Saxon countries, using standard burden of proof measures, there are three, namely:

a. “By a preponderance of evidence, that there must be such evidence, so that when it is measured it has greater strength for the truth (more than 50%);
b. By clear and convincing evidence, namely the level of evidence that will give the jury an impression of a clear level of truth from what was stated by the plaintiff;
c. Bey and a reasonable doubt, namely that the evidence must really be on the side of the plaintiff, so that there is no doubt

[26]Guwandi, J. "Hukum Medik (medical law)." (2019). hal 5

about the assessment of the defense of the defendant. This standard size is used in criminal cases." [27]

3.3. Comparison of Systematic Proof of Criminal Cases in Indonesia and the United States

The police as officials who are authorized by law to carry out investigations are explained according to Article 1 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) states that "An investigation is a series of investigator actions in matters according to the method stipulated in the Law to seek and collect evidence with that evidence to make clear about the crime that occurred and to find the suspect."[28] If the public prosecutor conducts an investigation in the event that a new reason is found, it is "investigator."

The Criminal Procedure Code (KUHAP) in Article 1 point (1) defines what is meant by an investigator as an official of the Indonesian National Police (POLRI) or certain civil servant officials who are given special authority by law to conduct investigations, whereas in Article 6 number (1) emphasizes that "investigators are officials of the state police of the Republic of Indonesia and certain civil servant officials who are given special authority by law. However, in certain cases, the Prosecutor also has the authority as an investigator for special criminal cases/offences."[29]

Investigation of criminal acts is a series of investigative actions in matters and according to the methods regulated by law to seek and collect evidence, which with that evidence makes it clear about the crime that occurred and to find the suspect. Investigation is the most important stage in the framework of criminal procedural law in Indonesia, because at this stage the investigator seeks to uncover facts and evidence for the occurrence of a crime and find the suspect who committed the crime.

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[27] *Ibid*. Hal. 98

[28] Kitab Undang-Undang Hukum Acara Pidana Pasal 1 ayat 2

[29] Anonimous, KUHAP dan KUHP, Sinar Grafika, Jakarta, 2013, hlm. 243.

Before the start of an investigative process, an investigative process has been carried out by investigators in a criminal case that occurred. In Article 1 numbers (2 and 5) of Law Number 8 of 1981 concerning Criminal Procedure Code, the notion of investigation and inquiry is mentioned.

When an investigator starts an investigative action, he is burdened with the obligation to notify the prosecutor about the commencement of said investigation. However, "the problem with the notification obligation is not only at the beginning of the investigative action, but also at the act of terminating the investigation."[30]

Based on the provisions of Article 109 paragraph (2) of the Criminal Procedure Code above, there are several circumstances where an investigation into a criminal case can be stopped. These circumstances are:

1. Insufficient Evidence
   If the investigator does not obtain sufficient evidence to prosecute the suspect or the evidence obtained by the investigator is insufficient to prove the guilt of the suspect when presented before a court session, the investigator has the authority to terminate the investigation. To be able to know that in an investigation there is not enough evidence, it must be known when the results of the investigation are seen as sufficient evidence. To be declared as sufficient evidence is the availability of at least two valid pieces of evidence to prove that it is true that a crime has been committed and that the suspect is a perpetrator who is guilty of committing a crime."[31]
2. "Event Turns Out to Be Not a Criminal Act If from the results of the investigation and examination, the investigator is of the opinion that what is alleged against the suspect is not a criminal act as stipulated in the Criminal Code, then the investigator has the authority to stop the investigation. Admittedly, sometimes it is very difficult to draw a clear line. assertive about whether an

[30] Sugama, I. Dewa Gede Dana. "Surat perintah penghentian penyidikan (Sp3) Dalam pemberantasan tindak pidana korupsi." *Jurnal Magister Hukum Udayana* 3.1 (2014): 44107. hlm. 4.

[31] Yahya, Harahap M. "Pembahasan Permasalahan dan Penerapan KUHAP penyidikan dan penuntutan." *Jakarta: Sinar Garfika* (2013).hlm. 152

action committed by someone is included in the scope of a criminal act whether it is a crime or a violation."[32]

3. Case Closed for the sake of Law If a case is closed for the sake of law, it means that the case cannot be prosecuted or prosecuted. These provisions are contained in Chapter VIII of the Criminal Code (KUHP) Articles 76 to Article 85 which regulates 'the abolition of the authority to prosecute and carry out crimes', including
   a. Nebis in idem
      A person can no longer be prosecuted for the second time on the basis of the same act, against which the person concerned has been tried and the case has been decided by a judge or court competent for that in Indonesia, and the decision has obtained permanent legal force. The principle of nebis in idemini is one of the human rights that must be protected by law and at the same time is intended to uphold legal certainty.
   b. The suspect died
      With the death of the suspect, by itself the investigation must be stopped. This is in accordance with the principles of law that apply universally in the modern era, namely that a criminal offense committed by a person is the full responsibility of the perpetrator concerned.
   c. Expiration
      After exceeding a certain time limit, a criminal act cannot be prosecuted on the grounds that the crime has passed the time limit or has expired, (Article 78 of the Criminal Code). Logically, if the authority to prosecute before a court session has been removed against a person who has committed a crime, it is of course useless to carry out an investigation and examination of that person. Therefore, if an investigator encounters a situation like this, he must immediately stop the investigation and examination.

In the Draft Law on Criminal Procedure Law, it is also regulated regarding the mechanism for ending an investigation which is part of the investigator's authority. which is regulated in Article 14. In the provisions of Article 14 of this Draft Law on Criminal Procedure Law it is expressly stated that the investigator has the authority to stop the investigation because:

a. Nebis in idem;

[32] Latifah, Marfuatul. "Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia (The Urgency Of Assets Recovery Act In Indonesia)." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 6.1 (2016): 17-30.

b. The suspect died;
c. It's past time;
d. There are no complaints on criminal complaints;
e. The law or article which forms the basis of the claim has been revoked or declared to be unenforceable based on a court decision; And
f. It was not a crime or the defendant was under the age of 8 when he committed the crime. This provision in the Draft Law on Criminal Procedure eliminates the provision "insufficient evidence" which was originally a provision that facilitated the termination of investigations for criminal suspects.

An Investigation Termination Order (SP3) is issued with reference to Article 109 paragraph (2) of the Criminal Procedure Code, namely:

(1). If the investigator who stops the investigation is the National Police, notification of the termination of the investigation is conveyed to the public prosecutor and the suspect/his family; 2. If the one who stops the investigation is a civil servant investigator, the notification of the investigation shall be submitted to:
   a. Polri investigators, as officials authorized to coordinate investigations;
   b. Public prosecutor.
   c. Investigators in determining whether an event is a crime or not, must adhere to the elements of the offense of the alleged crime. Because in a definition of a crime there is an element of delict that must be met, so that the investigator can decide an event as a crime. Regarding the termination of the investigation on the grounds that the event is not a crime, the investigator cannot conduct a re-investigation, because the case is not within the scope of the investigation. criminal law, unless strong indications are found to prove otherwise.

Developed countries like the United States use a jury in the proving process. There are two types of juries in the federal court system, namely grand jury and petit jury. The Grand Jury is “a group of men and women randomly selected from the general public who meet to determine

whether there is sufficient cause to believe that a person has committed the federal crime for which he is charged. The Minor Juror, like the Grand Juror, is chosen at random from the public to hear evidence and determine whether a defendant in a criminal case is guilty or not guilty." [33]

When a suspect in a criminal act is detained, a recording process is carried out by asking for information at the police station. Records were made of the facts surrounding the detention and fingerprints and photographs of the suspect were taken. After the recording process is complete, the next process is carried out, namely Initial Appearance (Appearance in Front of the Judge). In this process the suspect is informed about the indictment that will be filed and informed about his rights.

In this process it is also possible to carry out a bail process for parole. Parole on bail is considered a privilege, not the suspect's right and can be refused altogether with certain considerations. If they are not granted parole, or are terminated, the case will proceed to the next process, namely the Preliminary Hearing.

In the Preliminary Hearing process, the prosecutor presents his case and the suspect has the right to re-examine witnesses and submit mitigating evidence. In the Preliminary Hearing process, it is possible for the suspect to be acquitted by the court, because the prosecutor cannot prove there is sufficient reason to carry out further prosecution in a formal trial. However, when sufficient evidence was obtained during the Preliminary Hearing process, the case moved on to the next process. With information from investigators and information he gleaned from talking to the people involved, he decides whether to submit the case to an impartial group of citizens called the Grand Jury.

[33] Andi Hamzah. *Loc.cit.* Hal 3

When someone is accused, he is given official notification that he is believed to have committed a crime in the form of an indictment containing information about the accusations against him.

The difference is, if in Indonesia the proof stage is still in the area of investigation (police) then the executive (prosecutor) has the right to conduct an investigation if new reasons are found, whereas in the United States the process before this proof is already in the prosecutor's area, where the report on the results of the investigation has been submitted from police to prosecutors. This verification process is the authority of the police and prosecutors in Indonesia, as well as in the United States. In drafting an indictment, the Indonesian prosecutor's office has full authority in drafting an indictment, while in the United States.

The indictment was obtained after the United States prosecutor showed evidence and testimony in a criminal case to the Grand Jury, then the Grand Jury issued an indictment after being approved by at least 12 people consisting of 16-23 Grand Jury.

If in the Indonesian criminal proof system, it is clear when the terms "suspect" and "defendant" are used, however in the United States evidentiary system, there is a comparison in the stages of the process to use the terms "suspect" or "defendant".

In the Indonesian evidentiary system, the term "suspect" is used before the case is transferred to the public prosecutor, but after it is delegated to the public prosecutor the term "defendant" is used until there is a binding judge's decision to change to "convict." In the United States evidentiary system, new charges are officially proven at trial after the Preliminary Hearing process or the Grand Jury process. After this process, the indictment will be examined in court to be decided by the judge. Thus, it is appropriate for the accused party to use the term "defendant."

4. Conclusion

Comparative implementation of evidentiary law arrangements in Indonesia and the United States seen from the perspective of the criminal justice system, the process of law enforcement power in the field of criminal law includes all powers/authorities of criminal law enforcement carried out through investigative powers by the police, evidentiary powers by the police and prosecutors, and powers judged by the court.

Proof in special cases in Indonesia uses the same method as stipulated in the Criminal Procedure Code. Proof in the Criminal Procedure Code adheres to a system or theory of proof based on negative laws (negatief wettelijk). Whereas in Anglo Saxon countries including the United States in resolving special cases applying the principle of re ipsa loquitur (the thing speaks for itself), this doctrine is directly related to the burden of proof. "Res ipsa loquitur" does not prove anything, it is nothing but a very limited possibility of shifting the burden of proof from the plaintiff to the defendant or using reverse evidence.

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