

CONSTRUCTION OF THE BUREAUCRATIC CRIMINAL JUSTICE BASED ON THE PUBLIC SERVICE

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ABSTRACT

The role of bureaucratic criminal trial is very important for the attainment of substantial justice, because at this stage the presence of proof against the defendant's fault. Law enforcement officers based on the Indonesia criminal justice system acts represent the interests of Justice seeker of legal examination of criminal cases. There are rejection from the justice seeker againsts the existence of judicial bureaucracy due to: (a) the completion of the drawn-out litigation; (b) the Justice Ministry closed; (c) a number of court rulings that did not pro to the small people. The problem in this paper is how is the ideal construction of judicial bureaucracy based on public services in order to realize substantial justice. The Research methods with the constructivism paradigm using a socio-legal research approach. Construction of ideal trial-based public service bureaucracy in the form of: (a) the trial shall use the information technology system; (b) any decision of the judge must to immediately accessible to the public; (c) the implementation of different judges opinion (dissenting opinion); (d) the obligation of any examination of cases by the independent institutions; (e) the authority of the Chairman of the District Court (KPN) to combine a number of things over the same defendants; (f) the existence of a single judge appoints KPN authority; (g) Implementation of the legal institution Settlement the matter out of Court (afdoening buiten process); (h) implement mechanisms for negotiations over the charge (plea bargain); (i) liability of legal aid to all criminal cases; (j) the protection of witnesses in the criminal trial case

Keywords: bureaucratic, public, justice.

Introduction

Criminal case trial occupies an important thing in the criminal law enforcement because at this stage there is a proof process by the judge to decide the defendant's charge. While the decision of judges should be based on facts, and evidence at the court hearing.¹

The mechanism of criminal case examination have ruled limited in the way of court trial, it is to create the judicial functional in this case the judge and the clerk of court to correctly doing their job, and they can be responcibe by the law and create the substantial justice. The existence of such provisions in a limited manner in accordance with the criminal procedure law function is to control the law enforcement officials, not the criminal.²

Implementation of criminal justice by judicial authorities relating to the administration of justice (*administration of justice*). given that the scope of the administration of justice include processes and procedures for handling cases and litigation practices (*litigation procedure of and practice*) in terms of prosecuting authority (*judicial power*).³ The existence of the administration of justice in this case the judicial bureaucracy⁴ in the enforcement of criminal law is very important, because law enforcement is an integral part of the criminal case proceedings to seek justice in material / substantial. In this regard, there are two functions of

¹ Mardjono Reksodiputro, 1994. *Hak Asasi Manusia Dalam Sistem Peradilan Pidana*, Sercive Center of Justice and Legal Devotion (d/h Criminology Institution) UI. Jakarta. Pp. 34 stated that through the interpretation of paragraph (1) article 191 and article 197 must be interpreted the adjudication step (court trial) which must "dominant" in the all of process, it matter on the guilty or not guilty decision, it must based on " fact and the condition and also the evidence that collected from the court hearing".

² Jerome H. Skolnick, "Justice Without Trial: Law Enforcement in Democratic Society", Dalam Lawrence M. Friedman dan Stewart Macaulay (ed), *Law And The Behavioral Sciences*, The Bobbs-Merril Company, New York. 1966. Hlm. 903 bahwa *The substantive law of crimes is intended to control the behavior of people who wilfully injure persons or property, or who engage in behaviors eventually having such a consequence, as the use of narcotics. Criminal procedure, by contrast is intended to control authorities, not criminals.*

³ Muladi, 2002. administration of justice can be ambiguous which court administration, in terms of management relating to the organizational, administrative and financial arrangements of justice agencies; and the administration of justice, including the processes and procedures for handling cases and litigation practices (litigation procedure of and practice) in terms of prosecuting authority (judicial power); The prosecuting authority is closely linked to the process of law enforcement (law enforcement) and protection. *Op.cit.* Pp. 3. Compare with Max Weber and Bendix opinion, 2001. *Hukum Birokrasi dan Kekuasaan di Indonesia*. Walisongo Research Institute (WRI) Yogyakarta, bureaucracy is a mechanism for administration of the most modern formal organization, Pp. 3. In this paper the mechanism defined as mechanism of administration of justice. Administration of justice including procedures for the entry of the court, the appointment of judges, procedures the case investigation in the trial, the judge's ruling, and the execution of the judge's decision.

⁴ Bagir Manan, *Kekuasaan Kehakiman Indonesia Dalam UU No. 4 Tahun 2004*. FH UII Press Yogyakarta, 2007. Pp. 2 stated that the rearrangement of the composition of the judiciary is required in order to organize the judicial bureaucracy or the administration of justice.

criminal justice administration, namely: (1) the administration of criminal justice is seen as an instrument (tool) social control by means of enforcing the rules contained in the substantive criminal law; (2) the administration of criminal justice is a tool to protect individual rights and freedoms of individuals suspected or others.⁵

The administration of criminal justice should reflect the criminal justice models adopted by Act No. 8 of 1981 on the Code of Criminal Procedure (Code of Criminal Procedure) is a model of service (*the service model*),⁶ The task of justice is left entirely to the State through law enforcement officers. Based on this model the legal interests of justice seekers will be represented entirely to law enforcement officers. there is no provision of the Criminal Procedure Code which provides access to the victim to be active in the trial, even reinforced by the mandate of the provisions of Article 4 paragraph (2) of Law No. 48 Year 2009 on Judicial Power that helps Court seeking justice and strive to overcome all obstacles and obstacles to the achievement of justice that is simple, fast, and low cost. It is necessary for basic standards on how law enforcement officers carry out their duties and authorities in proceedings of regulated proceedings.

The relation between model of justice above, the justice officials in carrying out its functions are obligated to protect, promote and serve the interests of the law (rights) the seeker of justice in accordance with the substantive competence so that the substantial justice may be realized.⁷ But now the existence of the administration of criminal justice as the foundation for the work of the judicial bureaucrats have received less attention in the politics of law enforcement in Indonesia. Have not seen the administration of criminal justice comprehensiveness substance contained in the Criminal Procedure Code, in particular the provisions on legal proceedings. Construction administration of justice at this time seems not to be able to protect the legal interests of justice seekers.⁸

Design administration of criminal justice according to the Criminal Procedure Code contained in Chapter XVI and Chapter XVII set from Article 145 to Article 258 of the Criminal Procedure Code of Criminal Procedure trial. The provision is seen not able to accommodate the interests of those law justice seekers both defendants, witnesses, victims, and the public in the administration of criminal justice. In this case, looks a denial of justice seekers on the workings of the judicial authorities to examine and decide a criminal case under the provisions in force. Rejection is due to: (1) the existence of protracted practice in settling disputes; (2) judicial services that are closed; (3) the low performance of judicial officers; and (4) any litigation practices tailored to the interests of justice officials and / or agencies such as the court proceedings by the judges but implemented by a single judge, the decision in which there has been no decision file, examination of witnesses who are just random origin to meet the obligations of formality. Judicial practice as above in addition to being able to realize substantial justice, is also likely to give rise to a violation of the legal interest (Human Rights) seekers of justice, can even develop the practice of judicial mafia. The existence of the workings of the judicial officers as above due on less precise settings on some aspects of the administration of criminal justice, as shown in Table 1 below.

Table 1: Justice Administration Practice Based on the Code of Criminal Procedure

No.	Code of Criminal Procedure	Court Practice	Explanation
1.	Criminal Procedure Code does not give authority to the Chairman of the Court to join several cases against the same defendant filed by prosecutors. ⁹	Often found in the separation of several case against a defendant who does not have an interest, such as: (1) practice of criminal justice administration in the Tanjung Karang District Court in the case No. 224/Pid/B/1989/ PN.TK <i>juncto</i> No.43/Pid/B/ 1990/PT.TK <i>juncto</i> No.2060K/ Pid/1990.; (2) Separation case Practice against a defendant named Sugiharto Wiharjo alias Alay on Tanjung Karang District Court Class IA. ¹⁰ Separation practice of the case that opposite the principle of justice	The verdict in this case lead to a loss against the accused due to the separation of lead defendant in the case, sentenced to 35 years in 4 (four) cases. This ruling exceeds the maximum length of imprisonment as provided for in Article 12 paragraph (4) and Article 71 of the Criminal Code. This ruling has been fixed by the Supreme Court by the Review Decision No. 31 PK / Pid / 1999, with amar legal considerations that the judge has made a real mistake.

⁵ Muladi, *Fungsi Administrasi Peradilan Dalam Sistem Peradilan Pidana Terpadu*. Makalah Seminar Sistem Peradilan Pidana, Unisba Bandung. 2002.

⁶ Administration model of criminal justice in addition to models of service (the service model), also known as procedural rights model (procedural rights). According to this model the justice seekers, especially the victims were given the right to sue directly in a criminal case.

⁷ The role of the judicial officers in performing their duties so that the judge shall explore, and understand the legal values and sense of justice in society as stipulated in Article 5 (1) of the Judicial Power.

⁸ Compare with Barda Nawawi Arief Opinion. *Kapita Selekta Hukum Pidana*. Penerbit PT. Citra Aditya Bakti. Bandung. 2003. Pp. 59 Said that problematic of policy formulation, could have led to the decision to be unfair or unsatisfactory, so that the parties (convicted or Attorney) appeal / cassation or Review (Peninjauan Kembali).

⁹ Compare with article 250 paragraph (2) *Herziene Inlandsch Reglement* (HIR) Stbl 1941 No. 44 so ..., but when the letters of the preliminary examination it turns out to him, the defendant was guilty of committing acts that may be punished, or that he was even more forbidden acts incoming to the inspection of the district court explained or addressed in the article above, then act others can be punished or even more it let be included in the decision, unless the magistraat demands upon it firmly explained that he did not want to do the demands on other acts or better more. R. Tresna, 2005. *Komentar HIR*, Pradnya Paramita, Jakarta. Pp. 208.

¹⁰ SKH. Radar Lampung, Jalani Perkara Keempat, tgl. 29-10-2009. Based on the research, defendant case get separated by 10 cases.

		those are fast, simple and low cost adopted by Code of Criminal Procedure. ¹¹	
2.	Although there are provisions that require judges and clerks to make and sign the verdict immediately after the verdict was pronounced, while the decision letter should contain items that have been determined in a limited manner in Article 197 Criminal Procedure Code, if not followed, will result in the decision null and void, ¹² but the Code of Criminal Procedure can not sanction judges for violations.	There are several judges at the time of verdict, decision letter has not been made. ¹³ Letters decision will be made if the defendant or the public prosecutor requested a copy of the decision for the appeal interest. ¹⁴	In these circumstances the decision letter is only made by a judge on behalf of the judges with the term "three in one", even the concept of letter ruling made by the Substitute Clerk by a similar case of letter ruling. ¹⁵
3.	Information developmental efforts of law committed by the defendant only through the Clerk of Frist Level District Court againts the case involved.	Law Effort on criminal cases in the District Court of Tanjungkarang No: 723/Pid.B/2001/PN.TK. In the case of more than two years Decision Letter of the Supreme Court is not submitted by the Clerk of the Supreme Court to the Tanjung Karang District Court Clerk. ¹⁶	Therefore, the case can not be executed, resulting in the loss of the rights of convicts who have status as a prisoner like to receive coaching, remission and others, the administration of justice as these practices cause harm and violate the defendant Human Rights (Human Rights).

¹¹ The reasons above according to the results of research conducted by the Indonesian Judicial Monitoring Society (MPPI) that the court proceedings were passed from registration until exit decisions are too complicated, inefficient and expensive. and then with the poor management of the distribution of cases and the appointment of judges to handle cases considered disproportionate and acceptable. In addition, the determination of a court ruling procedure is also considered not transparent to the public (www.pemantauperadilan.com). Downloaded on. 1-01-2010). Also look into M. Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa*, PT. Citra Aditya Bakti. Bandung. 1997. chronic disease that first popped up in courts around the world: settling disputes through litigation in general, "slow" or so-called "waste of time" (waste of time), this is due to the inspection process is very "formalistic" is also very technical at all (technically), other than that, the current court case is getting heavy so bombarded with too much burden (overloaded). Pp. 204.

¹² Article 197 paragraph (1) letter of sentencing verdict includes:

- a. head of the written decision reads: "FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD";
- b. full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the defendant;
- c. charges, as contained in the indictment;
- d. arranged briefly consideration of the facts and circumstances as well as the tools of evidence obtained from the examination in the trial on which the determination of guilt of the accused;
- e. criminal charges, as contained in the warrant;
- f. Article legislation that became the basis of criminal prosecution or action and Article legislation which forms the legal basis of the decision, accompanied by aggravating circumstances and mitigating the defendant;
- g. day and date of the deliberation the judges except the case examined by a single judge;
- h. Statement of guilt of the defendant, the statement has fulfilled all the elements in the formulation of a criminal offense is accompanied by qualification and punishment imposed or action;
- i. Conditions to whom the court fee is charged to mention a definite amount and the provision of evidence;
- j. Statement that the entire letter was counterfeit or information where it is located falsehood, if there is an authentic letter is considered false;
- k. Orders that the accused be detained or kept in custody or released;
- l. Day and date of the judgment, the name of the prosecutor, the judge decide the name and the clerk's name;

Paragraph (2) not fulfilled on the paragraph (1) point a, b, c, d, e, f, h, i, j, k, and l This article resulted in the decision null and void. Special provisions of Article 197 paragraph (2) k, based on the decision of the Constitutional Court No. 69 / PUU-X-2012 does not have binding legal force.

¹³ Example, Case No. 224/Pid.B/2010/PNTK; Case No. 446/Pid.B/2010/PNTK; Case No. 475/Pid.B/ 2010/PNTK;

¹⁴ Bagir Manan, 2007. *Kekuasaan Kehakiman Indonesia Dalam UU No. 4 Tahun 2004*. FH UII Press Yogyakarta, states that a Substitute Clerk Askor found two that holds five file cabinets that have been cut but not forwarded by minutasi. Minutasi done by order litigants. Similarly, it is not uncommon dilambat delivery decision-slow down, waiting for someone to ask or facing. This issue is not about skill or work facility, but because of low morale irresponsible. p. 54. Based on the observations of researchers such practice is also found in the District Court tanjungkarang.

¹⁵ These conditions are in accordance with the opinion of Busyro Muqoddas at the National Seminar on "Bribes, Mafia Justice, Law Enforcement and Criminal Justice Reform" Diponegoro Semarang on March 10, 2010 that there was a judge's decision stems from the concept that created an advocate. Compare Todung Mulya Lubis also the opinion that the presence of the Judicial Commission which has not been able to enter the belly of corruption, the judge's ruling that the terms with manipulations such as copy and paste, the judge can be arranged especially in remote areas, which can be controlled investigator. Various problems in the above encourage the emergence of mob justice (Judicial Commission Buletin Vol. IV No. 3 December 2009. Pp. 10).

¹⁶ "Salinan putusan masih sulit didapat. Komisi Yudisial saja kesulitan, apalagi yang lain," said Busyro. Busyro admitted it is difficult to obtain a copy of the decision of the appeal / reconsideration of the Supreme Court. Supreme Court often throw / ask the Judicial Commission to the local court if you want to ask for a copy of the verdict. <http://cetak.kompas.com>, downloaded on January 1, 2010. Similar conditions also

In connection with the conditions above, then it is time to do the reconstruction of the administration of criminal justice in Indonesia oriented public interest. This is because the judiciary as an organizer of the country in the field of judicial duties as state agencies in the executive and legislative obligation to provide services to all citizens and residents of Indonesia. The state is obliged serve every citizen and resident to fulfill the rights and basic needs that are mandated by the Constitution of the Republic of Indonesia Year 1945.¹⁷ In it's capacity as organizer of the state duty, the judiciary is also obliged to organize public services as mandated by Law No. 25 of 2009 on Public Service. Based on the explanation of Article 5 paragraph (4) letter a of the law stated that:

Public services in this provision, for example, health care (hospitals and clinics), education services (elementary school, junior high school, high school, and college), marine navigation services (lighthouses and beacons), judicial services, traffic services (traffic lights), security services (police services), and market services.

Relation between the current status of the court as an institution of public service providers, it is necessary to renew the vision, mission, duties, powers and functions in accordance with the demands in the era of reform that upholds democracy and openness. The Court must change its role solely as a funnel law courts have become an active role to serve, represent and promote the interests of justice seekers law, as well as to listen to the laws of society. thus, it needs construction administration of justice based on the public service.

The importance of public service as a basis of criminal justice administration is considering the core public service that is excellent service in the form of service is fast, precise, accurate, and quality is in line with the principles of justice fast, simple and low cost of the underlying implementation of criminal justice in Indonesia based on the Law Law No. 8 of 1981 in conjunction with Law No. 48 Year 2009 on Judicial Power. In addition, the principles of public service in the form of transparency, accountability, conditional, participation, equal rights and the balance of rights and obligations, and in accordance with the principles of justice based on God or God's justice is based on the guidance of the equation, objectivity, fair, and impartiality, which is the goal of Indonesian court of justice. This paper would like to discuss the administration of criminal justice-based construction of public services for the creation of substantial justice as coveted by Indonesian society.

Discussion

Implementation of criminal court of justice under the Law 8 of 1981 on the Law of Criminal Procedure (Criminal Code) is based on the justice of which are free, open to the public and held fast, simple, and inexpensive, and free, fair and impartial. Justice is done for the sake of justice based on God, as stipulated in Article 2 paragraph (1) of Law No. 48 Year 2009 on Judicial Power. Embodiment of the principles of justice, then ideally the administration of criminal justice must be effective, transparency¹⁸, accountability, and respect for the legal interests of justice seekers. Therefore, administration of criminal justice in the adjudication stage are required to be implemented effectively, open, accountable, and meets the legal interests of justice seekers. Moreover, the Criminal Code Procedures perspective puts the status of the defendant as the subject of the trial hearing¹⁹ so that the required availability of the humane treatment of the defendant by providing the fulfillment of their rights during the course of the trial hearing. This is consistent with the administration of criminal justice functions, namely: (1) the administration of criminal justice is seen as instruments (tools) to enforce social control rules contained in the substantive criminal law; (2) the administration of criminal justice is a tool to protect individual rights and freedoms of individuals as suspects or others.²⁰

Constitution of the Republic of Indonesia Year 1945 (UUD 1945) asserted that Indonesia is a state of law. One of the important principles of law state is a guarantee of the implementation of an independent judiciary, free from the influence of other powers to organize judiciary to enforce the law and justice. According to Article 24 paragraph (1) of the 1945 Constitution that the judicial power is an independent power to organize judicial administration to uphold the law and justice. To realize the mandate of the 1945 Constitution, the Law No. 48 Year 2009 on Judicial Power has set the principles of the organization of the judicial authority as stipulated in Article 2 that (1) Justice is done "By Justice Based on God"; (2) The State Court implement and enforce the law and justice based on Pancasila; (3) All courts in the whole territory of the Republic of Indonesia is the country's judiciary that regulated by law; (4) Court trial is done with a simple, fast, and low cost. Based on these principles, the legal values that should be realized in the administration of justice in order to implement and enforce the law and justice based on Pancasila is the realization of justice based on God that is done in a simple, fast and inexpensive. Justice that based on God in this paper is defined as the intrinsic fairness / material / substantial that real justice without any fake condition.²¹

occur in cases of bribery prosecutor Gunawan, despite the Supreme Court ruling has been more than one and a half months but have not received a copy of the Commission's decision the eradication of corruption so that the convict can not be executed, Radar Lampung 26-4-2009.

¹⁷ Law No. 25 year 2009 about public service.

¹⁸ Decision of the Chairman of the Supreme Court of the Republic of Indonesia No. 144 / KMA / SK / VIII / 2007 on Freedom of Information in court.

¹⁹ Known as confession of suspect and defendant's right in criminal code procedure.

²⁰ Muladi, *Fungsi Administrasi Peradilan Dalam Sistem Peradilan Pidana Terpadu*. Makalah Seminar Sistem Peradilan Pidana, Unisba Bandung, 2002.

²¹ Compare with Barda Nawawi Arief Opinion, 2011. *Pendekatan Keilmuan dan Pendekatan Religius Dalam Rangka Optimalisasi dan Refomasi Penegakan Hukum (Pidana) di Indonesia*. Badan Penerbit Undip Semarang. Pp. 16, justice based on God means justice based on the guidance of God which contains principles: (1) the equation; (2) objectivity; (3) no favoritism; and (4) do not take sides.

The mechanism of the administration (bureaucracy) in court there are two (2) types of court bureaucracy in implementation of the administration of the courts (court administration) and the bureaucracy of the administration of justice in the judicial administrative cases (administration of justice).²² Criminal justice court functions both as a means of social control and means of protection of the rights of justice seekers is very important for the realization of justice. Thus the criminal justice court will only contribute optimally and meaningfully to the criminal justice system if it can manage identity as supporter of principles of independent judicial power and successfully promote and protect human rights.²³

The court as an institution that serves to bring about justice, in carrying out their duties is determined by the performance of the organizers. Therefore the hands of the judicial authorities was a justice that is expected by those seeking justice can be achieved. In this relation it is necessary to the role of the criminal justice court to realize the justice. The administration of criminal justice is defined as a process of handling cases in court (adjudication) in which the task is based on the provisions of the law of Court Hearing. Organizers administration of justice is justice officials in the context of this paper is limited to judges and clerks because they are the direct role in the Court Hearing, although already known to many state officials who served in the courts.

The existence of criminal justice administration is very important in order to realize the justice of material / substantial. The procedure for settling disputes in the courts as part of the criminal justice system will determine the final outcome of the overall activity of the judiciary, both in terms of quality and quantity. If the quality is said that the procedure can produce output that can provide a sense of fairness for all parties without its rejection. While the said quantity if the procedure can work quickly and efficiently to be able to resolve cases that occur without the remaining cases.²⁴

In addition, the role of criminal justice administration to achieve substantial justice, is also associated with the model of service (the service model) adopted by the Criminal Code Procedures in realizing the legal interests of justice seekers. Based on this model, all the interests of justice seekers represented by the law enforcement officers which are the police, prosecutors and judges. This model illustrates the justice seekers as a specific target to be served within the framework of law enforcement activities. Therefore, it is necessary to have the provisions of the Criminal Code Procedures in particular concerning the law of Court Hearing that are comprehensive ranging from ordinances the entry of cases, the authority of the chairman of the district court against the incorporation of interrelated cases, transparency in the process of proving to the obligatory examination of cases that are considered necessary. Such provisions as the basis for the administration of criminal justice to realize the substantial justice.

Discussing the role of the administration of justice means also discuss the role of judges in relation to judicial power. considering the position and the judge has an important role for the sake of a state of law. thus, there should be a guarantee for the position of judges in the legislation. Position Indonesian judges have been regulated in Law Number 48 Year 2009 on Judicial Power. Under the provisions of Article 1 paragraph 1 of the law, the judicial power is independent of state power to conduct judiciary to uphold the law and justice based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, for the implementation of the legal state of the Republic of Indonesia.

This independent judicial power implies the existence of judicial power that is free of interference from other state powers, and free of coercion, influence, and recommendations coming from parties outside the law (extra-judicial), except as permitted by law. Judges Freedomity are not absolute in using powers under the law, because the duty of judges to enforce the law and justice should be based on Pancasila with reasoning and interpretation of the law, as well as searching and digging legal values that live in the community for those cases that they handle, so decision will reflect a sense of justice for the people of Indonesia.

Position and function of judges under Article 1, point 8 the Criminal Code is the state judicial officer authorized by law to prosecute. While the understanding of a judge, according to Article 1, point 9 the Criminal Code is a series of actions of judges to receive, examine and decide a criminal case based on the principles of free, fair and impartial in court in the manner set out in legislation. Judge in carrying out their duties must be active to ask and provide equal opportunities to the public prosecutor and defendant to question the witness in order to find the truth of the material. so the judge responsible for all that is decided based on the evidence at trial.

Decision of the judges is not a series of words and sentences that are not significant, which is spoken by a person before the court. Judge's decision is the decision of law enforcement, even the law itself that can describe many things about the world and our legal justice. Judge's decision can describe how the intellectual quality of the judge, the seriousness of the judge, the judge thoroughness in preparing the legal considerations, describe the paradigm of thinking that they profess, describe the appreciation and commitment to the importance of law enforcement for the design of a social life outside the law including describe whether there is a commitment to human rights.²⁵

Decision of qualified judges will realize the respect and authority of the law in public. But if the quality is low, the judge's decision will certainly build a negative image of the judge and the law, so that the judge and the law does not have the moral

²² In this dissertation is defined as a judicial bureaucracy bureaucratic criminal justice.

²³ Muladi, 2002, *Fungsi Administrasi Peradilan Dalam Sistem Peradilan Pidana Terpadu*. Makalah Seminar Sistem Peradilan Pidana, Unisba Bandung. Pp. 5

²⁴ Rusli Muhammad. 2004. *Kemandirian Pengadilan Dalam Proses Penegakan Hukum Pidana Menuju Sistem Peradilan Pidana yang Bebas dan Bertanggungjawab*, Disertasi PDIH Undip. Pp. 338.

²⁵ Judicial Commission of Indonesian Republic, *Wajah Hakim Dalam Putusan: Studi Atas Putusan Hakim Berdimensi Hak Asasi Manusia*. PUSHAM UII Yogyakarta, Pp. 8.

authority and social as well.²⁶ Judge's decision in principle is a moral decision, but it can also be disastrous if not careful, wrong or incorrect. Decision as that is the cause of their 'misguided justice' which gets rejection of society, even the protests of the families of the victims after hearing the verdict as was the case in the district court Kendari, Southeast Sulawesi.²⁷

Extra-judicial influence on the current transition are felt at all. Many cases have been rejected from the seekers of justice, including the general public because it is believed as a result of engineering law enforcement officers who work to meet the interests of a particular party. Examples of such cases are the Bibit-Chandra case that led to the issuance of Warrant Termination Prosecution (SP3) by the Attorney General. Even often found in the practice of 'trial trial' as a result of the poor performance of law enforcement officers. Another example of a case of 'trial trial' is an error in the verdict against spouses residents of Gorontalo district was named Risman lakoro and Rostin Mahaji. They were sentenced to prison for 3 (three) years for the alleged murder of his daughter Alta lakoro who was still alive.²⁸

Ironically, the Supreme Court (MA) is not going to give sanction to the judge who sentenced the verdict was later proven wrong. The reason according to Supreme Court Chief Justice Bagir Manan that if the material investigation and prosecution mistaken, all the judges certainly also make wrong decisions that are not purely mistakes of the judge.²⁹ The reason is wrong because the function of of the judge in a criminal case is to be active to find substantial truth. so that the obligation of the judge not only prove the guilt of the defendant, but also to assess the truth of the charges made by the public prosecutor. Criminal law enforcement perspective as the one who is believed to be one of the causes of the messy administration of criminal justice at this time.

So it takes a view of the law and how the judge work who is progressive as the embodiment of the obligation of judges to explore, follow and understand the legal values and sense of justice in society. In this relation, there are three (3) function of judges in applying the law which are: (1) to apply the law as it is (*rechtstoepassing*). This function puts the judge simply "stick" or "give place" an event with the existance of legal provisions . The function of the judge as a tailor; (2) judges as the inventor of the law that is acting as the translate or provide a means by which a legal rule or a "legal sense" may be actual in accordance with the law of concrete events that occurred; (3) The judge serves as the creator of the law in relation to the legal vacuum (*rechtsvacuum*, *legal vacuum*).³⁰

The judiciary as an organizer of the state judicial duties as state agencies in the executive and the legislature, shall provide an excellent service to every citizen and resident of Indonesia.³¹ It is given the duty to serve every citizen and residents to meet their basic needs and rights within the framework of public service which is mandated by the Constitution of the Republic of Indonesia Year 1945 are realized through the provisions of Act No. 25 of 2009 on Public Service.³² So that the judiciary is required to improve the quality of its role in the framework of public service is by the way of reconstruction of the bureaucracy.

To realize the mandate of the 1945 Constitution of the Republic of Indonesia, the Supreme Court of the Republic of Indonesia (MARI) as the organizer of the state duty in the field of justice (judicial) since 2004 has made an effort to reform the judiciary. It is marked by the presence of Decree (SK) Supreme Court Chief Justice (KMA) of the Republic of Indonesia (RI) Number: KMA / 26 / SK / IV / 2004 on the Establishment of the Judicial Reform Team at the Supreme Court. The decree last amended by Decree. KMA No. KMA / 085 / SK / VII / 2008. An example form of judicial reform in the field of public service that is the KMA Decree No. 144 / KMA / SK / VIII / 2007 on Disclosure of Information in court.³³ With the decision of any court is obliged to provide access to the public to obtain information about the relevant court. Understanding the scope of information about the court in the decision letter was only related to administration of justice information (administration of court) that the obligation of the publication number of the case, the schedule of the case, the court fee, organizational structure, and the other thing, but does not include information about the administration of justice / case (administration of justice) as publication / impressions trial activity by using an information technology, publication and examination of decisions, etc.

Supposedly disclosure based on the Decision Letter of the court that covers both aspects of the administration in the court. that the policy in accordance with the vision and mission of MARI. The Supreme Court's vision is "to realize the rule of law through

²⁶ *Ibid.* Pp. 10.

²⁷ SKH. Tribun Lampung on 3 February 2011. Compare with Rusli Muhammad opinion, 1997. *Urgensi dan Upaya Revitalisasi Lembaga Peradilan*, Dalam *Revitalisasi Lembaga Peradilan*. Jurnah Hukum Ius Quia Iustum. UII. Yogyakarta, Pp. 37, that the harassment of the judiciary almost has reached the optimum level of classified embarrassing and terrible. It is characterized by the presence of various actions taken such as: throwing a shoe by a mother to face judges at the Central Jakarta District Court, hearing the crowd act simultaneously wagging money in case the tax levy in Surabaya District Court, lawyers pleasure of pointing to before a judge and walked out of action during the trial.

²⁸ Radar Lampung, *Tak Ada Sanksi bagi Hakim Salah Vonis*, on. 21 July 2007.

²⁹ *Ibid.*

³⁰ Bagir Manan, 2009, *Op.cit.* Pp. 170.

³¹ Barda Nawawi Arief. 2003. *Kapita Selekta Hukum Pidana*. Penerbit PT. Citra Aditya Bakti. Bandung. Pp. 57 management of criminal justice is part of the public administration responsible for the wider community.

³² Based on the explanation of Article 5 paragraph (4) letter a that public services in this provision as an example, among other health services (hospitals and clinics), education services (elementary school, junior high school, high school, and college), service marine navigation (lighthouses and beacons), the **justice ministry**, ministry of traffic service (traffic lights), security services (police services), and service markets.

³³ Nowadays the obligation of public institution doing the information disclosure that ruled on Law No. 14 of 2008 about Public Information Disclosure.

an independent judiciary, effective, efficient and gain public trust, professional and provide quality legal services, ethical, affordable, and low cost to society and be able to answer the call of public service". While the mission of the Supreme Court, which is: (1) create a sense of justice in accordance with the laws and regulations, and meet the public sense of justice; (2) creating an independent judiciary, free from interference by other parties; (3) improving access to services in the field of court to the public; (4) improve the quality of the internal input on the judicial process; (5) realize the judicial institutions that are effective, efficient, dignified, and respected; (6) carry out an independent judicial power, impartial, and transparent.³⁴

Need a reconstruction of the criminal justice bureaucracy that can achieve justice on materiel / substantially through the bureaucracy and inter-related activities with the various aspects that underlying the existence of the bureaucracy. These aspects include the substance in the form of rules on which the bureaucracy, as the base structure in the form of bureaucratic institutions, and culture in the form of how the organizers bureaucratic officials. Therefore, the reconstruction of the criminal justice bureaucracy must be systemic to the three aspects of bureaucracy above.

The existence of the reconstruction of the criminal justice bureaucracy expected the creation of the criminal justice bureaucracy that have good quality. The implications of the existence of the criminal justice bureaucracy qualified / professional and high acceptance of justice seekers against the decision which is believed to be a unity that mutually reinforcing for the advent of respect and authority of the law in public.³⁵ Therefore, in order that the criminal justice bureaucracy can be used as means to realize the substantial justice, the law must be able to accommodate the interests of the parties involved in the criminal judicial process based on the values of justice in the Pancasila as a philosophy or way of life of the Indonesian nation. For the criminal justice bureaucracy should be built on the basis of public service, keeping in mind the principles of public service based on the Ministry of State Apparatus Empowerment No. 63 / KEP / M.PAN / 7/2003 in conjunction with Law No. 25 of 2009 include: (1) transparency; (2) accountability; (3) conditional; (4) a participatory; (5) equal rights, and (6) the balance of rights and liabilities.

The reason for choosing public service as a basis for a reconstruction of the criminal justice bureaucracy, because the purpose of the public service excellent service basically includes four principles, namely (Fast, Precise, Accurate, Qualified) includes: (a) The services must be fast; (b) services must be appropriate; (c) the service must be accurate, and (d) quality of service should be,³⁶ accordance with the principle of justice is justice carried out with a quick, simple, and inexpensive, and free, fair and impartial.

Implementation of the principles of public service in the framework of reconstruction of the criminal justice bureaucracy in order to achieve justice based on God which held fast, simple, and inexpensive, and free, fair and impartial as mandated by Act No. 48 of 2009 on Judicial Power, which in turn will be accommodated in the law of the court hearing in the Criminal Code as follows:

1. Transparency Principle.

The principle of transparency in the public service calls for service that are open, easy, and accessible to all parties that need and provided adequately and easy to understand. so that, the right to information is a human right and public disclosure is one of the important characteristics of a democratic country that upholds the sovereignty of the people to achieve good governance. Public disclosure is a means to optimize public oversight of the implementation of state and other public agency and as well as everything that resulted in the public interest. The right to information is very important because the more open to public service of state administration, the administration of the country more accountable. The right of every person to obtain an information also relevant to improve the quality of public involvement in public decision-making process. Participation or community involvement does not mean much without a guarantee openness of Public Information.³⁷

The principle of transparency in the public service is not the same as the sense of openness that is practiced in the courts over the years. Understanding is implemented that openness during the hearing open to the public and the obligation of the presiding judge at the trial during the opening session stated that the trial opened and is open to the public, the decision null and void if the session is not opened by the judge and open to the public.³⁸ Openness here not only as such, but rather that all the criminal proceedings unless the trial judge deliberation can be accessed in particular by the parties in a case, and society in general. For Example implementation of this principle in the criminal justice bureaucracy such as that implemented in the District Court Bitung, North Sulawesi.

Criminal proceedings in the District Court of Bitung using an information technology in the trial activities by applying model of Cloning Function Monitor in Courtroom. With this model in each of the judges table, the table Prosecution and Legal Counsel are connected to a laptop monitor Of Clerk substitutor, so that all the events that occurred in the trial that is typed during the court Hearing (Court Hearing) by the clerk of direct replacement can be known by judges, prosecutors and lawyers of the defendant. Before the trial is closed, the chairman of the trial judge asked the public prosecutor and the defendant / legal counsel if the contents Court hearing was entered by the clerk's replacement in accordance with the facts of the trial. if the contents of court hearing have been approved then the next court hearing report is printed (print out) to be signed by the chairman of the trial judge

³⁴ Artidjo Alkostar, <http://www.ymp.or.id/> / downloaded on December 2, 2009

³⁵ Yudicial Commision of Indonesian Republic. 2010. *Wajah Hakim Dalam Putusan: Studi Atas Putusan Hakim Berdimensi Hak Asasi Manusia*. PUSHAM UII. Yogyakarta. Pp. 30.

³⁶ Surjadi, 2009, *Pengembangan Kinerja Pelayanan Publik*. Refika Aditama. Bandung. Pp 46.

³⁷ Preamble and General Explanation of Law No. 14 of 2008 tlg Public Information.

³⁸ Article 153, paragraph (3) and (4) of the Criminal Code Procedure.

and a copy given to the public prosecutor and the defendant / legal advisors. Beside The system connected to the court room, it also connected to the table of chief of court and District Court Clerk Bitung in the case of supervision.³⁹

2. Accountability Principle.

Based on the principle of accountability, the services that provided by public service providers must be able to be accounted for in accordance with the provisions of the legislation. This principle requires all the activities of public service providers in the level of process and outcome, should be accounted for in accordance with the provisions of the legislation. Relation with the criminal justice bureaucracy, meaning the process of criminal proceedings by the judicial authorities in this case judges and clerks shall be in accordance with the provisions of the legislation. Considering, there is no absolute freedom without responsibility. Judicial Independence must be balanced with the Judicial Accountability. Impartial, Honest, fair, transparent and professional as an attitude that must be upheld by any judge as a form of accountability for its judicial authority.⁴⁰

First, The implementation of this principle in the criminal justice bureaucracy can be realized in the form of the judge's decision after read out directly accessible by the public as a model of bureaucratic proceedings conducted in the District Court of Bitung. Model of the inspection carried out in a transparent case as recorded and posted directly to the public, so that motivated its case examination to be carried out in accordance with legislation. In addition by using the system, the judge's decision can be directly accessed by the public after the verdict readed by the judge. It is as practiced in Bitung District Court where the judge read the verdict after the copy of verdict document verdict was handed directly by a panel of judges to a replacement clerk for dimunitasi.. While the public prosecutor and the defendant / attorneys after the trial received a copy of the decision of the clerk of replacement documents.

Second, applying the law of agency functions "dissenting opinion" by requiring each judge makes the decision concept especially legal considerations which will be referred by the panel of judges for final decision.⁴¹ The concept of each decision of the judge is an integral and inseparable with the final decision of the panel of judges, which means that the concept of the decision made by each judge should be attached to the final decision of the panel. This is because the principle of judge accountability is individual decision because the judge is independent and responsible only to the Almighty God. Moreover, because every law enforcement (judges) have ideologies and dissenting opinions, so its indicate that there is transparency and clarity of judge accountability for their professional duties.⁴²

Third, there is an opportunity to noticed the court decision by independent institutions such as the Judicial Commission, academics, and Social Organization (NGO) that focuses on the judiciary. Considering that the judge's decision is essentially as a reflection of the performance of a judge, can also be used as a source of law. Through the decisions they made, the performance of a judge can be assessed and evaluated. Assessment and evaluation can be done through the examination of the judge's decision.⁴³ Aspects that can be examined at the judge's ruling, which are: how to applied the material or formal law, how to use the doctrine and how considerations of verdict.

3. Conditional Principle

The principle of conditional, calls for service in accordance with the conditions and the ability of the giver and the recipient of the service by sticking to the principles of efficiency and effectiveness. The embodiment of this principle in the criminal justice bureaucracy include **First**, reconstruct the composition of the judiciary under the environment of the General Court. In this case, Bagir Manan as the former of Indonesian Republic Supreme Court said that speedy trial needs judiciary instrument and how to make the way of trial procedure more simple based on the specific cases. Difficulty to access the easy way of dispute seattlement, simple, fast, and low cost increase when the judicial power is running unfairly.⁴⁴ According to Bagir Manan, reformation of court structure are needed in the case of reconstruct the judiciary bureaucracy or judiciary administrative that must be substituted by simple, integrated, so it will work effectively and efficient.

Second, in order to limit the number of cases to be tried by a district court, it needs to reapplied adoption) the provisions stipulated in Article 250 paragraph (2) *Het Herziene Inlandsch Regelement* (HIR Gazette. 1941 No. 44) which authorizes the Chairman of the Court to examine whether the defendant has other cases to be combined in cases that delegated by the public prosecutor.⁴⁵

³⁹ Maroni, *Rekonstruksi Birokrasi Peradilan Pidana Berbasis Pelayanan Publik Untuk Mewujudkan Keadilan*, Disertasi PDH Undip Semarang 2012.

⁴⁰ Taufiqurrohman Syahuri, *Peran Komisi Yudisial Dalam Mewujudkan Peradilan Bersih dan Berkeadilan*, papers delivered on the seminar of "Penyelenggaraan Peradilan Pidana: Quo Vadis antara Penegakan Hukum dan Keadilan" Kerjasama Laboratorium dan Program Magister Hukum Fakultas Hukum Universitas Lampung, Bandar Lampung, July 23, 2011. Pp. 4.

⁴¹ Decision of the Court pursuant to Article 14 paragraph (2), and (3) of Law No. 48 of 2009, required: the trial of deliberation, each judge shall submit a written judgment or opinion on the matter is being examined and become an integral part of the decision. In terms of the consultative session can not be achieved consensus, a different opinion of Judge must be incorporated in the decision.

⁴² Artidjo Alkostar, *Peranan Mahkamah Agung Dalam Pembuatan Yurisprudensi Kasus-Kasus Mafia Peradilan*. Makalah Seminar Nasional "Suap, Mafia Peradilan, Penegakan Hukum dan Pembaharuan Hukum Pidana". Undip Semarang, March 10, 2010. Pp. 2-6.

⁴³ Yudicial Commision of Indonesian Republic. 2010. *Op.cit.* Pp. 78.

⁴⁴ Manan, Bagir. 2007. *Kekuasaan Kehakiman Indonesia Dalam UU No. 4 Tahun 2004*. FH UII Press Yogyakarta. Pp. 3

⁴⁵ Soesilo, R. 1980. *RIB/HIR Dengan Penjelasan (Lengkap disertai Undang-Undang/Peraturan- Peraturan: Hukum Acara Perdata-Hukum Acara Pidana Peradilan Umum*. Politeia. Bogor. Pp. 181.

Third, the fact that the arrears of cases in the Supreme Court for many years not being resolved until August 2010 as many as 9167 cases,⁴⁶ so it need a discretion to resolve the problem in short term, which are: (1) There must be a discretion of examination of cassation cases only be performed by a single judge.; (2) it need a discretion that delegated as authority of cassation case examination to superial court. (3) limitations on the duration of cassation examination. While the long-term form of restriction cases can use cassation. Discretion of such restrictions can be reached, include (1) an appeal is only for serious criminal cases (2) all the not guilty verdict and release from all charges under any argumentation can not be appealed and cassation.

4. Participatory Principle.

Understanding of the participatory principles is a service that can encourage community participation in organizing public services with the aspirations, needs, and expectations of society. Embodiment of this principle in the criminal justice bureaucracy including **First**, by functionalization of law institutions outside the court to resolve Settlement Case (*afdoening buiten process*). The existance of this legal institution under the provisions of Article 82 of the Criminal Procedure called *afkoop* (Article 82 of the Criminal Procedure) which is set if an offense punishable only by a fine, it can be avoided of prosecution by paying directly the maximum fines.⁴⁷ In this regard, according to Andi Hamzah that the termination of the prosecution on condition of compensation to victims including restorative justice, which means that the importance of recovery as a result of the crime situation. But in particular there is a difference, restorative justice in general, including heavy cases.⁴⁸

Second, need to adopt a mechanism that has been long practiced in countries that use the common law system, which is Plea Bargain or negotiation mechanism on demand. Plea Bargain is an agreement mechanism in criminal matters between the Public Prosecutor with the defendant, which the defendant must plead guilty instead of prosecution bid or when the Judge has called informally that the judge will reduce the sentence if the defendant plead guilty.⁴⁹ There are some cases of contraband in Indonesia who settled outside of court to pay a fine of "peace" which was agreed between the suspect and the prosecutor who approved by the Attorney General. Determination of by the Attorney General was called *schikking* with basic legal principles of opportunity. That activities same as *Wet op de Economische delicten Nederland 1950*.⁵⁰

5. The Equality Right Principle

The principle of equal rights in public services means services which do not discriminate against justice seekers from the aspects of any particular tribe, race, religion, class, social status, and others. The implementation of this principle in the criminal justice bureaucracy: first, there is an obligation that every defendant who can not afford in all criminal cases to obtain legal aid free of charge.

Second, there is an existance of witnessess in the criminal trial process. Witnesses position in the Criminal Code is very weak, very few provisions of the Criminal Procedure Code which regulates the rights of the witness when compared with its obligations. Criminal Procedure Code is seeing witnesses relating to its obligations. Even if the witness refuses to meet its obligations then it can be imposed as an hostage in a house of detention of State for fourteen days under the provisions of Article 161 paragraph (1) Code of Criminal Procedure.

6. Right and Obligation Balance Principle.

The principle of the balance of rights and obligations in the public service aimed at their service considering the aspect of justice between the giver and receiver of public services. The implementation of this principle in the criminal justice bureaucracy that need real practice on how progressive law enforcement among judicial officials, By set in the Code of Ethics and Code of Conduct of Judges. and also the need for the Code of Ethics and Code of Conduct of Clerk. Code of Ethics and Judicial Code of Conduct arranged jointly between the Supreme Court and the Judicial Commission.

Implementation of the criminal justice bureaucracy-based on public service requires the performance of the criminal law enforcement officers who are progressive,⁵¹ which enforce the criminal law in order to bring about justice, welfare and interests of the people. Supremacy of law is not interpreted as rule of law, but the supremacy of justice. The workings of the criminal law

⁴⁶ Perkara Menumpuk, Kualitas Hakim Agung Buruk, Radar Lampung, 16 November 2010.

⁴⁷ Andi Hamzah, *Pembangunan Hukum Pidana Indonesia*, Makalah Seminar Pengaruh Globalisasi Terhadap Hukum Pidana dan Kriminologi Menghadapi Kejahatan Transnasional, Bandung, March 17, 2008. Pp. 10.

⁴⁸ *Ibid.* Pp 12. In this regard, according to the United Nyoman Putra Jaya that in the Netherlands there is a criminal case in the transaction settlement (input as testers SHP).

⁴⁹ *Plea bargain*, natural principle is based on the idea that in order to prevent the occurrence of the inability of the judiciary to deal with cases that are increasingly numerous and massive. Then this mechanism is believed to not violate the principle of legal and morally acceptable, because both parties voluntarily agreed to receive the benefits of this mechanism.

⁵⁰ Andi Hamzah, *Op.cit.* Pp. 10.

⁵¹ One way remarkable arbitrate offered by Satjipto Rahardjo to face the crisis in the world of law enforcement we are a progressive law enforcement types. Progressive law enforcement differs from "traditional ways", ie here the legal use creative, innovative, and aggressive to achieve the goals that have been confirmed. Progressive law enforcement is not just a legal run by the words black and white of the rules (According to the letter), but according to the spirit and the deeper meaning (to the very meaning) of the Act or law. Look at Yudi Kristiana, *Rekonstruksi Birokrasi Kejaksaan Dengan Pendekatan Hukum Progresif (Studi Penyelidikan, Penyidikan dan Penuntutan Tindak Pidana Korupsi)*. Disertasi PDIH Undip Semarang. 2005. Pp. xiii.

enforcement agencies are progressive in line with the demands of the workings of the judicial apparatus as mandated by Act No. 48 of 2009 on Justice, Article 5, paragraph (1) that the judge shall explore, and understand the legal values and sense justice in the society.

In addition, because of the existence of the criminal justice bureaucracy associated with law enforcement, the criminal justice bureaucracy reconstruction should also be related to the legal system that includes aspects of the substance of the law, the legal structure and legal culture.⁵² Based on the principles of public service above, the form of new construction within the criminal justice bureaucracy for the General Courts seen from the aspect of the substance include: (1) the provision of using of information technology facilities in the criminal proceedings; (2) the provision of any decision that has been read by the judge can be directly accessible to the public; (3) the provision of legal institutions functionalization dissenting opinion in any way judges are required to make decisions as a trial concept of the judge deliberation and as an annex to the final decision; (4) the existence of the obligation to conduct an examination of certain cases by independent institutions; (5) the provision About the authority of the Chairman of the district court may combine the same case against the defendant; (6) the provision of legal institutions functionalization Off-Court Settlement Case (afdoening buiten process), and (7) the provision of the Claims about Negotiation mechanism (plea bargain) which applies as in the common law system; (8) the provision of legal aid obligation free of charge against all criminal cases for indigent defendants, (9) The provisions on the protection of witnesses in the criminal justice process. While the reconstruction of the structural aspects of the criminal justice bureaucracy within the General Courts are doing rearrangement composition of judicial body under the aegis of the General Court, which the District Court only examine heavy cases, while common cases and traffic violations done by the judiciary institution itself. Furthermore, the reconstruction of the cultural aspect of the criminal justice bureaucracy in the General Courts aegis are building a culture of enforcement of criminal law that is progressive in the judicial bureaucrats.

The existence of the criminal justice bureaucracy that applies the principles of public service as above, of course it will eventually gain an appreciation and trust of the public naturally.⁵³ Public confidence in the judiciary is a very important factor for the establishment of the rule of law in a country. The low level of public confidence in the court with all the function and the process would be bad for the various aspects of community life of the country. For the realization of these conditions also need for a paradigm shift in the court of public services that the centralized nature of the services to provide more service-oriented focus on the management of customer satisfaction (*customer-driven government*). It should be established paradigm of public service in the form of services oriented to the needs of the community as a user.⁵⁴

With the criminal justice bureaucracy based public services expected function of the criminal justice bureaucracy can achieve justice, as well as to overcome the perceived judicial mafia practices increased lately.⁵⁵ The development of judicial mafia is now being supported by the organization of criminal justice bureaucracy that is not transparent and the lack of accountability mechanisms of the decision by the judge made.

Conclusions

Ideal Construction of bureaucracy criminal justice based on public services to achieve justice in the form of judicial bureaucracy to apply the principles of transparency, accountability, conditional, participatory, equal rights, and the balance of rights and obligations in the process of examination on criminal cases in court.

Embodiments of these principles from the aspects of the substance of the proceedings improvement of laws including make the public service as a trial principle. The enhancement include: (1) the obligation to implement transparency in the process of criminal proceedings by way of the use information technology facilities; (2) the provision of any decision that has been read by the judge can be directly accessible to the public; (3) the functioning of legal institutions dissenting opinion by way of any decision the judge is required to create a concept that is part and cannot be separated with a court decision; (4) the existence of the obligation to carry out the examination of the case by an independent institution; (5) the provision concerning the authority of the Chairman of the district court on the defendant combines several similar cases; (6) the provision concerning the authority of the Chairman of the district court appoint a single judge in cases that are considered easy proofs; (7) the provision of legal institutions functionalization Off-Court Settlement Case (afdoening buiten process); (8) the provision of Claims Negotiation

⁵² Lawrence M. Friedman, 1975, *The Legal System, A Social Science Perspective*, Russell Sage Foundation, New York. Pp. 14-15.

⁵³ Bagir Manan . 2007. *Kekuasaan Kehakiman Indonesia Dalam UU No. 4 Tahun 2004*. Penerbit : FH UII Press, Yogyakarta. Pp. 3, found in line with the demands of settlement to the case quickly (speedy trial), required the judiciary and the judicial or simple ways by certain types of cases. The difficulty of access to dispute resolution easy, simple, fast and inexpensive to grow upon the judicial power does not run in a fair, honest and impartial. Compare with Agus Rahardjo opinion <http://www.unsoed.ac.id/> accessed on January 23, 2010 by placing the judicial bureaucracy in the right position, then the speed, accuracy and complete data administration will be achieved. It is based on the fact that at the present time is too slow judicial bureaucracy caused by bureaucrats and marketing staff had no feeling (soul marketers). They just run a task that is more mechanical. Judicial bureaucracy should be future-oriented, rational and efficient.

⁵⁴ Sudrajat, www.goodgovernance-bappenas.go.id, downloaded on October 11, 2006.

⁵⁵ Radar Lampung, November 22, 2009, Increasing Judicial Mafia, According to Deputy Chief Supervision MA Hatta Ali recognize all courts of first instance and appeal is still susceptible to judicial mafia practices. Although the Supreme Court has been carrying out bureaucratic reform. Over the past nine months there seteril province of reports of alleged judicial corruption practices. "More and more cases are handled in the area, more and more reports (alleged Mafia) of people who received MA". Compare with Mahmutarom opinion. *Rekonstruksi Konsep Keadilan* (Studi tentang Perlindungan Korban Tindak Pidana Terhadap Nyawa Menurut Hukum Islam, Konstruksi Masyarakat dan Instrumen Internasional). Badan Penerbit Undip Semarang. 2010. Pp. 24-25 Expected future that can be built a judiciary that is very flexible, really close to the people, are grassroots, truly able to create a family atmosphere, sustainable and able to make mankind happy, and less likely to cause damage or misery for others.

mechanism (plea bargain) which applies as in the common law system; (9) the provision of legal aid obligation freely against all criminal cases for indigent defendants, (10) the provisions on the protection of witnesses in the criminal justice process. **Structure** aspect of the judicial bureaucracy do rearrangement of judicial body under the aegis of the General Court by way of an amendment to Act No. 49 of 2009 on the General Court, which the District Court only examine those heavy cases, while common cases and traffic violations do by the different judiciary. While the **cultural** aspects of the judicial bureaucracy is building a progressive legal culture among criminal justice officials by means of an obligation for judicial officers, especially judges to attend postgraduate education, seminars, upgrading courses and others. Hopefully the realization of the performance from judicial officers who have progressive character and pro-active so as to realize the will of the public law in every decision.

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