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The Enforcement of Legal Administration in Perspective of Indonesian Criminal Law

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Abstract
The aim of this research is to analytic why the criminal action of legal administration is easily committed by the governmental officials, describing the responsibility of legal administration in the perspective of Indonesian criminal law and analytics the model of legal administration enforcement based on the principal of Pancasila and the State of the Basic Constitution of the Republic of Indonesia 1945 which is based on the progressive justice in Indonesia. This research is running with the socio-legal approach or normative and nomological (non-doctrinal) approach. Normatively, this research analytics the application of the State of the Basic Constitution of the Republic of Indonesia 1945, the Indonesian Penal Code, Indonesian Criminal Justice System, any constitutions and the rules of Indonesian Regulations which is dealing with the legal criminal of administrations in Indonesia. Nomologically, this research analytics about the policy of governmental officials, the structure of social society in the enforcement of legal criminal administration in Indonesia of which pluralism society. The result of this research has shown-up: 1.Many of the governmental actions in running the governmental function has the contrarily of any legal principles, such as: equality before the law, equality before the justice, and the supreme legal principals which are living in Indonesian society, 2.The giving sanctions against the legal officials, the governmental officials who have broken the criminal legal administrations are not effectively, do not mirror the value justice in legal progressive of Indonesia. 3. The trial model of Indonesian legal administration is tendentiously positivistic of which type of politics determines law, most of the guilty and actions of the governmental officials in administrations belong to the negligence of the governmental officials by the argument on a negligence of the government officials in running the task of the government. The trial model of this criminal legal administration has been obviously does not mirror the value justice in the progressive law which has been based on the Principal of Pancasila and the State of the Basic Constitution of the Republic of Indonesia.
Keywords: The resistance of governmental officials committed the legal criminal administration- the responsibility of the governmental officials in committing legal criminal administration- the trial model of legal criminal administration against the Indonesian governmental officials.

1. Introduction

The function of legal administration is to act the function of the government which consists of the function of regulation, the service for society, development, empowering and the rights protection (Vide article 1 point (2) The Republic of Indonesian Constitution Number (RICN) 30 The Year of 2014 on The Governmental Administration). The substantial of legal administration is the behavior of the government. The behavior of the government can not be separated from the behavior of the governmental officials. The behavior of governmental officials must be based on the rules of law which has been regulated in article 1 point (3) The Constitution of the Basic State of the Republic of Indonesia (CBSRI) The Year 1945 the Post Amendment which stated that Indonesia is the State Based on the Rules or the State Rule of Law or Rechtsstaat not Machtsstaat or the Authority State (the Authorized State). It means that if there is a legal conflict between authority and justice, the certainty of law and the value of justice, political interest and the rule of law that must be sovereign of these conflicts is the rules of law. The principle of the legal supremacy in the Republic of Indonesia has given doctrine that must be the sovereign or must be the authority in law enforcement including the law enforcement of legal administration in the perspective of Indonesian criminal law is the rules of Indonesian criminal law is the rules of law or the rules of legal action of the material of crime. (not the interest of authority because in which must be authorized or must be the sovereign, principally must be the rules of law not persons or the power of the governmental officials). The principle of this legal supremacy must be strengthened with the principles of equality before the law in which each person have the rights of acknowledgment, guarantee, protection and the justified certainty of law, the same behavior of legal rights before the law as well. (Vide article 28 D CBSRI 1945 the post amendment). The application of this principle may not be committed discriminatively.

The application of discriminatively of law is obviously contrarily with the principles of : equality before the law, equality before the justice, the rules of Constitutional State of the Republic of Indonesia, democracy which has been based on the values of Pancasila and Constitution of the Basic State of the Republic of Indonesia the Year 1945. The rules of normative legal state, legal supremacy principal, equality before the law, and the above equality before the justice have not been optimally functionalized if they are applied for the governmental

officials who have involved in legal conflicts whether they are in criminal law, civil or private law and neither in legal administrations. The special treatment for the government officials who involved the above legal conflicts, firstly they have been based on the colonial legal doctrines (Vide article 118 verse (1) Jo article 189 verse (4) The Basic Constitution of the Republic of United Indonesian States 1949, Jo article 103 Jo article 118 verse (2) the Basic Temporary Constitution of Indonesian stated that the dignity of official states who have involved in legal conflicts must be protected or evocated. Protecting the dignity for the government officials or the state officials who have involved in legal conflicts are the same as protecting the country. The discrimination of these colonial legal doctrines have damaged the whole legal structures and the line of justice in the state of Indonesia.

The such legal praxis in the Old Governmental Reign or the Old Order Reign (August 17, 1945-March 11, 1966) was not treated. Bung Karno (Ir Soekarno the first President of Indonesia) did not want to interfere or evocated the State Minister of Law and the Home State Minister who involved the legal conflicts in that Era because their interference in such conflicts were their own interest and their own personal mens rea for those Ministers. The strict commitment of the first President of Indonesia who did not treat the forum-Privilageatum principle was not continued or was not followed-up by the New Order Reign (March 11, 1966-May 21, 1998) and the Reformation Reign (May 21, 1998 up to the present reign (2016)

The treatment of forum-privilageatum principle in the New and Reformation Reigns for the governmental officials or the state officials who had involved in legal conflicts can be looked out in the following gates:

a. The gates in the New Order or in the New Era Reign

1.The severe negligence of Human Rights in the movement of Indonesian Communist Party in September 30, 1965 (G 30 S PKI Tahun 1965). The murder, men-slaughter and genocide to millions of Indonesian communists by the Civil Society Organization and the government as the holder of the country without any legal responsibilities and the trial courts by state.
2. Tanjung Priuk gate has swollen hundreds of victims had been shot by the state security because they were thought to rebel the New Order Reign in 1974.
3. The murder of the journalist of Tempo Magazine, Bernas Fuat Syafrudin or Udin the Journalists of Tempo Magazine was killed mysteriously because his writing had criticized the development in Bantul Regency Centre Java in 1983. The regent of Bantul involved in this murder. The gate and the murder have not been revealed up to this year (2016).
4. The mysterious shooting gate against 1.678 the gangster leaders and recidivists in 1982-1985. This gate has not been solved clearly whether against the doers nor the role of the government as the holder of the state.
5. The murder of a woman (Marsinah), the labor fighter in one of the manufactories in Sidoarjo East Java who involved the District of the Military Commander of the Land-force (KODIM) Sidoarjo and the Manufactory side 1994.
6. The attachment of the Office of PDI (Partai Demokrasi Indonesia/ The Democracy Party of Indonesia) on 27th July 1996 which involved the Army Trained Troops or as the popular of Kuda Tuli (the Deaf Horse) gate.
7.The riots gate of May 1998 which victimized four university students of Universitas Trisakti University (1.Elang Mulia Lesmana, 2. Heri Hertanto, 3. Hafidin Royan, and 4.Hendriawan) were killed and shot because they asked the Total Reformation in Indonesia and asked Soeharto resigned from the president position of Indonesia on 21st May 1998.
8. The kidnap of 23 university students and activists whom have been evaluated vocally in criticizing the New Order Reign or as the popular of Mawar (the Rose) Gate who involved the military troops particularly the Land-force Troops in 1997.
9. The movement of Acehnese freedom (GAM /Gerakan Aceh Merdeka) gate as the popular of the Military of Operational Resort 1 and 2 or DOM 1, 2/ Daerah Operasi Militer 1 dan 2, which caused millions of Acehnese were killed. The doers that must be responsible from the soldiers are not clear (mysterious) and there have never been had the supra investigation or investigation in this gate.
10. Banyuwangi black magic gate or which is popular as Kasus Dukun Santet Banyuwangi East Java (the gate of Banyuwangi magician crime) which caused the hundreds of civil society were killed particularly from the prominent figure society elements were killed because they were indicted to be the black magician crime in 1998. The horizontal conflict has not been touched by the criminal law. The government as the holder of state has not been seemed obviously in this gate as well.

b. In Reformation Reign

1.The gate murder of Human Right Fighter, Munir in the reign of Megawati Soekarno Putri (on 23 rd July 2001-20th October 2004). Munir on 7th September 2004 was killed with the arsenic poison when he would departure to Holland for finishing his future study for Magister Program or the Strata Two (S2) in jurisprudence at UTRECHT University Netherland. This gate did not only involve Pollycarpus the criminal prisoner for fourteen years in jail, the pilot of the plane who brought Munir to Holland but also involved Hendropriono the Board of National Intelligent (BIN/ Badan Intelejen Nasional) of which real murderer has not been revealed

and the trial legal process has not been clear yet neither up to the present time.

2.The gate of liquidation subsidy of Indonesian Bank (kasus BLBI/ Bantuan Likuidasi Bank Indonesia) the state was compensated for 138.442 trillion rupiahs. Every year, Indonesia must pay the bank interest for 200 trillion rupiahs for the loan. This gate (the gate of Century Bank) has occurred since 2007 in the reign of Susilo Bambang Yudhoyono (SBY) 20th October 2004-20th October 2014. The government has issued the bailout for recovering the Century Bank for 6,7 trillion rupiahs as the cause (the consequence) the government has been compensated for 650 trillion rupiahs. The both gates (BLBI and the Century Bank gates) did not only involve the owners of the bank share (shareholders) but also involves the government officials including Sri Mulyani as the Monitory Minister and Budiono as the Voice President of Indonesia who ought to be responsible in the gate of the Century Bank but up to now (2016) this criminal responsibility has not been solved clearly yet.

3.The gate of the hot mud clay Lapindo Brantas Ltd on 27th May 2006 which swollen 641 hectares rice-fields, two hamlet areas, six villages, 39.947 villagers have lost their residences, 3.500 people have lost their professions or the way of earning money, has sunk down factories and manufactories and manufacturers claimed for 360.000.000.000 million rupiahs. The government has given the bailout for 827 trillion rupiahs, the infra-structures such as: the railroad, by pass (the toll-street) , markets, schools, telecommunications, State Electrical Manufactures (PLN/ Perusahaan Listrik Nagara) have been damaged and can not be re-functionalized anymore up to the present time. The above damages have not been rebuilt or re-covered yet. The governmental regency and the People Representative of Sidoarjo who have been the most responsible in the damage of the above natural resources have not been clear of which legal responsibility.

4. The gate of the rotund account at the Great Barrack of the Police of the Republic of Indonesia (Markas Besar Kepolisian Republik Indonesia/ MABESPOLRI). The rotund account for 59 000.000.000 million rupiahs by the name of General Commissioner (Komisaris Jenderal/Komjen) of Police Budi Gunawan was found in 2010 and Budi Gunawan had been stated as the criminal indicter in the gate of the above rotund account. Budi Gunawan issued the application of pre-tribunal legal action to the court of South of Jakarta. The court accepted the trial in February 2015. The effect of the accepted trial above, the next trial court had to be ended. The position of Budi Gunawan has been the Vice of the Head Police of the Republic of Indonesia now (2016) even he would be promoted to be the Head of the Police of the Republic of Indonesia for the next period

5. The gate of Papa needed the shares in the Freeport Ltd 2016 does not only involve the side of Freeport Ltd(the wanted criminal Muhammad Riza Chalid) but also involves the important officials of the government and the legislative constitution. The legal solution of this gate has not been clear as well.

6. The gate of merit of picking up money illegally (jasa pungutan liar/ Japung) in the government of Surabaya city who involves the mayor of the city Bambang DH, the governmental officials of Surabaya city Poerwito, Sukamto and some of the members of Regency Representative People of Surabaya the period of 2004-2009. Bambang DH has not been investigated in the legal process because he had been the official as the mayor of Surabaya city up to now (2016). The gate of Bambang DH had not been revealed clearly of which legal status.

7. Based on the invention of the Commission Combating Corruption (Komisi Pemberantasan Korupsi/ KPK) since the year of 2011 has been got 5000 licentious business in mining in Indonesia were illegal, 60 percent of 10 423 licentious business in mining have no clean and clear licence of business in mining, do not have the Basic Number of Obligation of the Tax, it means that for those (entrepreneurs) do not pay the tax which ought to be pay for 1,37 million hectares of conservation forests and 4,93 of cultivated forests. The forests have been damaged because of the illegal logging and mining and the state has been compensated hundred million rupiahs. The licence of illegal business in mining is the responsibility of the government.

8. The trillion rupiahs of the grey found (the capital of business) which have been parked or hidden by the Indonesian entrepreneurs and the government officials whom would be given the rights of tax amnesty by the Government of Indonesia through the Constitution of the Republic of Indonesia Number 11 the Year 2016 on Tax Amnesty is also potential to be legal conflict (it is potentially able to appear legal conflict) in legal administration in the perspective of Indonesian criminal law.

9. The regent election in Simalungun Regency of the north Sumatera has also appeared the legal conflict in criminal law. Amran Sinaga the selected regent in the leader election of regent which is held immediately through out the local government of Indonesia in 2015. When Amran Sinaga jointed the regent election in Simalungun regency, he had been stated as the criminal indicter in the case of illegal mining license when he was the leader of the forest official in Simalungun regency. Amran Sinaga faced the criminal legal conflict when he would be officially inaugurated as the regent of Simalungun regency, he has been status as the criminal indicter.

Based on the above descriptions the legal issues in this research as follows: 1.Why is the criminal action of legal administration resist or easily be committed by the governmental officials, 2.How is the responsibility of legal administration in the perspective of Indonesian criminal law, 3. How is the model of law enforcement in criminal legal administration as the basic of Pancasila and the progressive justice in Indonesia.

2. Methods

Answering the above legal issues, the socio-legal is used in this research. The aim of this research is to search why the government officials in Indonesia are resisted to commit the criminal action in legal administration, how is the criminal responsibility of legal administration for the governmental officials, and how is the model of tribunal criminal court of legal administration in Indonesia. The micro theory is used to analytic the above legal issues are The Code of Rules and Regulations Lawrence M Friedman, Sebernetika Theory of Talcott Parson, The Shell Theory (The Unity of Knowledge) Edward O Wilson, Sobural Theory (The study of social, culture and structural culture) of Sahetapy, The Theory of Making Policy Wavyne Parson, and The Legal Concept of Progressive Law Satjipto Rahardjo.

3. Discussion

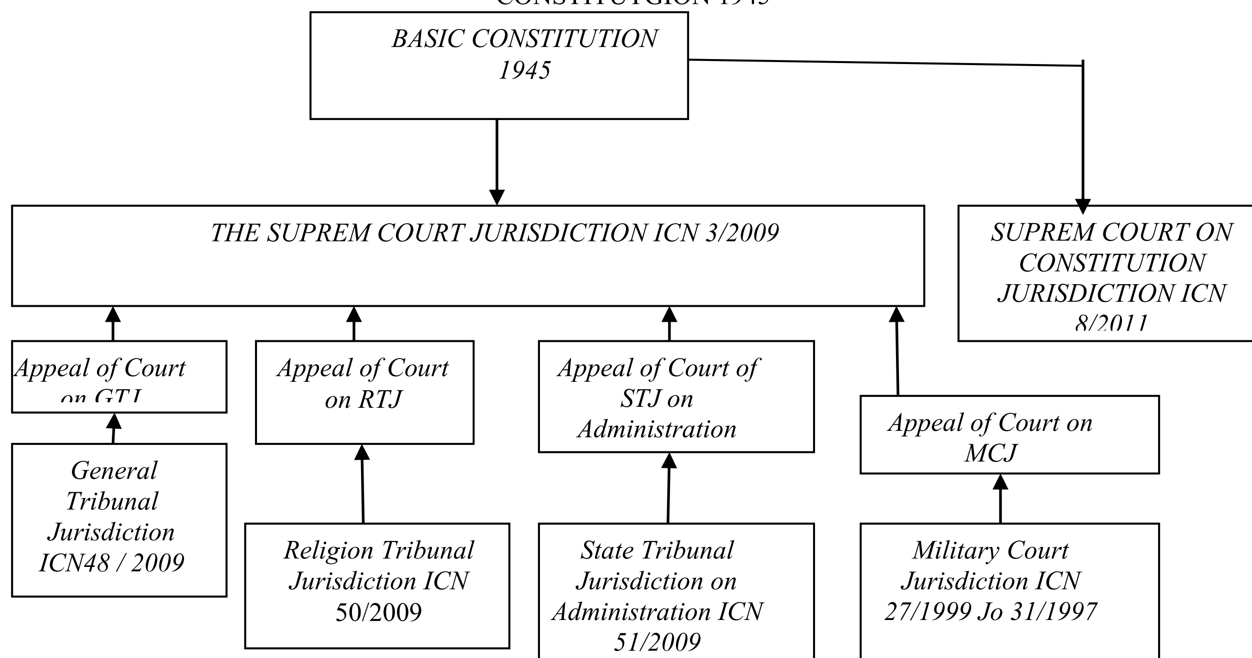
3.1.The Function of Work of Criminal Law of Indonesian Legal Administration

The study of legal administration is the governmental treatment which has been treated by the government officials. The government officials who have treated the function of the governance always base on the rules of the positive law which have been applied in their own states. The positive law is the legal concept which is based on the truth, the justice which is characterized predestination, legalized in universal, as the norms of positive law in nationally constitution system, the inconcreto of the judge's decision as the judge makes law. The concept of the above positive law in their implementations are very often have collision with the values of justice in society. The collision of the justice values are caused as follows:

1. The systems of positive law which are legalized in Indonesia are not suitable or do not match as the structure of Indonesian society which are in pluralisms.
2. The legal substantionally, the Codes of Law which are legalized as the basic guidance of the enforcement in Indonesia such as Wetboek van Straftrecht, Herziene Indonesische Reglement, Burgerlijk Wetboek, Rechtsreglement voor De Buitengesten and Wetboek van Koophandel are still Euro-centris principles which are not suitable (unsuitable) anymore with the justice which is growing in Indonesia.
3. The legal structurally, the judicial tribunal courts in Indonesia are seemingly overlapping jurisdiction, such as the carrying of the combating corruption, the unclear tax tribunal system, the trial of sea tribunal court is still unified in one of the general tribunal court, the tribunal of Human Rights is also still unified in one of the general court. The trial Institution and the Special Tribunal Institution can be paid attention to the Sketch 1 and Sketch 2 as follows:

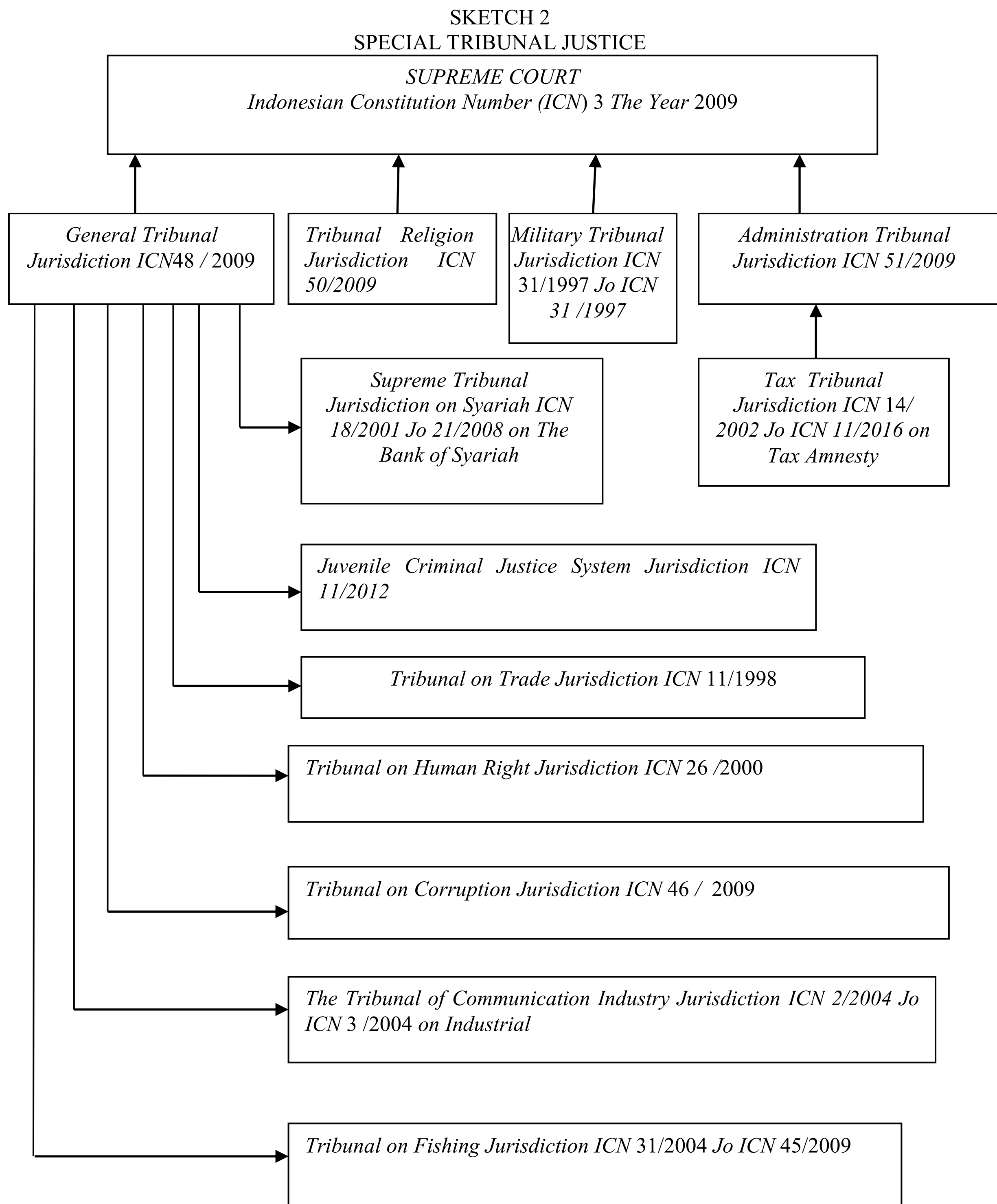
SKETCH 1

THE TRIAL INSTITUTION AFTER THE AMENDMENT OF THE BASIC OF INDONESIAN CONSTITUTGION 1945



Notes:
GTJ =General Tribunal Jurisdiction
ICN = Indonesia Constitution Number
RTJ = Religion Tribunal Jurisdiction
MCJ =Military Court Jurisdiction

SKETCH 2
SPECIAL TRIBUNAL JUSTICE



4. Legal culturally and legal praxis, the judges more emphasize the intellectual considerations instead of emotional or spiritual consideration.
5. In legal administration praxis, if the legal substance is not clear, the state officials including the judges enable to apply the legal policy, whether it is a fies ermessen, discretion or a political policy.
6. Even-though in applying legal policy, the state officials have to prior the general interest but in legal praxis, they more emphasize the political interest instead of justified interest.
7. The truth of material legal action in the political gate is bias characteristic but of which implementation is commonly imperative, repression and forcedly implementation. Derivatively, the birth of politics derives from the good moral for the interest and protection of many people. In the law enforcement, politics can not be decotomized with the law because basically the law is the birth of politics or law is the product of politics.

Politics and law is the one side of coins. Politics is one of the aspect of the truth of criminal law. Politics must be moralized, politics may not be contrary with the moral and law.

8. The law enforcement of legal administration can not be separated from the roles of the government officials because they are the care-takers of the well formed of the governmental principle. Based on the separated of power (trias politica theory) which involves the executive power. Legal administration has function to enforce the truth of the formal of law, as it is stated in national constitution, constitution of state and the rules of the valid constitutions.
9. The truth of legal administration may not defeat or diminish the truth of the material of criminal law. The characteristic of the material of Indonesian criminal law is pluralistic while the truth of legal formal is otonomy.

The problem of politics is the problem of law which is un-normative. Politics is a kind of tactic, method or strategy how to grab the goal. In life to state, the aim of political civic in Indonesia is to form the society to be justified and wealthy based on Pancasila and the Basic Constitution 1945. (Vide the preambule in the fourth paragraph). The trial to get the goal of the nation above, it is necessary to have the law to regulate the obligation and the rights of human beings. Principally, politics can be classified into two forms, that is pure politics and un-pure politics. Pure politics is the politics which is not based on the importance of SARA (Ethnics or tribe, religion and race/ suku agama dan ras), such as: fighting for power or authority, coup of power, revolution, Aanslag, subversion, and reformation, while un-pure politics is the politics which is based on the importance of SARA, such as : terrorisms, founding the Islamic state with the doctrine of Iraq and Syria (ISIS), economical back ground, the importance of ethnics, horizontal conflict etc.

The correlation between the above politics and law may occur in three definitions as follows:

1. Politics determines law
2. Law determines politics, and
3. Politics and law are working together for obtaining the goal to form the society to be justified and wealthy based on Pancasila and the Basic Constitution 1945.

The treatment of politics can not be separated from the roles of the authors. It is a nonsense talking about politics must be separated from the roles of the authors. The state authority in Indonesia is carried out by the care-takers of the state and the government. The treatment of the authority state and the government are always dealing with politics and law. The government officials have the policy, fries ermessen authority to carry out the function of the government. The definite of written and un-written rules can not be separated from the roles of governmental officials in deciding the law can be paid attention to the communication of law and politics as follows:

1. Politics determines law has the meaning that law is the product of politics. In the level of democratization survival of a state which is in disordered situation, law can be determined by the authors or in the authoritative reign, law is the tool of authority. Law can be issued according to the willingness or the expectation of the author.
2. Law determines politics has the meaning that the law as the holder of the sovereignty of power. If there is a legal gab between the importance of law and politics that must be sovereign or must be the commander is law. Indonesia has been a rechtsstaat or rules of state which must be the authority is law not the person or the author. Politics is a science which is not normative. In taking a decision must be based on the rules of law. The criminal law that must be treated on the truth on legal material. The value of justice in criminal law must be considered through the judicial, sociological, philosophical consideration.
3. Law and politics are working together to find out the goal. It means that law can not be separated to each other, it is as the coin that has been up and down is still in the same form. The justice must be obtained through the intellectual, emotional and spiritual intelligence.

3.2 The Responsibility of Criminal Legal Administration in Indonesia

The function of the government official is to carry out the treatment of the government. The state official is one element of care takers of the state. The care takers state are the officials who carry out the executive, legislative, and judicative functions. Bases on the above function, state officials or the government officials have the roles to carry out the function of the government transparently, clean of corruption, collusion and nepotism, having characteristics of justice, protecting the society from criminal treatment, giving the loyalty to the society in justice, priori the general interest over the personal and the crony interest, to work professionally, having the characteristics of wisdom, supporting the reality of society in justice and wealthily based on Pancasila (the five principles) and the Basic Constitution 1945.

Bases on the above roles of the care takers of state, the government officials have the policy, discretion and consent to carry out the function of the government solidly and professionally. The discretion of the government officials can be treated if they have obviously purpose, no contrary with the definition of rules of constitutions bases on the well-formed general principle of the government, having the objective reasons, does not have conflict interest, having the good ethics in facing the urgent situation. The implementation of discretion

must be based on the well-formed principle of the government. Based on the rules of article 10 point (1) the Constitution of the Republic of Indonesia Number 30 the year 2014 on the Governmental Administration, according to the principals of well-formed of the governance, the enforcement of legal administration should have to own the certainty of law, having the effects in their implementation, there is no interest of rights from the government officials, it is carefully carried out, does not have the illegal authorities, to prior the general interest and treated in well-formed performance.

Legally praxis, discretion and the principle of well-formed of the governance are commonly avoided by the government officials in treating the function of their governance. As the example gratia: The murder gate of Marsinah. Truthfully, this gate derived from the civil dispute, that is Marsinah, an industrial labor in SPS Ltd which is running or in production wrist-watches in the area of Sidoarjo Regency, East Java, Indonesia. In 1994, Marsinah by the name of her colleges and by she herself issued the rights of labors, such as: the increasing salary, the healthy rights, the right of taking rest of duty, the rights of getting contribution of extra productions and the other labor rights which have been regulated in the Constitution on Labor. Because of the riot, Marsinah was indicted as the motivator of the riots which may endanger the manufacture. Marsinah was arrested by the security and surrendered to the Commander of Military District (Komando Distrik Militer) of Land Force Sidoarjo to be interrogated and requested the responsibility for the riot which had been committed. Finally, Marsinah was killed mysteriously and the corpse or the died body was thrown out in the forest of Wilangan, Nganjuk, East Java until now (2016) the gate of Marsinah has not been revealed yet who is the real murderer or the real killer. The political element of this gate is the Military Institution of the Land Force which is actually does not have jurisdiction or authority to carry out the civil disputes. Judicially, demonstration problem has been the authority of the Police of the Republic of Indonesia to carry out the above pre investigation and the trial investigation. The responsibility of legal administration is strict to each board or each institution which involves in the disputes. The responsibility of criminal law is strict to the person or the mentioned corporation. If in a corporation has the element of criminal legal action the doer or the subject that must be responsible in the above criminal legal action is their officials and the mentioned members in the corporation. Because the object of legal administration is the treatment of the government officials, the one or the subject that must be responsible in the criminal responsibility must be the care takers function of the governance. The criminal responsibility on the care takers of the governance is logical because it can be based on the following reasons:

1. The institution can not work without any movement of the state care takers. The state care takers can be in legislative, executive, and judicative officials (vide the Constitution of the Republic of Indonesia Number 28 the year 1999 on the State Implementation on Clean and Free Governance from Corruption Collusion and Nepotism)
2. The state care takers have competence of skill and opinion which can be responsible in criminal law.
3. Any behavior of human beings which appears the damages or compensations for the other persons can not be separated from criminal, civil, and administration responsibility.
4. The care takers of state, the corporation principal may also be given the principle vicarious liability if they have done the negligence, carelessly behavior, unconsciously performance or treatment in managing the corporation which enables disadvantages of the governance.
5. Any citizens have the same rights in law and the governance. The governance has an obligation to honor highly the law and the governance without any exceptions (vide article 27 the Basic Constitution 1945). It means any care takers of state have the same inhabitant in law and the governance without any special treatment against the state care takers.
6. The negligence, culpa, un carelessly, in managing the corporation including to return the compensation of the state as the result of corruption can abolish the criminal responsibility (vide article 4 constitution the Republic of Indonesia Number 20 the year 2001 on the Combating of Legal Action on Corruption.)
7. The criminal responsibility in legal action of corruption is the same as the criminal responsibility in legal action of politics or legal action of legal administration. The application of forum privilageatum principle against the care takers of state in the enforcement of criminal la, in civil law and legal administration are the contrary with the principles of equality before the law, equality before the justice and the supreme of law.
8. The freedom or the abolishment of penal punishment and administration punishment against the care takers of state because they carry out the official duty of state is not a kind of reasonable truth in criminal law because it does not have an obvious logical contextual excepted if the country is in being a war condition or in a revolution in protecting the state sovereignty.
9. The function of criminal legal administration just characterizes the truth of legal formality.

The principle supreme of law in the context of law enforcement has an understanding that the side must be the sovereignty is law (rechtsstaatism) not the authority (machtstaat). It means that in a legal conflict or in legal gab between authority and law that must be the sovereignty is the definite of law. That is why, in law enforcement the forum privilegeatum principle must be abolished because it is contrary with the principle of equality before the law, and equality before the justice. If there have been negligence in carrying out the

profession (malpractice in medicine, human error factor, maladministration) a doctor, a pilot and a bureaucrat can be penalized but why the malpractice in the severe negligence in human rights, the mal-praxis in law enforcement such as: in issuing the decision on Ontslag van Recht vervolging must be protected. The treatment and the policy does not give the penal punishment against mal-praxis in law enforcement, the mal-praxis in severe negligence of human rights and maladministration is enable to appear the criminogenic treatment to the government officials particularly the severe negligence of human right and the care takers of legal administration to commit the unlawful act.

The supreme prosecutor of the Republic of Indonesia had given statement in Forum of Joint Committee of Reconciliation (Supreme Prosecutor, The Minister of Coordination of Politics, Law and Security/Menteri Koordinasi Politik, Hukum dan Keamanan/ Menko Polhukam, The Commissioner of National Committee of Human Rights/ Komisioner Komite Nasional Hak Asasi Manusia/ Komisioner Komnas HAM, and the Board of Guidance of the National Committee of Human Right/ Dewan Pembina Komnas HAM) that the statement of the severe negligence of Human Rights needs to be solved in non-litigation (non-Judicial Trial) because it is difficult to be proved, the element of the proof and the weakness of witness. The severe negligence of human right was committed because of the importance of Institution, it can not be suffered (burdened) to the person or the members. The Committee has decided that there had been the severe negligence human rights. The government acknowledge that there had been the above severe negligence of human rights and it is announced about the institution who had done the severe negligence of human rights then it must ended by the President to ask apologize on the above negligence (Post Java 22nd May 2015, p 1, column 2). The ones that can be classified into the severe negligence as the above descriptions are the movements of 30th September 1965 by the Communist Party in Indonesia. Talangsari gate, the mysterious shooting tragedy 1983. The riot and the omission of the activists of University students, the riot of Tanjung Priok, and Trisakti accidence 1998 are categories genocide, they are the mass killing against the mass of races, the civil societies who have no sins and guilty and mass of minority society (vide Webster Dictionary page 405). The above statement of Supreme Prosecutor is a political paradigm which does not have basic academic opinion, suffering the society who do not know well about law, defects intuitive justice in society and does not have a broaden knowledge in progressive law. The fact, institution is not human being but who carry out the institution is still human being, the other facts of institution is still human being, the other fact of the above Institution is the doer of criminal legal action is also the human being, but the reality the doer of criminal legal action can be given the penal punishment although the corruptor carries out the function of the institution. In perspective of criminal law, the warrantor of the severe negligence of human right is the chief of the institution and the persons who have committed the severe negligence because the doer of severe negligence of human rights belongs to delict dolus. It means they have committed the political crimes with institution (mens rea) consciously.

3.3. The Model of Criminal Justice System of Legal Administration in Indonesia.

Talking about criminal justice system of legal administration principally talking about the enforcement of the criminal legal administration. The dispute settlement of criminal legal administration in Indonesia can not be separated from the roles of the public officials or the care takers of the governance in each of it's state. The settlement of criminal justice dispute in Indonesia is more tendentiously carried out in legal administration settlement. The basic reason of legal administration settlement because of there have been negligence of ethics of it's institution or the state institution in Indonesia. The term of the negligence of ethic itself of which standardization is frequently not so clear. Which standardization belongs to the negligence of institution ethic and which standardization belongs to crimes. The both standardizations have no categories neither. The most crucial and suddenly of these disputes is the corruption of which term has been clear the category of crime but it is very often settled out in legal administration. Mostly the constitutions have their own Board of Courtesies of which function to settle out the negligence of ethic in each of their own institutions.

The settlement of criminal legal administration through the Board Of Courtesy is dangerously contaminated by the interest of institution itself. The settlement of such kind tendentiously characterizes politics instead of searching the substantial justice. The model of this settlement dispute is more prior the truth of legal formality instead of the truth of legal material and such settlement of dispute is contrary with the criminal principle which must be strict on the truth of legal material.

In legal substance, the tribunal legal administration is more related to the following problems:

a. The problem of rules, procedure, order, regularity, discipline of working, courtesy, as it is regulated in Indonesian Constitution Number 43 the year 1999 on The Principle of Labor, Jo The Rules of The Governance Number 30 the year 1980 on Rules and Discipline of Governmental Employee, Indonesian Constitution Number 13 the year 2003 on The Power of The Private Labor
b. Dealing with ethics and morality of labor themselves
c. Dealing with the profession of someone, someone's expert of their own.

The treatment of these rules dangerously with the use of policy. The holder of authority, and the policy

of the author are commonly loaded in political interest. The truth of politics is bias because politics is not normative in rules.

Legal structurally, the tribunal system in Indonesia is not running well, un-effective, because there have been pathological social in society, such as: disorganization, disfunctionalization The tribunal institution in Indonesia has not worked optimally, they do not work in one vision and mission (disorganization), there have been conflict of interest, over jurisdiction, overlapping jurisdiction, sector ego among tribunal institutions, such as: Commission of Combating Corruption (Komisi Pemberantasan Korupsi/ KPK) and The Police of the Republic of Indonesia (Kepolisian Republik Indonesia/ POLRI), The Commission of Combating Corruption and The Board Representative of People (Dewan Perwakilan Rakyat / DPR), The Commission of Combating Corruption and The Prosecution (Kejaksaan), The Judicial Commission (Komisi Yudisial/ KY) and The Supreme of Court (Mahkamah Agung / MA). The care takers of Tribunal Function have not worked effectively because they have no well-formed characteristics and they do not have the characteristic of working solidly, such as: lazy, apathies, and hypocrite which comes to disfunctiontionalization (the wrong function of institutions)

Legal structurally, the legal paradigm from the legal officials criminal legal administration is still positivistic, it is mere prior the truth of formality instead of the truth material, the legal civilization characterize money politics and the product of decision is frequently controversial does nor mirror the substantial justice, disobey local policy and it has not have the broadened knowledge of progressive law.

4. Conclusions

4.1.The government officials are dangerously commit the criminal legal administration because it is based on the following reasons:

a. The substance of legal administration is the governmental treatment. The government officials have argued that the mission of the government officials is carrying out the function of the governance that is carrying out the task of the state for getting the general interest.

b. If in a legal administration is not regulated clearly, the government officials in carrying the function of the governance, they are reasonable to issue the policy which is necessary needed.

c. The governmental policy characterizes politics.

4.2. The responsibility of criminal legal administration must be given strictly to the persons nor the corporations who have committed the criminal legal administration.

4.3.The law enforcement of criminal legal administration in Indonesia is still to prior the political interest instead of the substantial justice. The government officials who have involved in the criminal legal administration is merely valued as the treatment which characterizes as the negligence, culpa or a mistakes in carrying out the function of the governance. The institution which is used to settle out the dispute of criminal legal administration who involved the government officials is the Institution Courtesy or the Board of Courtesy from the mentioned institution. The founding of the above Board Courtesy is tendentious to evocate the internal interest of each institutions and this founding of institution is the contrary with the principles of equality before the law, and equality before the justice

5.Suggestions

5.1. The principle of forum-privilegeatum against the government officials who have involved in legal administration, criminal law or in civil law must be enforced in justice.

5.2. The punishment of criminal legal administration must be given to the persons, government officials or institution who have committed in the criminal legal action. The principle of legal. The principle of legal supremacy must be enforced in justice. Law is the Commander not the Authors or the Government Officials.

5.3.1. The criminal legal administration must be strictly formulated between the negligence of criminal legal administration and the crime of criminal legal administration. The Board of Courtesy can not be corrected to settle out the crime in criminal legal administration because the crime has been the competence of tribunal criminal justice system. The Board Courtesy must be performed dependently.

5.3.2.The mens rea of legal action of political crime is bias that is why the settlement solution of legal action of political ought to be settled out in non-litigation by giving an amnesty or abolition to maintain the certain of criminal justice system. The Board Courtesy must be performed dependently.

5.3.3. The mens rea of legal action of political crime is bias that is why the settlement solution ought to be settled out in non-litigation by giving an amnesty or abolition to maintain the courtesy of law whether for the doer or for the victims. However, if the mens rea of political crime has been the proof, there is a mens

rea (intention of the doer which has been committed intentionally), culpa from the doer (political criminal) must be given the penal punishment because the law must be able to give the utility for the mass people.

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