



## EQUALITY BEFORE THE LAW: A CRITICAL REVIEW OF LEGAL IMPLEMENTATION IN INDONESIA

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### *Abstract*

*Criminal Law is part of the national legal system that has been in effect since independence until now. The implementation of criminal law experiences ups and downs along with the development of society and even becomes a sharp focus when it has not provided justice and prosperity and is still considered an instrument of power to protect state administrators and a weapon for ordinary people when fighting criminal law. country. The implementation of criminal law in Indonesia aims to provide protection, peace, order and legal certainty to the community. Although there are objectives that provide protection, especially personal or individual interests in exercising the rights of citizens. Meanwhile, the purpose of this writing is to provide an understanding that Criminal Law is a chain of laws and regulations that apply in Indonesia and its content focuses on the Criminal Code and Criminal Procedure which reaches all levels of society.*

**Keywords:** Equality, Law, Implementation

### INTRODUCTION

A statement regarding the implementation and enforcement of law in Indonesia with one sentence "sharp downwards blunt upwards". This statement certainly has strong reasons by witnessing the implementation of law enforcement and the law that is really in the spotlight is the implementation of criminal law. In fact, in the 1945 Constitution article 28 D paragraph 1 which states "Everyone has the right to recognition, guarantees of protection and legal certainty that is fair and treatment Which The same in front of law" in this article contains fair legal certainty and equal treatment before the law, meaning that every citizen has the same rights and whether they do not in appeal compare with wealth, status, position nor descendants. Has You're welcome is known that Law Criminal in Indonesia is a legacy of the Dutch colonial government, which has been adapted to the realm of independence. Although currently the government is trying to draft a Criminal Code that is in accordance with the soul and personality of the Indonesian nation. Criminal Law has a broad meaning so that there are several meanings, but from the existing formulation there is none which is considered a perfect formula that can be applied generally.<sup>1</sup> Indonesia's independence, which was proclaimed decades ago, was the beginning of the breakthrough of colonial law into national law. However, in reality, Indonesia's positive criminal law (KUHP) is a legacy of Dutch colonialism. Politically this created problems for an independent nation. Bearing in mind that at the time of the proclamation of independence, Indonesia did not yet have national law, the law inherited from the Netherlands was used to become national law, or better known as conditional law, at that time there was a legal vacuum. Its purpose is to realize the sovereignty of the Unitary State of the Republic of Indonesia.

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This provision explains that the laws required to regulate state administration are regulations that have existed and been in effect since the time when Indonesia was not yet independent. While waiting for a new national legal system to emerge, all legal regulations that had been implemented in Indonesia before independence were implemented temporarily. This also means that the Indonesian nation's founding fathers mandated the next generation to renew the colonial legal system into a national legal system<sup>3</sup>Meanwhile, in the current legal condition, when dealing with people who have power, whether political power or money, the law becomes blunt. However, when dealing with weak people, those who have no power and so on. The law can be very sharp. This happens because the legal process does not run automatically, it is not measurable how the law enforcement process is carried out. Supposedly, when there is a legal case we can look at it in a mathematical way. What is the action, what is the process, what is the proof process, what is the decision. If this is implemented, the legal settlement process will definitely run well. However, many anomalies occur. For example, in a case of theft, the charge is theft, but the anomaly that occurs may differ depending on the social status. If the case occurs to those of lower social status, the law enforcement process will be quick and easy to detain. However, the opposite happens to people with high social status who are powerful in financial and political matters. This is the problem in cases like this. Don't let the incident happen again. In this case, it was very controversial, and caused misery to the community, which of course questioned where there was justice for the "little people".

People often do not believe in the legal process, later people will see that when they look at the law enforcement process they can see it with justice. In criminal cases, the task of the police is to collect as much incoming information or data as possible, which can be categorized as evidence or evidence so that they can construct from this information and data or can construct criminal articles. Next, from the anatomy, we look at the elements of the prosecutor and then enter the court process. In the law enforcement process, the terminology is "whoever" so anyone can experience the legal process. Later, if the issue of ownership is related, it will be questioned separately.

### **Formulation of the problem**

Based on background behind problem on so can withdrawn The formulation of the problem is: How to analyze the Sharp Down Blunt Up case (Overview of the Implementation of Criminal Law in Indonesia)

### **Scope of problem**

To clarify and provide appropriate direction in this discussion and based on the identification of the problems above, the author of the Review of the Implementation of Criminal Law in Indonesia

### **Research purposes**

The aim of this research is to find out how law enforcement is in Indonesia.

## Benefits of research

The benefit of this research is to increase insight and scientific discourse, especially in the field of law enforcement in Indonesia.

## Literature Review Understanding Criminal Law

Criminal Law as a translation from the Dutch language *strafrecht* is all rules that have orders and prohibitions that use sanctions (threats) of punishment for those who violate them. Meanwhile, according to Moeljatno, Criminal Law is part of the overall law that applies in a country, which provides the basic basics and rules for:

- a. Determining which actions may not be carried out and which are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates these prohibitions.
- b. Determine when and in what cases those who have violated these prohibitions can be subject to or be punished as threatened.
- c. Determine how the imposition of a criminal offense can be carried out if someone is suspected of having violated the prohibition.

Meanwhile, WLG Lemaire provides an understanding that criminal law consists of norms containing requirements and prohibitions which (by the legislators) have been linked to a law. sanctions in the form of punishment, namely a special suffering. Thus, it can also be said that criminal law is a system of norms that determines which actions (doing something or not doing something where there is an obligation to do something) and under what circumstances can be imposed on a criminal. these actions. In simple terms, it can be understood that law has a coercive nature accompanied by threats and sanctions. But the law does not force people to correct wrong issues, or force the people down and allow arbitrary rulers to commit violations without punishment. However, so that the law is truly obeyed and adhered to so that it becomes a legal rule in the life of the nation and state. In addition, criminal law can be interpreted broadly and narrowly, in a broad sense, namely the right of the state or state apparatus to impose or threaten criminal acts.

Specifically and in a narrow sense, namely the right to prosecute criminal cases, impose and carry out criminal penalties against people who commit prohibited acts. This right is exercised by judicial bodies. So *ius puniendi* is the right to impose a criminal penalty. Criminal law in the subjective sense (*ius puniendi*) which is a regulation that regulates the state's rights and state equipment to threaten, impose and carry out punishment against someone who violates the prohibitions and orders that have been regulated in criminal law is obtained by the state from the regulations that have been issued. determined by criminal law in the sense of objective (*ius poenale*). In other words, *ius puniendi* must be based on *ius poenale*.

## RESULTS AND DISCUSSION

Para expert law criminalstated that the purpose of criminal law is first, to scare people so that they do not commit crimes (preventive). Second, to educate or improve people Which Alreadyindicates that he likes committing crimes in order to become a

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person with a good character (repressive). The aim of criminal law is to protect the interests of individuals or human and community rights. in accordance with the Pancasila philosophy which is able to bring fair interests to all citizens. Thus, criminal law in Indonesia is to protect all Indonesian people. The objectives of criminal law are divided into 2 (two), namely:

1. The purpose of criminal law is as a law of sanctions. This goal is conceptual or philosophical in nature and aims to provide the basis for criminal sanctions. Types of forms and criminal sanctions as well as parameters in resolving criminal violations. This aim is usually not written in criminal law articles but can be read from all criminal law provisions or in general explanations
2. The aim of imposing criminal sanctions on people who violate criminal law. This goal has a pragmatic character with clear and concrete measures that are relevant to the problems that arise as a result of violations of criminal law and people who violate criminal law. This goal is the embodiment of the goal First. The aim of criminal law in Indonesia must be

In addition to the objectives of criminal law above, there are 2 (two) schools that address the objectives of criminal law, namely:

1). Classical Flow

According to the classical school (*de klassieke school/de klassieke richting*) the purpose of criminal law is to protect individuals from the power of the authorities (the State). The foundation was Markies van Beccaria who wrote about "Dei delittis edelle pene" (1764). In this article, he demands that criminal law must be regulated by laws that do not know exactly which actions are prohibited and the severity of the penalties threatened because they must be written. In the era before the influence of Beccaria's writings, the existing criminal law was largely unwritten and in addition the power of the Absolute King could hold arbitrary courts by determining the law according to the judge's own feelings. The law is not written. The court process did not go well, until an incident occurred that shocked the people, such as in France with the case of Jean Calas te Toulouse (1762) who was accused of killing his own son, Mauriac Antoine Calas, because the child died in his father's house. During the examination, Calas still did not confess and the judge was still found guilty and sentenced to death by guillotine.

The public was dissatisfied, who considered Jean Calas innocent of killing his son, so Voltaire criticized the court's decision, which turned out to be granted the demand to re-examine the Calas case. The results of the re-examination stated that Mauriac died by suicide. The community was in an uproar because of the decision, and subsequently community leaders such as JJ Rousseau and Montesquieu also demanded that the power of the King and his rulers be limited by written law or statute. All events immortalized are an effort to protect individuals for individual legal interests.

2). Modern Flow

The modern school (*de moderne school/de moderne richting*) teaches that the aim of criminal law is to protect society against crime. In line with this aim, the development of criminal law must pay attention to crimes and circumstances.

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His research includes, among other things, the behavior of individuals and/or society, which is one of the sciences that enriches the science of criminal law. The influence of criminology as part of social science has given rise to a new school which believes that the aim of criminal law is to eradicate crime protected the legal interests of society. In other forms, criminal law has the following objectives, namely:

1. To protect the interests of a person or individual (human rights) society and the state with a harmonious balance between despicable/criminal actions on the one hand and detrimental acts on the other.
2. To make people who want to commit crimes or bad deeds afraid to do those acts.
3. To educate someone who commits an offending act so that they do not do it again, and so that they are accepted back into society and prevent unhealthy social symptoms from occurring or those who commit the act. which is violated, and punishment for people criminal Criminology Which object who have already done something bad

In principle, in accordance with the nature of criminal law as public law, the main objective of criminal law is to protect the interests of society as a collective from actions that threaten it or even harm it, whether they come from individuals or groups of people (an organization). These various social interests include peace, tranquility and order in community life. For protect interest something

## **B. Functions of Criminal Law**

Tirtaamidjaya stated that the purpose of implementing criminal law is to protect society. <sup>14</sup> Although in general criminal law functions to regulate people's lives so that public order can be created and maintained. Humans, in their efforts to fulfill their different needs and interests in life, sometimes experience conflict between one another, which can cause harm or disturb the interests of other people. In order not to cause harm and disturb the interests of other people in their efforts to fulfill their life needs, the law provides rules that limit human actions, so that they cannot do as they please.

In more detail, criminal law can be divided into 2 (two), namely general functions and special functions. Sudarto explains the general and specific functions of criminal law as follows:

### **1. General Functions**

The general function of criminal law is the same as the function of law in general, because criminal law is part of the entire legal field, namely regulating life or administering order in society. In community life, social relationships occur between members of the community itself. Every member of society has interests that often conflict with the interests of other members of society, so often Causing conflict and disharmony in society, criminal law is the means used to resolve the conflict.

### **2. Special Functions**

The special function of criminal law is to protect legal interests against acts that intend to rape them with sanctions in the form of criminal penalties that are sharper in nature when compared to sanctions contained in other branches of law. These legal interests (legal objects) may come from an individual from an entity or from a collective,

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for example society or the state. These sharp sanctions can affect the property, honor, body and sometimes the life of someone who violates these legal objects. It can be said that criminal law provides rules to overcome evil acts.

As public law, criminal law has the following functions:

3. The function of protecting legal interests from acts that attack or rape them.

Legal interests are all interests that are necessary in various aspects of human life, whether as individuals, members of society, or members of a state, which must be guarded and defended so that they are not violated or violated by human actions. All of this is aimed at implementing and ensuring order in all areas of life.

Responding to these legal interests, 3 (three) things can be seen, namely:

- a. Individual legal interests include, for example, legal interests regarding the right to life (life), legal interests regarding the body, legal interests regarding property rights to objects, legal interests regarding self-esteem and good name, legal interests regarding morals, and so on.
  - b. Community legal interests (*sociale of maatschappelijke belangen*), for example legal interests regarding security and public order, traffic order on roads, and so on.
  - c. Interest law country (*staatsbelangen*), for example legal interests regarding the security and safety of the country, legal interests towards friendly countries, legal interests towards the dignity of the head of state and his representatives, and so on. The three legal interests above are interrelated and cannot be separated. Examples of legal interests regulated in the material criminal law (KUHP) are the prohibition on stealing (article 362), the prohibition on taking life (article 338). Article 363 protects and defends people's legal interests over personal property rights and article 338 protects and defends legal interests over individual rights/people's lives. To protect the above legal interests is through criminal sanctions/straf (imprisonment) The Criminal Code carries a maximum prison sentence of 5 years and Article 338 carries a maximum prison sentence of 15 years.
4. Providing a basis for legitimacy for the state in order for the state to carry out its function of defending protected legal interests.

The function of criminal law referred to here is nothing other than providing a basis for legitimacy for the state so that the state can carry out the function of enforcing and protecting the legal interests protected by the criminal law as well as possible. This function is mainly found in criminal procedural law, which has been codified in what is called the Criminal Procedure Code (KUHP), namely Law no. 8 of 1981. Criminal procedural law has regulated in such a way what the state can do and how the state can defend legal interests protected by criminal law. For example, how does the state take legal action against the occurrence of criminal acts such as arrest, detention, prosecution, examination, verdict, etc. All of the above state actions certainly have unpleasant consequences for anyone. However, on the basis of legal and state interests, the state's actions are justified, through the KUHP procedure above.

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### C. Implementation of Criminal Law in Indonesia

In the tradition of legal-positivist thinking, which is widely adhered to by democratic countries like Indonesia today, law is conceptualized as a product of legislation. Laws are statutory regulations produced through the national legislative process. The law applies solely because it has been stipulated in the form of statutory regulations, regardless of whether its contents contain the values of justice or not. In this system, legal actors (judges and bureaucracy), as per the doctrine in analytical jurisprudence, only serve as trumpets or mouthpieces for the law. The use of legal-positivist thinking, in an elitist legal situation, will cause inequality (economic injustice) and poverty to become more widespread, because of the breakdown in democracy that occurs under the pressure of Neoliberalism,

This will cause the laws resulting from the legislative process to tend to favor the interests of elites and ignore justice and the welfare of the people at large. According to Satjipto Rahardjo, the law should serve humans, not the other way around. The quality of law is determined by its ability to serve society. This is progressive law, which adheres to a legal ideology that is pro-justice and law Which pro-people. Lawthis progressive, offered to overcome the crisis in the current global era. Dedication para perpetrator The law has a primary place to make improvements. Lawyers, must have empathy and concern for the suffering experienced by the people and nation. Interest people must become orientation main And objective end implementation of law. In the concept of progressive law, the law does not serve itself, but rather serves a purpose that is outside of itself. This is different with tradition analytical jurisprudence that tends to dismiss the world outside himself; like man, society and its welfare.<sup>17</sup> Reflection implementation law

Crime in Indonesia has a very diverse impact on society. Until the end, people often say that the application of law in Indonesia, especially criminal law which concerns various criminal cases, is with the phrase "sharp downwards blunt upwards". Of course, this does not reveal itself and there are many factors that cause it, such as:

a. Law enforcer

The real conditions currently occurring in Indonesia indicate the failure of law enforcement officials to enforce the law. The failure of law enforcement as a whole can be seen from the condition of incompetence and incompetence of the law enforcement officers themselves. The inability to enforce the law is due to the lack of professionalism of the authorities, while the inability to enforce the law related to corruption, collusion and nepotism (KKN) problems committed by legal officials has become an open secret. Apart from the two things above, weak law enforcement in Indonesia can also be seen from public dissatisfaction because the law, which in fact is a forum for seeking justice for society, actually gives a sense of injustice.

Law enforcers include judges, prosecutors, police, advocates and legal advisors as well as the Corruption Eradication Commission. In their hands lies the burden of obligation to implement a principle of justice as stated in the second principle optimally and maximally. However, what happens is the opposite. There are many cases of law enforcement that do not work properly There are many oddities that occur in law enforcement, such as the ease with which someone who has money can get facilities in

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detention Or there are several cases that really hinder the decisions made, such as cases of theft committed by small members of the community, such as Nek Minah and others.

The main problem of law enforcement in countries developing countries, especially Indonesia, not on the legal system itself, but on the quality of the people who enforce the law. Thus, the role of humans who carry out the law, law enforcement, occupies a strategic position. The issue of law enforcement transparency is closely related to the accountability of the performance of law enforcement agencies. These principles have a purpose, namely as a guideline for state administrators to be able to create administrators who are able to carry out their functions and duties seriously and responsibly. Law enforcement often causes injury a sense of justice, both justice according to the juridical view and justice according to society. This is one of the triggers for public distrust in the performance of law enforcement officers in enforcing the law in society. If viewed from the perspective of legal sociology, we can assume that there are two most prominent factors that influence law enforcement officers in enforcing the law, namely internal and external factors.

One example is internal factors (which originate from law enforcers themselves), the tendency of law enforcement officers to enforce the law to be guided solely by the law, thus ignoring the values that develop in society. Furthermore, external factors (which come from outside law enforcement itself), for example when a legal incident occurs, there is a tendency for people to resolve it in their own way. Law enforcers are a role model in society, who should have certain abilities, in accordance with society's aspirations. They must be able to communicate and gain understanding from the target group (society), in addition to being able to carry out or carry out roles that are acceptable to them. Apart from that, the role model group must be able to utilize elements of certain traditional patterns, so as to stimulate participation from the target group or the wider community. The role model group must also be able to choose the right time and environment in introducing new norms or legal rules and providing a good example.

b. Political Factors

The reality is that it is impossible found without any form of ruler, is the first and main political factor. Let us illustrate. In a developed society, the ruler of the State is, in essence, one of the most important authors of law. The three powers of the State, the legislative, executive and judicial powers, in addition, seem to overlap with the three ways in which legal order is based on functioning through the formation of regulations that make laws issuing legal rules that have general binding force, through the means -how to maintain and enforce these rules, the implementing authority determines the modalities for implementing these rules within the scope and reach that have been determined by the legislator and through resolving disputes power This judiciary determines the meaning contained in the rules to be interpreted, filling and completing the gaps in the law and so on. Thus we can also say that because the State is an expression or at least a forum for political forces that exist in society, law is the result of some of the formation of decisions taken indirectly by the authorities.

Political interference, many legal cases in Indonesia are hampered because of political interference in them. This is a normal thing to say because the current big cases and structural dimensions involve at least the ruling political party in this country.



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Legislation that favors the interests of the authorities rather than the interests of the people, resulting in injustice. This lack of justice is the result of ignoring the law, disrespect for the law, lack of trust in the law and misuse of the law.

c. Economic Factors

Marx and Engels argued that economic factors have an absolute influence on societal development. Society is essentially based on considerations and relationships in the production process and all manifestations social awareness, such as political, legal, moral, religious, artistic structures and so many more are only superstructures (bovenbous), which are determined by that basis.

The scope within which possession of goods plays an important role in relationships and balance power Whichcontrolling social life, is the distribution of economic power, which is essentially the result of the structure of ownership of goods that controls society, an important political factor that influences the development of law. However, the law can also have the power to eliminate guardianship if social groups who are less fortunate in the economic situation through political power can use it to improve their downturn. So, here we find an undeniable bond between political and economic forces, in this sense the economy is an important factor in influencing law enforcement.<sup>19</sup>

d. Citizens' awareness and legal compliance

Awareness law is abstract concept within humans, about the harmony between order and peace that is desired or appropriate. Legal awareness is often associated with legal compliance, legal formation, and legal effectiveness. Legal awareness is the awareness/values contained in humans about existing laws or about expected laws. Community obedience or obedience to the law will be determined by how the law operates. Community compliance with statutory regulations, they consider that the laws made by law-forming institutions are in accordance with the values that live in society itself. Or laws that are made according to the needs of society itself. Starting from this understanding, BerlKutschinsky, as stated by R. Otje Salman, public legal awareness is influenced by four factors, namely:

- a. Knowledge of positive law is a person's knowledge regarding certain behaviors regulated by law. This knowledge relates to behavior that is prohibited or permitted by law. Positive legal knowledge is closely related to the assumption that the public is considered to know the contents of a regulation when the regulation has been promulgated.
- b. Knowledge of the content of the law is the amount of information a person has regarding the regulatory content of a particular law. In other words, legal knowledge is: an understanding of the content and purpose of a written regulation in a particular law and its benefits for the parties whose lives are regulated by that regulation.
- c. Legal attitude is a tendency to accept the law because there is an appreciation of the law as beneficial or beneficial if the law is obeyed.
- d. Legal behavior patterns are the main thing in legal awareness, because it can be seen what a regulation is applies or not in society. If the four indicators of legal awareness mentioned above are truly implemented in society in accordance with

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government expectations and there are no implications, then the regulation can be considered effective. And people no longer think that the law is only sharp for them and blunt when it applies to state or government officials.

## CLOSING

Closing this article, we hope that the implementation of criminal law in Indonesia can trigger national legal awareness that is able to penetrate all levels of society and not become the subject of insults or insults that give rise to law or street justice in the midst of society as a result of law enforcers or people on duty. enforcing the law does not take its role as desired by the rule of law itself while society is forced to obey the law. Many cases occur in Indonesia, ranging from trivial to high level and need to be processed strictly. Especially for trivial things, quite a few of the perpetrators are 'little people' who are blind to the law and end up being tortured in court because of their ignorance and also other factors,

The following are several cases in Indonesia involving lower class defendants which many people think are very ridiculous, including:

1. Stealing a watermelon requires 2 months and 10 days  
Two men named Basar Suyanto and Kholil were finally sentenced to 2 months and 10 days in prison by the Kediri District Court, East Java, in 2009 because they were proven to have stolen a watermelon. Because the decision handed down by the Kediri District Court was deemed inhumane, a number of student representatives protested and provided support for the two defendants. After a follow-up trial, finally the two men were only sentenced to 15 days in prison.
2. Firecracker seller demands 5 months  
An elderly woman named Meri, from Tegal, Central Java, had to deal with the law because she was caught selling firecrackers in her own house. Grandma Meri herself did not know that selling firecrackers was prohibited because since President Soekarno's administration, she had been selling them and this was the first time she had been caught in the law. Because of this, the Tegal District Court sentenced Grandma Meri to 5 months in prison and 10 months probation. After undergoing a follow-up trial, in the end Grandma Meri was only sentenced to 3 months in prison with a 6 month probation period
3. Taking shabby cloth demands 5 years  
It's something that is quite ridiculous if you listen to it. There was an old farm laborer A 19 year old named Aspuri had to deal with the law because he picked up a worn t-shirt on the fence of his neighbor's house. The T-shirt owner finally reported Aspuri to the police on charges of theft. In fact, previously, the house owner's servant had stated that he had deliberately thrown away the t-shirt because it was no longer used. Because of this, Aspuri had to languish in a cell at the Serang City Detention Center, Banten for 3 months while waiting for the court's decision. He faces a maximum prison sentence of 5 years.

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4. Stealing 3 pieces of Cocoa requires 1 monthA woman who deserves to be called a grandmother because of her old age is named Minah must received a sentence of 1 month in prison with a probation period of 3 months because he was proven to have stolen 3 cocoa pieces worth IDR 2,000 belonging to PT Rumpun Sari Antan Which is at in Banyumas, Central Java. Even though they had returned it shortly after being discovered, the management of PT Rumpun Sari Antan still litigate itFor provide a deterrent effect and prevent it from being imitated public other. company said he was satisfied.
5. Suspected of stealing 7 teak logs measuring 15 cm, prison sentence for 5 years Of course, many people are aware of the case of Grandmother Asyani, who was suspected of stealing 7 teak trees belonging to Perum Perhutani. According to the old woman from Situbondo, East Java, the teak wood was cut down by her late husband from their own land which has now been sold. However, Perhutani continued to say that the teak wood came from their land and insisted on prosecuting Grandmother Asyani's actions. Because of this, from July – December 2014, Grandmother Asyani was in prison awaiting trial. The court imposed a maximum threat of 5 years in prison. When will the law stop being “sharp downwards and blunt upwards” in this country? What an irony.

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