



HUMAN RIGHTS AND POLICE SUPERVISION MODEL: INDONESIA'S CASE



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ABSTRACT

This paper will discuss two issues related to poor implementation of human rights by Police, based on four measuring analyzes of human rights implementation based on role and function as follow: the use of violence, human rights violations, act of disparage and militaristic culture in Police tasks. This paper also argues that human rights implementation in the Police are still not fully guaranteed and improved. This is due to four reasons: prolonging police culture, inappropriate police discretion, the role of Precinct as key implementer of police policies, as well as the improper role of Police as state-agency of violence in term of implementation. The second issue of this paper is a model of police supervision in order to be effectively implements Human Rights for Police in performing tasks, roles and functions to serve the public.

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Contribution/ Originality

This paper is contributing to part of strengthen the implementation of democratic policing, which adopt the values of human rights is part of the democratic affirmation of how policing is run. So far strengthening discourse on the implementation of the values of human rights is reflected in the extent of the curriculum and implementations in the police, as it's a mirror for the presence of the police at this time as part of the scheme to be integrated in democratic governance.

1. INTRODUCTION

Polemic between the Indonesia's Corruption Eradication Commission (here after KPK) with the Indonesia National Police (here after POLRI) is one of plagued problems against the POLRI as law enforcer. It reflects that POLRI has not been able to institutionally leave the old mainstream that left negative public perception. However, it does not just happen inside the POLRI, a number of Police Institution in some countries with established democratic tradition still face the same problem (Kadar, 2001). Still, it is not an excuse or justification over the problem. After fifteen years of separation from the military, there should be achievements that can be put forward and progress of the Police Reform.

The use of violence by the police, complained by public until now, has not yet reduced. In fact there is a tendency that acts of violence spread to other units, which previously was only conducted by personnel of the Indonesian Mobile Brigade (here after Brimob) (Muradi, 2014). The situation is certainly not an achievement, but

rather be serious homework. There are measures should be taken to reduce the use of violence. A number of training and mentoring by respected community organizations to reduce the use of violence by police personnel are also conducted. However, prolonged culture and habits had lost the essence of mentoring and training. It is like pouring salt into the sea, all training and mentoring is gone without a trace (ICG, 2012).

This paper will discuss about how to guarantee the human right implementation by the police. This paper also bases its analysis on four things: the use of violence, human rights violations, acts of disparage and militaristic culture in Police duties and functions.

This paper also argues that the human rights implementation in the Police are still not fully guaranteed and improved. This is due to four reasons: prolonged police culture, inappropriate police discretion, the role of Precinct as bearer of Police policy, the improper role of Police as state-agency of violence. This paper offers a model of police supervision in order to effectively implement Human Rights in Police when performing tasks, roles and functions to serve the public.

2. HUMAN RIGHT DILEMMAS AND THE POLICE DILEMMAS

As one of the state agency that has the authority to use violence in their functions and roles, Police is prone to violent abuse. If Police is not in the right position, the use of force by the police would be against human rights. The idea of democratic policing is that police as a state-institution with authority to use force should be bordered in order to narrow the use of violence that may violate the rights of the people. Because the police are the most visible manifestation of government, then duties and functions of the police should be emphasized as follows: maintain public order and uphold the law, protect and respect the rights and fundamental freedoms of individuals; prevent and eradicate crime; and to provide assistance to the public (Carty, 2008).

A good performance of the police will increase the legitimacy of the State, if they demonstrate responsiveness to community needs and expectations, in their daily work, and using the power for the benefit of the people (Carty, 2008).

Therefore, the police must be able to maintain and enhance public confidence with better performance. There are two universal codes of ethics on police practices in many countries, related to professionalism and integrity of the police. However, in special circumstances, Police have the authority to restrain temporarily public freedoms for certain special situations, restrict the rights and public availability and, even in extreme circumstances, to conduct violence and even death. Based on the role and function of the police, they must not deviate from their duties in accordance with standards of universal human rights, civil rights and politics. Protection and security should be the highest priority of the police (Carty, 2008).

In the Indonesian context, the implementation of democratic policing is stipulated, in the Law No. 2/2002 of the POLRI, especially at section 4, as well as adjustments to legislation directly related to the enforcement of Human Rights in Law No. 39/1999, where Police then issued the Decree of Chief of Indonesia National Police No. 08 / 2009 on the Implementation of Principles and Standards of Human Rights over POLRI tasks. The Decree stipulates matters related to police code of conduct in order to implement principles and standards of human rights in the administration of the duties and functions of police personnel.

In practice, these standards can not be fully implemented. In fact, there is an impression that the Police have awkwardly implemented the standard. The uncertainty, in turn, affects the performance of the police. A number of awkward police practices is implemented such as handling cases of violence against minority groups and civic groups that take the law enforcement functions with brute force approaches.

Violent religious-based vigilante groups, anti-communist issue, or regional sentiment in the recent period has become very worrying. Acts of violence took place in several regions in Indonesia (Kontras, 2015). In response, the Police as law enforcer is hesitant to act decisively. In some cases, the police tend to let law enforcement was taken

over by these radical groups. So, public accused the police gives sanctuary to these violent groups when they were in action (Okezone News, 2016).

Violence practices carried out by personnel and officers tended to spread after the Indonesia Police separation from the military. The violence is not only conducted by The Brimob, but almost equally to other units inside Police (JPPN, 2016). Punitive measures did not significantly reduce the violence by unscrupulous police personnel when carrying its duties and functions. Dishonored dismissal and imprisonment are the last option for Police to reduce the use of violence in order to prevent the worsening image of the Police. This, in certain contexts, reduces the violence for while, but it then continues at the next time with variety acts and scopes of violence, especially during the investigation process of high level security threat (Muradi, 2014).

Allegations of human rights violations committed by police personnel lead to arbitrariness that ignores the public's right to obtain their rights. Police handle a criminal act on the field always refers to the rules and procedures. However, the situation often threatened the lives of police officers. This is exactly why police should stay alert and carry out repressive measures against perpetrators in accordance with the rules. Regulated steps that should be taken by police is often violated and taken out of context due to situation on field (Hukumonline, 2016).

The act of disparaging also tends to increase inside the POLRI. One of them is sexual harassment and negation of humanity when investigating a crime. Procedures and standards in dealing and protecting perpetrators is even often only a slogan, because the practice of disparaging also part of police culture that has deeply entrenched and difficult to be removed (Kompas, 2016). Significant changes were yet to occur properly. One of the later identified is that the degrading practices and actions are most common in the Precinct, which should play key role of the function of the police (Kompas, 2016).

Fifteen years has passed after the separation from military but Police still has militaristic culture. This becomes the character of the Police when dealing all matters related to violence committed by the police. It is believed that the military culture separate Police from the new culture of democratic policing. The militaristic spirit and culture emerge when related to the hierarchy and the used methodology of violence. It is clear that Police is still not able to integrate himself as a civil institution in an era of post-separation with the military.

From the description above, there are four factors that made the Police not able to uphold human rights, namely: First, the prolonged old police culture. It refers to the presence of Police as a professional institution on one side and democratic culture and novelty as a civil institution at the other side. Corruptive culture and violence behavior has become part of serious situation which until now has not completely disappeared. These two police culture has become the answer why the Police cannot release from the situation and make poor public opinion to the law enforcement agency. Not surprisingly, during the last 15 years, the police never get a good appreciation of the public, except some good opinion on some figures and specific activities such as 88th Anti Terror Detachment, children and women units, which likely to be some positive activities to reduce negative opinion on police institution (Tempo, 2016).

Second, the improper police discretion. Police discretion is a powerful tool for police to take necessary action to uphold law. However, in certain contexts, discretion is often implemented incorrectly and overrides sense of justice. It is important to note that the discretion becomes the entry point of the irregularities committed by unscrupulous police personnel. This situation makes the Police, institutionally, receives negative comments from the public. A number of issues were then strengthened the authority on the use of improper police discretion as selective cases, the release of drug dealers and the imposition of penalties for individuals or citizens who were defeated by the political forces is based on the role of authority (Kompas, 2016).

Third, the role of Precinct as direct division of police practices. Indonesia National Police design Precinct as key player to implement the role and functions of the Police. POLRI has 420 thousands of police personnel, where 75% of the personnel are assigned throughout Indonesia (See Figure 1). Many of the Police personnel, officers and

secondary, are graduates of the Police Academy (Police Academy) as well as non-academy officers, recruited from enlisted training or courses, to be at the forefront of the Police (Okezonenews, 2016).

Most of the police personnel understand police service is based on hereditary tradition that developed by their predecessors. So that, almost no significant changes occurred on the service of POLSEK for more than fifteen years after police reform. This is the idea of becoming problem for the police, given what has been and is being done in the context of the police service does not give a positive effect for the police in the organization (Bayley, 2001). A number of rules, both formal legal or practical policies have also been carried out. But in fact, it did not move to improve the position of Police when the police station as the spearhead of the police service are substantially untouched by the change in the approach of the police service to the community (Kompas, 2016).

The failure of programs is due to discontinuity of the program, both in collaboration with foreign donors and program of the police themselves to the level of PRECINCT at the district level (Berita, 2015). The assumption developed over the years, the process of training and courses as well as the arrangement of the police service will be improved by simply making rules or with a number of the police station and police station pilot alone. In fact, to change the paradigm and police culture that ensnare, needed not just rulemaking and legality as well as the police station or police station pilot project alone, but also move the Police Headquarters for working on a continuous basis (Antara News, 2016).



Figure-1. Composition of Police Personnel

Source: Indonesia National Police Headquarters, year 2014

And fourth, the improper role of Police as state-agent of violence. The improper use of force by the police often correlated to the economic and political activity. Police existence as an institution, both at national level and region, is often held by political and economic interests. It is not a surprise if abuse of power often occurs on behalf of the state (Rakyat, 2016). The Police practice of violence on behalf of the state becomes a critical point for the police, because it is interpreted by the public as Police does not pay attention or respect public morality and law. Steps to reduce Police practices and the use of violence on behalf of the state is hampered by police discretion to take action on behalf subjectively stability and order (Republika, 2016).

3. SUPERVISION MODEL

Based on problems discussed above, it requires integrative police supervision and strict order of human rights award in the practice of police services to be effectively carried out. There are four models of police supervision practiced in order to guarantee the implementation of human rights in the police service: First, structured model of police supervision. This model relies on formal supervision, rely on punishment given by higher rank officer (here after Ankum) to subordinates who committed offenses. In this context, the leader often does not have enough objectivity and even make a late decision due to esprit de corps. The Ankum process actually can not run properly. The same thing also happens to the monitoring mechanism done of Internal Affairs (here after Propam) as part of the Police.

On the other structure, this model also relies on the supervision effectiveness conducted by the National Police Commission (Kompolnas) and the 3rd Commission of Law and Security in the House of Representative (DPR). Based on the monitoring carried out by the two institutions, this model is also hindered by the limited authority of the Kompolnas and 3rd Commission related to the Police issues. The problem of police in democracy era is growing not only related to law enforcement, but also on the political dynamic.

On the other side, the involvement of formal supervision also involves other institution such as the National Commission of Human Rights (Komnas HAM), the Ombudsman, Financial Transaction Investigation Agency (PPATK), Corruption Eradication Commission (KPK) and so on. The problem arises is related to the specific character and functions of these institutions. The supervision process is then limited only in certain scale and violation without being able to bind Police institutionally (CNN Indonesia, 2016).

Second, the Public Pure Oversight Model. In this model, police supervision is entirely done by the public using existing instruments. In this model, network with the media and social media is important as driving information related to police practices that are contrary to public expectations. In addition to these two, it takes also a public figure who can be a magnet to create public opinion in order to criticize policing policies and practices of modern policing to meet public expectations (Detik.com, 2016).

This supervision model also has the destructive potential that can not be measured if not managed properly. The sense and logic of public assumption is often different from the dynamic that occurs in state institution. So, if not managed properly, the model of pure public scrutiny will be referred to other agencies and become never-ending polemic. In addition, the potential for conflict in the horizontal level can also occur due to different points of view, understanding of the problem, as well as personal relationships with the police (Detik.com, 2016).

Third, the Public structured oversight model. The police supervision integrates public scrutiny with the existing supervisory structures in government. Step model of supervision requires good political communication between the public and relevant institutions, both internally and in external. Referring to the polemic of POLRI and KPK, this supervision model is actually working. The only problem is when the monitoring process is not going well, due to criminalization against leaders of both institutions (Republika, 2016).

Involving the public and media has become a major foothold of this model of police oversight (Detik.com, 2016). However, in other areas, government institutions are not in tune, both inside and outside the Police institution. The example is on issues emerged by KPK, PPATK, Kompolnas and 3rd Commission of the are against one another during the polemic between KPK and POLRI. At the public level, although the scale is not the same, there are also divisions and differences in public view over these problems (Republika, 2016).

And fourth, performance based supervision model. The model is fully devolved police surveillance on state-led policies in assessing police performance. Yet, there are suggestions and input from relevant supervisory agency to police by the leaders of the country (Detik.com, 2016). In this model, the Head of state could replace the police chief if not adequately address the perceived expectations and deliver the expected target. Problem of this model is only applicable for police at the local level, hard to be implemented at the national level. Variation on this supervision

model relies on the program, when it is not achieved, Police Chief can be replaced as part of “the punishment” for not being able to run the program.

The difficulty of this model is at the national level, because it could disrupt the police internally. There may also be internal resistance made from the police, in form of demonstration, strikes, up to armed resistance (Beltran, 2009). So it requires steps and solid policy for this model to be practiced. Some countries are even able to position its police agencies effectively and better as modern policing by practicing this model (Pino and Michael, 2006).

These four supervision models in practice can not be entirely successful. It relies on the practice of Police internal irregularities, public solidity, understanding the issues, commitment and the cleanliness of the leaders to oversight the institutions and state policy. At a certain degree, supervision models can be simultaneously practiced. However, without good management and control, the situation could have just made the situation is not good enough and out of control. In other words, the practice of police oversight models should also based on the readiness of the institutions involved (Pino and Michael, 2006).

4. CONCLUSION

Based on above description, the correlation to guarantee the implementation of human rights in the Police is also associated with the prolonged police culture, inappropriate police discretion, the role of Precinct, as well as improper Police role as state-agent of violence. The approach taken to ensure that the implementation of human rights in the police can be guaranteed is to ensure that the four substantive issues can be described and solved properly.

An important step to ensure it is an effective supervision. There are four models of police oversight in order to effectively implement institutional Police Human Rights in performing tasks, roles and functions to serve the public. And of course as part of the monitoring, the model offered is also correlated with the readiness of the elements and parties involved in the supervision.

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