

POLICE CULTURE IN CONSTRUCTING INVESTIGATION TRANSPARENCY (A STUDY IN THE REGION OF POLICE IN CENTRAL JAVA, INDONESIA)

Christina Maya Indah S, S.H., M.Hum.

*Lecturer from faculty of law
in Satya Wacana Christian University,
Salatiga, Central Java Indonesia
Email: mayauksw@yahoo.co.id*

ABSTRACT

The transparency of police investigation is important for the justice seeker to get an access of justice. The police legal culture, which has reticent and militaristic characteristics, affects the reality of investigation transparency done by Indonesian police officers. This article also analyzes the dilemma faced by the police in defining and bringing the investigation transparency into reality. The article presents qualitative research which has the source of justice seeker, like victims, suspects, Non-Government Organization as the legal associate, National Police Commission (KOMPOLNAS), and from the police's side in Central Java Region on 2008 to 2010. This research has purpose to examine how the police could bring the investigation transparency into reality and analyze various social context on police legal culture in bringing the transparency into reality. Based on the analysis done on the interaction of distillation between norms and facts of the investigation transparency. The interpreters with their tradition regarding the interpretation in hermeneutic circle resulted either subjective or objective perspective as follows: the definition of transparency by police referred to the notification of the investigation results, which is informative, limited, secretive, procedural, and prone to investigation failure; whereas the society referred transparency to opened, egalitarian, honest, fitted to social justice, opened justification, and fulfilling rights for access to justice. In the practice, police has been following legalistic practice than service to the people, protagonist style, has 'administrative responsibility' than 'substantial responsibility,' legal accountability than public accountability, and merely following the procedures. The findings suggest the police legal culture in bringing investigation transparency into reality should be reformed towards justice, civility, and integrity as this will enhance the society's respect on more humane and just image of the police.

Key words : police culture, investigation transparency

Introduction

Victims, suspects, or society, or commonly known as the justice seekers, are considered as the external party (outsiders) of the investigation. Police, as the internal party (insiders) of the investigation, has domination or full authority of the investigation, more information, more power, and more practical concerns on the investigation compared to the outsiders. Some factors such as the information gap, participation, and private concerns have caused both parties of having different perspectives. As the society hopes that the police would represent their interest, they demand transparency in investigation. Thus, the justice seeker aspires that the police have the legitimacy and trustworthiness from the justice seeker society.

Investigation transparency is the openness from the investigators in their interaction with the justice seeker society while conducting the investigation, for example by giving information and being open towards criticisms. By practicing investigation transparency, the society hopes that the police would have the accountability to serve and to protect the society, as they were sworn to.

As mentioned earlier, the idea of investigation transparency was based on the society's mistrust on legal upright in conducting investigations. As quoted from the Evaluation of Indonesian Police Bureaucracy Program, Indonesian Police also admitted that there was mistrust from the society towards the Police Department of Indonesia (Progress report of Indonesian Police Bureaucracy Reformation Program, 2009, pp. 47-48).

In Indonesia, justice seeker society still has negative perspective about the police image. They question the police work such as why the investigation takes such a long time, sometimes even years. The study conducted interview with the justice seeker society in order to acquire perspectives of victim, suspect, lawyer, National Police Commission, or the legal associate from the Non Government Organization (LRC KJHAM, YLBHI-LBH Semarang). The interview results showed that the justice seeker society considered the police investigators of being reticent and resistant towards the inputs and criticisms when the justice seeker society tried to find justice by handling their cases. For example, in investigating corruption case in Central Java, KP2KKN declared that the investigation was still uncertain; thus, the investigators' accountability was unknown. In an interview, the victim, suspect, lawyer, LRC KJHAM, YLBHI-LBH of Semarang declared that they often faced challenges in accessing justice. The society expects that investigation transparency would allow the equal justice from the police and based on the demands of the society.

From the perspective of the police, investigation has become the investigators' domination and authority. Based on the interview with Central Java Police Department investigator in Salatiga on September-November of 2009, the police have their own reason why they could not really convey the investigation transparency as demanded by the society. They based their reason on investigation secrecy and that no one could intervene with the investigation. They were concerned that if they revealed the investigation process to the public, it would cause failure in their investigation. As the police have full authority to do the legal upright task, they can only disclose the investigation results to the public. Transparency demand in investigation process could be considered as high risk for law enforcement process.

The research problems were presented within 2 things that had juridical, sociological, and philosophical implications:

- a. Why has the investigation transparency construction not formed the police accountability according to substantial justice yet?
- b. How do we construct the investigation transparency to create police accountability in doing the investigation?

Methods

The study is a socio-legal research with qualitative approach. The primary data were acquired by conducting department interview with the justice seekers such as the victims, suspects, lawyers, Non-Government Organizations (LRC KJHAM (Legal Resource Centre Gender and Human Rights Justice) KP2KKN (committee of investigation against corruption, collusion, and nepotism), LBH (Legal Assistance Institution) of Semarang), Indonesia Police Department, and KOMPOLNAS (National Police Commission). The research was conducted from 2008 until 2010 within the legal area of Central Java Police Region Indonesia. In order to set the validity of the data, it needs the examination techniques based on some criteria (i.e., credibility, transferability, dependability, and confirmed-ability)

Police legal culture

Police legal culture is the way of thinking owned by the Police. This culture becomes the base of their attitude and norms taken in their perspective on legal aspect (legal substance) and bureaucracy (legal structure). The police culture becomes the police perspective in facing both external factors (i.e., from the legal side, bureaucracy, country, society) and the internal factors, which influence their perspective or mental activity on the legal consideration and moral consideration internalized by the police. That is why police culture has an important role in investigating and digging the meaning of investigation transparency from the police, and even becomes the mind-set of the police in confronting the demand and restriction existed in the legal aspect, bureaucracy, and society.

Police culture, as declared by Peter Manning, has the role of 'speak core skills, cognition, affect and accepted practices, rules and principles of conduct that are situationally applied, and generalized rationales and beliefs. Simon Holdaway locates police culture in a residual core of beliefs and values, of associated strategies and tactics relevant to policing a principal guide for the day-to-day work of the rank and file officers.

Robert Reiner speaks of a 'cop culture' that has developed as a patterned set of understandings which help to cope with and adjust to the pressures and tensions which confront the police (Robert Reiner in Smith & Natalier, 2005, p. 88) As quoted by Janet Chan (1996), Cain, Manning, and Holdaway defined police culture as the concept of police culture originally emerged from ethnographic studies of routine police work, which uncover a layer of informal occupational norms and values operating under the apparently rigid hierarchical structure of police organizations. Further, this definition was elaborated into "police cultural practice results from the interactions between sociopolitical context of police work and various dimensions of police organizational knowledge.

Therefore, Chan (1996) explained that police culture should not be understood as some internalized rules or values independent of the conditions of policing. Police culture results from an interaction between the field of policing (in either social, political, economic, or legal context of police/minority interaction) and the various dimensions of police organizational knowledge.

Smith and Natalier (2005) affirmed on elaborate consensus of police culture that:

The police need to be constantly on guard against the possibility of violence. A defensive mentality comes from the accountability of police work. Unlike most other occupation, the police are continually at risk of reprimand from superiors... Moreover, showing emotion or becoming too close to the public is seen weakness within police culture (p.89).

Investigation Transparency in the Police Culture

Basically, there are two dominant characters from the police culture: 'isolation' and a 'them-versus-us' world view. However, as explained by Miller and Hess, the isolation and them-versus-us world view conflicts with a community-oriented philosophy of policing (Miller & Hess, 2002, p. 35). As affirmed by Mc. Erlain that stated that police culture was "Code of Silence" (Mc.Erlain in Miller & Hess, 2002, p. 34), it could be said that police culture is clannish, secretive and isolated. Furthermore, it was mentioned that policemen become even more silent, secretive, and sensitive to criticism. The secrecy, with which they hope to protect themselves and is used as an adjusting mechanism, only widens the gap between themselves and the community. However, secrecy that originally starts as a protective reaction to citizen hostility, can also serve the corrupt police officers (Trojanowics & Dixon, 1974, p.141).

Linda and Karen clearly stated that from the ethics policy point of view, in order to maintain public trust, police must be men and women of good character who hold foremost the ideals of fairness and justice (Trojanowics & Dixon, 1974, p. 45). Therefore, as stated in this study, transparency and accountability are the legal needs of the justice seekers and become the standards of society

assessment towards Indonesian Police's work. If we relate the research to the investigation transparency concept by Stephanos Bibas and Fred D. Agostino, then the meaning of police transparency includes 'accessibility', 'intelligibility' and 'open justification' aspects (Agostino, 1996, pp. 58-60). The justice seekers believe that investigation transparency is the police investigation done with fully openness, honesty, and fairness towards the police's reaction against the victim's report, conducting investigation processes correctly, and fulfilling the hope of justice from the justice seekers. However, in practice, the police often place the victims as 'forgotten persons'.

Police accountability is not merely limited to the legal administration accountability/administrative responsibility, but also includes the substantive responsibility that requires the police to be honest and connect the fact with the law (PutraJaya, 2005, p.118) and the internal accountability, public accountability, plus external accountability (Osse, 2007, pp.189-190; Stenning, 1995, pp. 3-14; Walker, 2005, pp. 7-8). Police accountability has two basic dimensions. On one level it refers to holding law enforcement agencies accountable for the basic services they deliver. Crime control, order maintenance, and miscellaneous services to people and communities. At the same time, however, it also refers to holding individual officers accountable for how they treat citizens, particularly with regard to the use of force, equal treatment of all groups, and respect for individuals.

Discussion

Based on the retrieved data, it showed that there was no transparency in the police department and it had been hard for them to receive inputs or criticisms. As the result, it was difficult for the society to get 'access to justice and fair treatment' from the police. Sometimes, police officers become inhumane by provoking and intimidating the other parties during the investigation. This was mainly caused by the mindset that they acted as the authority of justice, instead of servant of justice.

In 2009, KP2KKN observation noted there were 425 assumed corruption cases in Central Java; 289 were new cases and the rest were extended cases that were still in legal process. The Reports of Monitoring and Evaluation of corruption cases and their legal treats in Regencies/Cities in Central Java in 2009 (documentation of KP2KKN) stated that 179 assumed corruption cases remained unsolved and some were unprocessed by related institutions (police and prosecution counsel).

We could also examine the society's mistrust from the complaints received by police department. The document from Dumas Polda Jateng (Dumas of Central Java Region Police) noted that there were 441 cases in 2007, 232 cases in 2008, and 345 cases in 2009 on people's complaints on the police work submitted through Itwasda Jateng (Police Internal Supervisor in Central Java). Based on the legal assistance from YLBHI-LBH (Legal Assistance Institution) of Semarang for the justice seeker society (suspects and victims), and from the conducted observation, it was noted that the society deductively assessed the police's work during 2007 and 2008 as being secrete due to the characteristics of being discriminative, corruptive, and full of intimidation. According to the society, those characteristics reflected the situation of law enforcement that influenced police's attitudes of being not transparent in the investigation.

The same situation also happened to KOMPOLNAS (National Police Commission) in 2009, as the record showed people's complaints in all districts of Polda (Regional Police) in Indonesia. There were 1386 complaints specifically related to the investigation handled by Criminal Detectives and 1466 complaints in general towards the police units including those of Criminal Detectives. As categorized by KOMPOLNAS, 239 authority misuse cases, 8 cases of assumed police corruption, 1151 poor services cases, 48 discrimination cases, and 20 wrong discretion cases.

Based on the findings about the police interpretation, it was clear that the norms the police adopted were rooted from the ratiocination of a craftsman who merely applied law in the legal literal way. This judgment was based on the interpretation of the police, which was influenced by Criminal Procedure of Law that actually had some weaknesses in accommodating the investigation transparency. Therefore, the police interpret investigation transparency as the form of providing information on the investigation result for the actor, victim, or society. There could not be complete disclosure or open justification in investigation transparency as the police believed that they could not reveal all the information due to concern of investigation failure and to avoid intervention in their investigation process. Thus, the interpretation of transparency for the police was closer to investigation administrative procedural aspect only, as a legal accountability form, they loosely interpreted investigation transparency in a positivism paradigm frame.

However, according to Scholten, law is a part of human spiritual life, individualism, and within togetherness (Scholten, 2005, p.18). The positivism point of view created a justice output that aimed a procedural justice, similar with the reference on autonomous legal role from Nonet and Selznick that emphasized intensely on formality for the sake of institution integrity, which was in this case, investigation integrity of the police. In Nonet and Selznick's Autonomous Law, procedure is the heart of the law, orderliness and fairness are the main purpose of legal order, instead of substantive justice. In the way of autonomous law like modern bureaucracy, it impulses a narrow point of view on the officers' obligation and the legal institution interprets its authority in a restricted way, avoids the policy issues, conceals under neutrality, and avoids initiatives (Nonet and Selznick, 1978).

The findings showed that the experience of the justice seekers on the construction of investigation transparency, interpreted that the police interpretation of transparency, either their interpretation on the norms or the fact manifestation, was still far from the society's expectation. The essence was that the society lack of trust on the police because they believed that the police did not quite serve and protect the people as they were sworn to. Police's responsibility was considered as the responsibility on the law, not the society. This was irrelevant with the opinion from Thomas A. Johnson, Gordon E. Misner, and Lee P. Brown, which stated that in democracy, the police "act as the agents of the public" (Johnston, Misner, & Brown, 1981, p. 31), considering that

the police also maintained the investigation integrity that would also restrict the investigation transparency to give information for the public about the investigation.

Both parties had different concept of transparency, in which the legal concept of police interpretation of transparency tended to emphasize the integrity of police authority, whereas the interpretation in the social concept of the justice seeker society was the emphasis on the openness. In interpreting the transparency, the police used the rational modern legal system, yet the public had different perspective. The public had their own of justice, which was apparently different from the police's rational modern legal system.

When it was related to the concept of investigation transparency by Stephanos Bibas and Fred D. Agostino, the police interpretation of transparency in legal concept did not include 'accessibility' and 'open justification' aspects (Agostino, 1996, pg.58-60). The investigator interpreted transparency as conveying information with the characteristics of procedural informative, that meant had no connection with justification process from the justice seeker society at all. The information conveyed in the investigation transparency was not directed to achieve better substantive outcomes (Bibas, 2006, p. 140; Bedner and Jacqueline, 2010). Therefore, the police interpretation of investigation transparency until now did not guarantee a way out for the justice seeker society to have an access to justice, since the police considered that the information of the investigation result was "taken for granted," by closing all access to police openness of public justice. The characteristics here, in the manifestation turned out that the police merely used as the guidance for the most influential thing for themselves.

Apparently, the interpretation of investigation transparency norms by the police in the characteristics of police behavior beforehand had some impacts. On the public side, there were lacks of optimum things such as the victim's rights to participate and to be listened to his/her opinions, the suspect's right to defend him/herself, the victim and suspect's right to get credit and respect, the victim and suspect's right to get fair and honest information on their justice, and the public's right to execute public supervision.

The occurrence happened because the police had a dilemma between their role and interest in implementing the transparency and accountability of legal upright investigation that was a process to construct abstract ideas of law into reality, whereas the police work was a legal upright work in optima forma. Through the police, the legal goal was realized, which was to protect and serve (Rahardjo, 2002, pp. 30-32, 203). In the Act No. 2 in 2002 about Indonesian Police, the Indonesian Police main task in article 13 is to maintain the public safety and orderliness, to uphold the law, to give protection, guardianship, and service for the public. Satjipto proposed that the police doctrine in the world is "protecting the society." The doctrine followed by Indonesian Police that is 'to protect and to serve'.

The justice seeker society assessed that the attitude of being secretive and self-defense from the police bureaucracy were often visible in the investigator's attitude. Although their uncooperative behavior did not clearly define the scope of responsibility, the public believed that this reflected the attitude of secretiveness from the police bureaucracy. The public also perceived that their complaints were not responded quite well as the police response was just within the procedural range, people felt they were being unfair. So far, the police received the complaints and then they only told about their work normatively, so the complaints did not represent adequately to evaluate the police.

As demanded by the people, investigation transparency should start from the moment police report was taken from the victim. It begins from the early stage of victim protection towards the reaction from victimization event occurred to get feedback through the criminal judiciary. Consequently, the transparency should be reflected in 'selected law violation' towards the reported case. The Police was the entrance gate into criminal judiciary system. Secondly, this selected law violation continued through the work of the legal upholders, which were related to the confronted case characteristics and the interactions among the actor, victim, and other parties including the lawyer that was involved as the instrument of law.

The interpretation of investigation transparency by the investigator was overwhelmed with the police culture in playing its role and the culture was their 'way of thinking'. Within the police department, they faced complex dilemmas and tensions in the interpretation process. The first one was the tension in executing the police's double roles. In one side they had the role as the legal upholder who must strictly maintain the legal integrity with no compromise and keep 'the investigation secrets'. On the other side, they had to play as the orderliness guardian who must manage the task in a dialog-responsive way with the public. In the next evaluation, it was also found that there was a limitation of public information openness as stated in the Law No. 14 of 2008. The Law stated that the law enforcer had the rights to keep the information if they could hinder the investigation process such as revealing the identity of the informant, the reporter, the witness, and or the victim who noticed the crime, revealing the criminal intelligent data, related to the plan of prevention and handling of all types of transnational crime, endangered the safety and life of the law upholders and or their families, and or endangered the security of the tools and equipment and or infrastructure of the law upholders.

Furthermore, the police department was an institution with double paradigm. The first paradigm was the authority in connection with the role to uphold the law, where the relationship between the police and the public had 'top-bottom' characteristic. The second paradigm was horizontal characteristic, which meant that there was a partnership or parallelism with the public related to the legal task to guard, to protect, to serve the public.

The second tension in playing the double roles as mentioned above, the police officers had some pressures coming from external factors and internal factors within the police department. The external factors included legal factor such as the police rules (norms of transparency), bureaucracy factor from the demands of the police department itself, , the justice seeker society factor

that was differently polarized in the interests of the victim, the actor, and NGO, or general public interest. The internal factor was the personal strength factor within the police department itself (legal paradigm of the police individual and personal charges). As they confront the public and regarding their work, the police officers faced many choices to interpret and to take certain action regarding investigation transparency. The police department had many interests to take into consideration, as we could say, of the conflict between individual and general public interest, and between legal justice and legal assurance.

One of the transformation challenges within the police was how to become 'civil police' in this democracy era. Civil police had to place themselves proportionally; when to act as a strong hand of society and when to act as a soft hand of society, especially in implementing the investigation transparency.

Their choice of when and where they should act accordingly was also an interesting subject to be analyzed. This was done to know how to construct the interpretation of investigation transparency from the police, to direct towards police task accountability 'to serve and to protect' headed to the substantial justice.

As police officers, investigators would always face three norms that slant the police, which became the sources of all practices of the police. They are:

- a. 'Paramilitaristic' police, which is the opposite of civil police.
- b. 'Reactive/traditional' police confronts with progressive police.
- c. 'Antagonist' police versus protagonist police.

As proposed by Mc Erlain who stated that police culture was "Code of Silence" (Miller & Hess, 2002, p. 34), the characteristics of police officers often being clannish, secretive, and isolated. Skolnick added that "police work constitutes the most secluded part of an already secluded system" (Scolnick, 1966, pp. 12-14).

The militaristic characteristic of police officer was said to have some weaknesses. They were the dependency towards authoritarian, lack of innovation, tend to be closed, which stifles innovation, unable to cope with environment changes, lack of motivation that actually still referred to the old concept in Classical organization model police (Trojanowicz & Dixon, 1974, p. 222)

It was correct to say that police work attracts people with a strong authoritarian bent. According to Packer, "the enforcement of criminal law is inherently coercive... police work seemed more repressive rather than permissive, intolerant rather than tolerant, conforming rather than non-conforming" (Packer, 1968, p. 284).

As categorized by Satjipto Rahardjo, police officers tend to had a protagonist attitude (2002, p. 32). The resolution the police tried to find for the public dissatisfaction often placed the public in the helpless position in front of the police.

Conclusion

1. The meaning of investigation transparency until nowadays is different between the transparency meaning of the social view/the bottom up view's of law from the justice seeker society and the police's investigation transparency meaning. The society expects more than informative transparency that ends in the administrative responsibility only, instead, they expect transparency that directs to the substantial responsibility based on the openness. On the police's side, transparency has limited meaning on the investigation result and not meant to be spread towards the justice seeker society, so it becomes procedural. The restriction of transparency is on the investigation technique or tactic and the investigation plan. In the existing condition, the investigation secrecy becomes the reason for not doing the transparency, because it will cause some constraints in the investigation if broken. The police have been resistant and unopened. Nowadays, "isolation" attitude and the position of justice seekers in the confrontation of being less powerful remained the dominant features of police culture.

2. As the study suggested, investigation transparency was needed to be developed more in the police culture and it will lead to some thoughts of:

- Reopening investigations, with the limitations of investigation techniques and that of the usages had to be kept secrets.
- *Proactive efforts to reduce misconduct by the police officers.*
- Permanent external monitoring to supervise police task and recommendations for changing the police policies, either to change or to bring policy review.
- Police attitude of being transparent through an open law.
- Proposing a value-oriented legal scheme.
- Opening the screen of closed ideology and clarifying the legal judgment by the police.
- Rejecting dogmatic stiffness and absolutism within the bureaucratic-centered mechanism.
- Law to humanize humans.
- The fulfillment of social values complained to the police in interpreting the transparency.
- The way of following more humane and responsive laws by the police with the consideration of conscience.
- The change of law interpretation into a more balanced model between people's interests (i.e., actor, victim, or individual) and the country, society, and the legal integrity that represented the country's interest.

We could conclude that reforming the police department by transforming the police reputation to the direction of fairness, civility, and integrity in order to be more respectful towards people's expectation would create more humane and just police.

The needs for internalization of humanity and fairness value within the Police Department, either as individual or as an institution, would bring the police into an ideal role model in order to fulfill people's expectation and hope for protection and service towards the achievement of substantial justice. The internalization efforts of these values could be constructed through Police Education that directed towards Protagonist, Progressive, and Responsive paradigms. The implementation of this program is hoped that the police mental activity-related work would reinforce the moral ethics consideration from the police.

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