REVITALIZATION OF POLICE ROLE IN THE CRIMINAL JUSTICE SYSTEM REFORM IN INDONESIA

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ABSTRACT

The criminal justice system in the current legal reform is interpreted by the works of the law enforcers subsystem in order to realize an integrated criminal justice that is effective and efficient. In Indonesia, the position of the Police subsystem is based on the Criminal Procedure Code (KUHAP) and Law Number 2 of 2002 concerning the Indonesian National Police as the "gate keepers" of the criminal justice system. However, the position of the Police in the law reform was apparently not yet realized due to the lack of independence of the police institution and the repressive function done by the Police towards crime taking precedence over the preventive function itself. Therefore, the method used in this reasearch is normative juridicial research, and in accordance with the methode, the study was carried out on the norms and principless contained in the secondary data, which were found in the primary, secondary, and tertiary legal materials.

Keywords: police, reformation, criminal justice system

I. INTRODUCTION

Criminal justice system is a process in the enforcement of criminal law, therefore the criminal justice system is closely related the criminal law itself, both the material criminal law and the formal criminal law. It is said so because criminal law is basically a law enforcement *in abstracto* which will be realized in criminal law enforcement *in concreto* (Atmasasmita, 2017: 28).

Criminal justice system is a system in a society to cakle crime problems and can distinguish the understanding between criminal justice process and criminal justice system. Criminal justice process is every stage of a decision that exposes a suspect to a process that leads to criminal determination, while criminal justice system is the interconnection between decisions of each agency involved in the criminal justice process. (Reksodiputro, 2017: 16). Thus, the criminal justice system focuses more on the coordination and synchronization of criminal justice components (Police, Prosecutors, Courts and Penitentiaries) in terms of supervision and control of the use of power by the subsystems components in criminal justice.

As for the problems that have arisen in the criminal justice system in Indonesia since Criminal Procedure Code (KUHAP) came into force in 1981, partly due to the lack of coordination between fellow law enforcers who are part of the criminal justice system, thus causing law enforcement itself does not work effectively and efficiently.

Basically, each criminal justice subsytem has its own rules. The police have Law Number 2 of 2002 concerning the Indonesian National Police. The Attorney General's Office has Law Number 16 of 2004 concerning the attorney General's Office of Republic Indonesia. The court has Law Number 4 of 2004 concerning Judicial Power *jo* Law Number 48 of 2009 and Law Number 5 of 2004 as an amendment to Law Number 14 of 1985 concerning the Supreme Court *jo* Law Number 3 of 2009. Likewise, Advocates and Penitentiaries.

If each of the criminal justice subsystems above which has the power in its function is divided systematically in the Integrated Criminal Justice System, then it is implemented in 4 (four) subsystems, namely:

1) "Investigative" authority (by investigation institution);
2) "Prosecution" authority (by public prosecutor institution);
3) "Adjudicating and convicting" authority (by a court of law);
4) "Enforcement of decisions/penalties" authority (by institution/executors/executions).

The four criminal justice subsystems as mentioned above constitute a series of investigation subsystems, prosecution subsystems, court subsystems and systems for implementing the decisions as referred to above, constitute a unified criminal law enforcement system which is integral or often known as the Integrated Criminal Justice System. However, it is unfortunate, the concept of integrated criminal justice system has not been reflected in the implementations of each justice subsystem (Atmasasmita, 1996: 18-20). Before going through the next subsystem, the first process in the subsystem is the police institution subsystem as an institution that has the power to conduct "investigations".

Based on the theory of Baldwin and Bottomley, the position of the police subsystem is as part of criminal justice system (Baldwin & Bottomley, 1978: 35). It also contains an understanding that basically every criminal offense thath is processed in the criminal justice system starts through the police subsystem. Community members who witnessed a criminal event, because of their social responsibility are also encouraged to deliver it to the police subsystem. Victims of a criminal offense begin their efforts to seek justice in the police subsystems. Whenever an action occurs that is contrary to the prohibition or necessity determined by the law, in which it is accompanied by a criminal threat for whoever commits it, then the act should be followed up through a process within the police subsystem. Thus, both the person and the act of the person related to criminal law, more specifically, both the person who commits the criminal act and the criminal act itself, if it will rolled into the the criminal justice

system, firstly it will be placed and processed in the police subsystem. From there, the whole series of criminal prosesses began, so the police subsystem was referred to as the "gate" (Huda, 1999). The position of of the police subsystem as gate keepers of criminal processes is, in essence, related to the implementation of repressive functions against criminal acts. This originated from how the performance of the police subsystem in tracking the occurrence of criminal acts and investigating the perpretators (Baldwin & Bottomley, 1978: 35).

Based on the provisions contained in Article 4 Number 2 of 2002 concerning the Indonesian National Police (Polri), this law reform is intended to further strengthen the position and role of the National Police as a government function including maintaining security and public order, law enforcement, protection and services to people who uphold human rights, must be free from the influence of the the authority of any party, ie carried out independently regardless of the influence of governmental power or other powers.

However, the police subsystem has not yet worked as an institution that has the power to conduct "investigations" in the integrated criminal justice systems according to the author, the solution can be found through 2 (two) ways, namely:

1) Independence of the police institution;
2) Prioritizing the preventive function rather than the repressive function against crime.

Based on the problems above, the 2 (two) ways above can be used as a central issue in the reformation of criminal justice system in Indonesia, therefore this paper further examines the revitalization of the police's role in the criminal justice system reformation in Indonesia.

II. RESEARCH METHOD

The method used in this reasearch is normative juridicial research. Research with the perspective of legal/juridicial focused on rules/norms of the Criminal Procedure Code (KUHAP) and comparative law through legal principles is the study of legal norms which are benchmarks to behave appropriately. In accordance with the methode, the study was carried out on the norms and principless contained in the secondary data, which were found in the primary, secondary, and tertiary legal materials.

III. DISCUSSION

1. Independence of the Police Agency

An examination based on formal rules of the Criminal Procedure Code (KUHAP) does not always provide an adequate explanation of various weaknesses and obstacles. Besides, there must also be a relationship between the Police in conducting investigations up to the Prosecutor in conducting prosecutions up to the the Penitentiary as a unit in the Criminal Justice system. Criminal justice system is essentially identical to the Criminal Law Enforcement System (SPHP). The system of "law enforcement" is basically a "system of power/authority to enforce the law" (Purba, 2017: 33).

The criminal justice system approach does not use a normative perspective, but rather a management perpective in criminal justice, which emphasizes the interrelationship of each element of law enforcement agenciest, how the mechanisms works and the influence of each who plays a role in enforcing the law as well as the overall impact of the law enforcement, thus the system approach is preferred (Purba, 2017: 33). This is in line with the United Nations (UN) resolution about "*The Prevention of the Crime and the Treatmen of Offenders*" 8th held in Havana, Cuba in 1990 (Eight UN Congress, 1991). Resolution point 19 concerning the management of criminal justice and the development of criminal policies (*management of criminal justice and development of sentencing policies*) as follows:

1) Only of the criminal justice system is well managed can rational change be made to improve the situation.
2) In-adequate management of the criminal justice system can result in certain practices, such as long delays before trial, that may create injustice for person where cases are being processed by the system.
3) Satisfactory relations between different agencies of the criminal justice system can contribute to effective alocation of resources.

In line with the above, the criminal justice system approach according to Romli is as follows (Atmasasmita, 1996: 19-20):

1) Emphasis on coordination and synchronization of the criminal justice component (Police, Prosecutor, Court dan Prison Institution).
2) Supervision of control over the use of power by the criminal justice component.
3) The effectiveness of the crime prevention system is more important than the efficiency of the settlement of the case.
4) The use of law as an instrument to strengthen the administration of justice.

The independence of the Police is very necessary, especially in carrying out their duties as law enforcers in the criminal justice system. The criminal justice system aims to restore the balance of society disturbed by crime. In the context of carrying out the task of investigating criminal offenses, the Police absolutely have the independence to be free from the intervention of extra judicial power. Without independence, it is impossible for the Police to be able to carry out their duties properly as law enforcement officers (Sadjijono, 2007: 139).

Meanwhile, other law enforcement officials, namely the prosecutors and the courts have independence, so that they can freely carry out their duties in criminal justice. Existing legal instruments have guaranteed the independence of these institutions as

contained in Law Number 16 of 2004 concerning the Prosecutor's Office, Law Number 4 of 2004 concerning the Principal of Judicial Power, Law Number 2 of 1986 concerning the Supreme Court, has provided guarantees of independence for prosecutors and judges in carrying out judicial duties.

As regulated in Article 7 verse (1) KUHAP *jo* Law Number 2 of 2002 concerning the Indonesian National Police, the authority of the police includes:

1) Receive reports or complaints about criminal acts;
2) Take the first action at the time of the incident;
3) To stop the suspect and examine the suspect's identification;
4) Conduct arrests, detetion, search and seizure;
5) Inspect and confiscate letters;
6) Taking fingerprints and photographing someone;
7) Calling someone to be heard and examined as a suspect or witness;
8) Bring in an expert who is needed in connction with the examination of the case;
9) Carry out and end to the investigation;
10) Carry out other actions according to responsible law.

However, practically it is not uncommon for Police Officers to have difficulty in carrying out their duties when clashed with extra judicial power outside of him who co-opted in carrying out Police duties. Although the police have the authority to carry out their duties. The existence of structural and institutional shackles does not allow the police to develop their authority properly. In fact, the Police authority can be carried out in the context of carrying out duties as *order maintenance* or as *official law enforcement*. Indonesian Police Institution (Polri) in carrying out their duties has a dual role, both as law enforcer (in the field of criminal justice) and as social workers in social and community aspects (service). Furthermore, the function of police institution universally includes two things, namely peace and order maintenance in law enforcement (Arief, 2005).

Based on the long history of Police Institutions existence in Indonesia, especially after the reformation in 1998, efforts to make police independent have existed, namely by placing Police Institutions directly under the President who are separated from the Indonesian National Army (TNI). The logical consequence of this is to equate the Police position with other law enforcers, namely the Attorney General's Office under the President. However, the Attorney General's Office has long been a separate institution that is independent from the department (minister) and is directly under the President. The Attorney General's Office position in carrying out the duties is directly responsible to the President. Furthermore, even the Judges in Judiciary is more independent and free because it is outside the executive power. The Judiciary is a part of the judicial authority whose freedom and independence are guaranteed by Article 24 of the 1945 Constitution.

The Police main tasks can be interpreted as the Police main function which is one of the government functions. The term government here implies as an organ/state agency/equipment entrusted by government, that one of the tasks and authorities is to maintain the security and community order and to carry out public interests (*public servant*), so that the government function is the government insitutions function that are carried out to support the goals of the state, because the government in a narrow sense is one element of the constitutional system.

On the other hand, the Police main tasks which are interpreted as the Police main functions, are carried out towards the security and public order realization which is one of the government functions. Based on the theory of power sharing and presidential government system prevailing in Indonesia, the government function is carried out by an executive institution led by the President, so that the President is responsible for governmental administration. Therefore, reviewing the Police position based on its main function cannot be separated from the main function of the government led by the President.

The President is part of the executive power that carries out statutory regulations. With the Police being directly under the President, it can be interpreted that everything related to the Police is accountable to the President. Even though it is not explained further about what limits the Police institution is responsible to the President.

Independence is defined as being free from executive influence or all other State Powers and freedom from coercion, directives or recommendations that come from extra judicial parties, except in the cases permitted by law. Likewise, it includes freedom from judicial internal influences in passing decisions. (Lotulung, 2003).

Viewed from an institutional standpoint, the position of the Police is actually better when compared to the Attorney General's Office. Article 5 verse (1) Law Number 2 of 2002 concerning the Republic of Indonesia National Police (Police Act) determines: *"The National Police is a state instrument that plays a role in maintaining public order and security, enforcing the law, as well as protecting, sheltering and serving to the community in the context of maintaining the country"*. As a "state tool", even though it is not "state power", of course the police cannot be seen as part of "executive power". This is also marked by the control of the the House of Representatives (DPR) over the President in the form of "approval" when electing (appointing and dismissing) the Police Chief of the Republic of Indonesia (Kapolri), as determined in Article 11 verse (1) of the Police Law. The logical consequence of this is that the replacement of the Indonesian National Police Chief did not follow the change of the cabinet, which was different from the Attorney General who was always seen as a state official at the Ministerial level (Huda, 2015). The election of the Attorney General does not require the approval of the DPR, because it is the prerogative authority of the President.

However, with regard to law enforcement regulated by law, Polri is basically subordinated from the Attorney General's Office. This should not be seen as something negative. Juridically the police are "dependent" on the Attorney General's Office as required by the provisions of Article 109 verse (1), (2) and Article 110 of the Code of Criminal Justice. Provisions that require the police to submit a Letter of Investigation Commencement (SPDP) must be understood that in law enforcement by the Police are under the guidance of the Attorney General's Office. Likewise, the provisions that determine the existence of the Public Prosecutor's authority (Attorney General's Office) to determine whether a case file is complete, so that it can be submitted to the court. This suggests that the determination of whether an event is seen as a legal case or not, is determined by the Public Prosecutor (Huda, 2015). Thus, the main problem in relation to the independence of police from institutional side is that on one hand the Police are institutionally independent, but on the other hand, interms of law enforcement, Police have a subordinated position under the Attorney General's Office which is basically led by a cabinet member under the executive authority.

Muladi argued, that the criminal justice system is a network of justice that uses material criminal law, formal criminal law and criminal implementation law, however, this institution must be seen in a social context. The nature of being too formal if based only on the interests of legal certainty will bring disasters in the form of injustice. Muladi also stressed that the meaning of "integrated criminal justice sistem" is synchronization or harmony, which can be distinguished in the following cases (Muladi, 2002: 35):

1) Structural synchronization
2) Substansial synchronization
3) Cultural synchronization

The concept of synchronization is the meaning of the integrated criminal justice system which is expected to be intertwined in the context of law enforcement in Indonesia, in its implementation, which often gets intervention and influence from extra judicial power and there are differences in perceptions between one subsystem and other subsystems in resolving cases, for example, in one party, the Police and the Attorney General's Office has tried hard to find evidence so that the suspect can be detained and transferred to the Court as a defendant, but on the other hand, there are other powers that can intervene in the authority possessed by Police and Attorney General's Office.

The criminal justice system, as part of government administration that is essentially also be bound by provisions, namely judicial process implementation by criminal justice system components that must be based on the authority possessed by each component in moving the criminal justice administration management must get serious attention, not only because of law enforcement apparatus actions validity issue, but also (which is even more essential) because of every law enfocement apparatus action that has no authority basis will give birth to human rights violations, in carrying out its duties and functions, it must really have a strong legal basis because it is related to human rights. Therefore, the principle of legality in KUHAP is strictly regulated as seen in Article 3 of the KUHAP which reads: *"Judgement is conducted in the manner stipulated in this law"* (Waluyo, 2016: 224).

2. Prioritizing the Preventive Function Rather than the Repressive Function Against Crime

In Article 30 verse (4) of the 1945 Constitution it is stated: *"The Republic of Indonesia National Police as a state instrument that mantains public security and order has the duty to protect, serve the community, and enforce the law"*. While in Law Number 2 of 2002 concerning the Republic of Indonesia National Police it is stated dinyatakan: *"The Police function is one of the state government functions in the field of maintaining security and public order, law enforcement, protection and servise to the community"*.

In general, Police duties in the criminal justice subsystem so that a legal case comes to the police is based on 3 (three) things, namely based on reports, complaints (in offense complaints) and the occurrence of crimes in the form of being caught red-handed. If the law case is accepted by Police in the form of reports and complaints, then the ability of criminal law knowledge in addition to other knowledge that supports the disclosure of a legal case owned by police will be very significant, including but not limited to human rights issues on the other hand that must be noticed by the Police. In this context, the Police's understanding of a case that exist in it is as if "forced" to reach the Judge's area in deciding a case.

Illustratively, not all Law Graduates are able to understand the things that are regulated in criminal law; understanding the definition/nature of criminal acts, about acts against the law, about the principle of no criminal without fault, about the understanding of causality, about the definition of criminal error or responsibility, about corporate criminal liability, and others. Therefore, a very good breakthrough from internal police itself with the issuance of National Police Chief Regulation Number 1 of 2012 concerning Recruitment and Selection of Republic of Indonesia National Police Investigators (Perkapolri 1/ 2012), which in essence prioritizes the recruitment of those with Law Graduates. As a result of this, among others, for Police who had entered police institution but had not yet graduated from Law faculty before the 1/ 2012 National Police Chief Regulation, many applied to the law faculty.

In accordance with the duties of Police in criminal justice subsystem, it should not only be able to be reactive in the presence of reports and complaints from the public, but also must be proactive in all potentials that cause crimes. The Police must pay attention to unusual things, which must suspect the possibility of crime from various community activities in public places (Sacks, 1967: 75). The same thing was stated by Butler, who sees this as an obligation of the Police to pay close attention to environmental changes that occur, which suspiciously will lead to crime (Butler, 1984: 27). Where according to Michael Chatterton, "Police from wheel and not just on wheels and to spend ofhis shift patrolling his beat on foot, inspecting the front and

rear of vulnerable property and checking on persons who arouse his suspicious" (Chatterton in Baldwin and A. Kelt Bottomley, 1978: 43) .

In addition, the efficiency of criminal justice system is determined by the extent to which the Police subsystem can uncover a case, as well as the presence of citizen compliant in determining the speed at which a case is disclosed.

The Police subsystem must also play another role against crime, namely dealing with crimes that have not yet occurred. Here, the Police subsystem functions as a crime prevention agent. The function of Police subsystem as a crime prevention is expected to be played more broadly, in accordance with the adage "an ounce of prevention is worth a pund of cure". The same thing was stated by Govler, "the primary object ofan officient police is the prevention of crime; the next that of detective and punishment of offenders if crime is comitted" (Govler, 1943: 92). Thus, with regard to crime, the police subsystem as "gatekeepers" of criminal justice system should function both preventive and repressive.

Police are Gatekeepers of the criminal justice system. The role of Police as investigators of crime, placing police in connection with most ordinary or common crimes, is directly related to the complainant, witnesses or the perpretators of crime (suspect). Most Police work reactive rather than proactive, relying heavily on public members to complain or report on alleged criminal acts. With sufficient evidence based on KUHAP, Police as investigators delegate cases to Attorney General's Office for prosecution.

Not only from the aspect of understanding about matters as stated above, Police on the other hand is also required not only to be able to resolve (reveal) a case that is available to Prosecutor, but also to be able to resolve a case **quickly**, because the speed of Police force to uncover a case as a whole will largely determine Police subsystem performance. Clearance rate is an important sign of overall Police efficiency (Griffin, 1958: 69). Thus, the efficiency of Police subsystem performance is determined by case disclosure level or clearence rate that is carried out by Police subsystem. Clearence rate can also be seen as a controlling tool for Police management and professionalism in carrying out their duties (Wilson, 1962: 112).

Historically, the Police are considered to have preventive function that has been recognized long ago. Van Vollenhoven had stated that the police function was to carry out *preventive rechtzorg*, which was to force the inhabitants of a region to obey the rule of law and to take precautionary measures so that the orderliness of the community remained well preserved" (Vollenhoven in Utrecht, 1960: 60). Prevention of crime was placed as policies primary objective and intergrated into police duties that began to be noticed by the end of 1950s, which recommended holding special training for Police officers so that they became experts in the field of crime prevention, and also introduced partnership approach that suppressed the involvement of organizations outside the Police to get together and to be responsible for crime prevention. In the 1970s development, a special unit was formed in various police organizations tasked with holding crime prevention (Crime Prevention Department) (Crawford, 1997: 26).

From the description above, it can be seen that the current Police subsystem is demanded to be able to function not only with regard to its traditional duties (investigating crime), but also (further in nature) responsible for the realization of the stated society objectives. In this case, the Police subsystem is not only a criminal justice system gatekeepers, but also goal prevention officers. This requires that the implementation of police duties is not merely done as a reaction to the occurrence of crime, but must be done more proactively in controlling crime (Huda, 1999).

However, in the provisions contained in the criminal procedure law itself as a formal provision, regulation regarding the authority to prevent the emergence of crimes that can be committed by Police is not explicitly regulated. Only a small number of regulations regarding crime prevention can be done by the Police. This is as contained in Article 1 number 19 of Code of Criminal Justice regarding crime through being caught red-handed. Other arrangements are also contained in Article 75 of Law Number 35 Year 2009 concerning Narcotics, which gives the authority to the Narcotics Police to carry out the function of preventing narcotics distribution through various investigative techniques.

With regard to the above, in the near future, the Draft of Criminal Procedure Code (RKUHAP) which entering the final stage of its discussion by legislators, provisions regarding preventive actions that can be taken by police should also be explicitly regulated in RKUHAP as a formal provision, so that when the Police take crime prevention action, does not conflict with the principle of existing legality.

Crime prevention committed by Police is also in line with the purpose of criminalization that was not explicitly set out in the Criminal Code (KUHP), but will be explicitly set out in the Draft of Criminal Code (RKUHP). The purpose of criminalization in RKHUP in Article 55 verse (1) is to state that the criminalization is intended to:

a. *Preventing crime by upholding law for the protection of society;*
b. *Socialize the convicts by providing construction to be good and useful people;*
c. *Resolve conflicts caused by crime, restore balance and bring peace in society; and*
d. *Free the guilt of the offender*.

Article 55 verse (2) also states that: *Criminalization is not intended to narrate and demean human dignity.*

With the goal of criminalization contained in this RKUHP, it can be concluded that based on Article 55 verse (1) RKUHP letters a and b, the purpose of retaliation is formulated more **explicitly**. Meanwhile, based on Article 55 verse (1) RKUHP letters c and d, the purpose of retaliation is formulated more **implicitl**y.

Furthermore, discussion about the importance of crime prevention by law enforcers, including Police, has also been discussed for a long time, including in the 4th United Nations Congress in 1970 (Fourth UN Congress, 1971) about *The Prevention of Crime and the Treatment of Offenders* until the 11th UN Congress in Bangkok (Eleventh UN Congress, 2006).

If crime prevention function has become the objective and criminal justice system for the Police, then, in accordance with the concept of criminal justice system as an integrated common goal, it must be understood clearly by subsystems in criminal justice system as a common goal that must be achieved together also with other law enforcers. Thus, Police subsystem is also positioned as a goal prevention officer (Harvey, Grimshaw & Pease in Morgan & Smith, 1989). Where Police Officers should also be seen as officials whose purpose in carrying out their duties is crime prevention. But on the contrary, if Police do not make preventive efforts in their duties, Police will be more focused on their conventional and traditional works, which is only to conduct an investigation of a crime that has occurred.

IV. CONCLUSION

In the reformation of criminal procedure law in Indonesia, it is expected that criminal justice system consisting of law enforcers including Police, Posecutors and Courts can coordinate and synchronize with each other in law enforcement. However, efforts to reform criminal procedure law in terms of the Police independence as "gate keepers" in the law enforcement process are constrained due to the lack of independence they have. Besides, the paradigm of solving crimes that is more prioritized is repressive functions rather than preventive functions. Therefore, there are 2 (two) ways that can be taken to overcome this problem. The first way is realizing Police agency independence. The second way is realizing preventive function rather than repressive function of the Police against crime.

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