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POLICE BUREAUCRATIC REFORM IN LAW ENFORCEMENT BASED ON PROGRESSIVE LAW

( A study on discretionary handling paradigmatic contextual crime through restorative justice system in FKPM in Riau islands Police )



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 Police bureaucracy with the conventional approach, had Internal Legal Culture which oriented to the positivism paradigm law enforcement. The implication of positivism paradigm law enforcement to result that contextual of handling crime with Formal and Rigid, The implication of this condition result in formal and rigid contextual of handling crime, which come down to not realization yet of substantive justice. Therefore, new approach on progressive law be required to be realigned. As for direct from transformation of internal legal culture oriented from positivism paradigm to constructivism paradigm law enforcement.

The issues raised in this study is (1) Why contextual law enforcement through the police bureaucracy with conventional approaches have not been able to realize the substantive justice ? (2) How Police Community Partnership Forum's role as part of the police bureaucracy in contextual law enforcement in Restorative Justice System to realize the substantive justice? (3) How is the construction of the Progressive police bureaucracy in contextual law enforcement using Restorative Justice System approach?

Socio legal research approach is used to uncover issue in jurisdiction Police Office Of Riau Islands. Contextual law enforcement in Conventional Police Bureaucracy result is Not realization yet of substantive justice, due to various factors : (1) Various of regulations on the contextual law enforcement, did not give space for settlement through the Restorative Justice System ; (2) The reason to not give the space for law enforcement is due to fears of abuse of power (3) Conventional approach on police bureaucracy in law enforcement is a Bureaucratic type, arranged by tight hierarchical, attached by investigation of criminal offenses Standard of Procedure, which not take into account of the social environment as well as other non legal factor, consequently cause bureaucracy case at certain points ; (3) Enforcement of the law is not fully carried out by personel who have the competence, as a result of limited human resources and wrong recruitment system, (4) The absence of authority delegation to use police discretion in handling conventional crimes, as a result of accountability misunderstanding ; (5) An understanding of accountability in law enforcement only be conceived as vertical accountability and override horizontal accountability; (6) Law enforcement is running with a mission to achieve rule of law, while the basic values in the laws become marginalized.

The recommendation of Study are (1) To reconstruct and change in police paradigm from legalistic to democratic, which benefit to engage Police Community Partnership Forum ; (2) The policy of community policing should be implemented throughout the unit area, as a forum to solving various social problems in community ; (3) Police need to revise the Police Regulation in the management of investigations, provide space for non-litigation law enforcement implementation and implement progressive police bureaucracy in contextual law enforcement using Restorative Justice System approach.

Keywords : Police Bureaucracy, Police Community Partnership Forum, Law Enforcement and Restorative Justice System.

1. **Introduction**

The crime phenomenon from time to time shows the increasing trend, in terms of quantity and quality as well, but the increase in crime is not comparable with the ability in resolving crimes cases which occur. Average ability of police / investigators in solving crime / Crime that occurred are approximately only 47%. Law enforcement against various types of crimes or offenses are generally resolved through the mechanisms or procedures that have been set in the criminal procedural law, in other words through the Criminal Justice System.

The use of the criminal justice system in processing criminal cases by the police is due to the position of the police in the system. Police is an integral part of a functioning criminal justice system in the investigation of the criminal case. As a logical consequence of the position of the police in the system, therefore any criminal cases which are processed by the police will use the instruments of criminal law. Despite the fact that sometimes the police resolves a criminal case outside the criminal justice system.

The settlement of criminal cases by the police normatively through the criminal justice system, it is aimed at establishing a justice which is simple, fast and doesn’t cost much as mentioned in the book of the criminal procedural law. At the level of the reality of criminal proceedings through the system is not as simple as mentioned in the criminal procedural law, such as the investigation of the case Golf caddy who stole $ 5 which is owned by a golfer who was playing golf at Palm Spring Golf and Resort Batam, and still quite a lot of similar cases that occurred but did not come to the surface.

In addition to the position of the police in the criminal justice system in processing criminal cases where police generally choose the mechanism that has been established, which is also related to the understanding of the crime. The understanding of the crime is often only seen from one point of view only that of the perpetrator as a focus factor handling. While other factors such as witnesses, affected communities from crime, local knowledge and others are excluded. The principles of this understanding, assume that the ideal crime prevention is through the punishment of imprisonment for offenders.

Penitentiary to prepare prisoners to be able to integrate healthy society so as to play a role again as members of the public who are free and responsible, although in reality it is no longer functioning optimally. It thus caused by excess capacity, which causes management Penitentiary is not running. This situation has turned the Penitentiary into an institution that plays a role of educating people to become professionals in crimes.

Based on the exposure conditions of law enforcement, as described above, also in accordance with the policies in the prevention of crime (criminal policy), then the actual handling of criminal cases can be through two (2) lines, such as penal line (criminal law) and a non-penal line (not or outside the criminal law). Therefore in crime prevention efforts, the Police through discretionary authority which is attached to it, can make a decision to use penal policy and non-penal policy, with the goal of achieving real justice expected by society (substantive justice).

In accordance with the mentioned subject above, so as to be able to realize this requires realignment to make a change in the tradition of thinking about the law, such as the tradition of thinking about the law which uses only optical normative (paradigm positivism) towards thinking about the law that is more progressive (constructivism). Besides, in the realignment also need to pay attention to the concept of justice which is characterized by Indonesia that lives and thrives in the community as well as considering the tendency of the global community that includes a restorative justice as one way in solving a crime, so the Criminal Justice System will be more effective.

 The focus of this study is to understand the management of handling contextual crimes by conventional police bureaucracy and its social dimensions that influences it, so it can not bring about justice which is really expected by society (substantive justice). One reason is the inconsistency in the indonesian police chief regulations in regards to the handling of the contextual crime outside the criminal justice system with equal legal norms as well as the nature of the legal norms of higher nature. That is something that interests the author to reveal about the underlying social dimension, which leads to inconsistencies. Then to reconstruct progressive police bureaucracy in handling crimes to justice-based contextual substantive.

1. **Statement of the Problem**

 There are three problems stated in this thesis, these problems are: (1) Why has the handling of contextual crimes through conventional police bureaucracy not been able to realize the substantive justice, the real justice as expected by the public? ; (2) What is the role of the police and community partnership forum (FKPM) as a driving force of community policing as democratic policing or community policing (Polmas) in the handling of contextual crimes that are in the framework of reform of the police bureaucracy? ; and (3) How is the construction of progressive bureaucratic police in the handling of contextual crimes in the context of restorative justice in order to achieve substantive justice ?.

**C. The Purposes of Study**

 The purposes of this study are (1) To understand why handling contextual crime through conventional police bureaucracy has not been able to realize the substantive justice, the real justice as expected by the public; (2) to understand the role of Police and Community Partnership Forum (FKPM), as a driving force Community Policing as Democratic Policing or Community Policing (Polmas), the handling of contextual crime in the framework of the Police Reforms; and (3) To initiate progressive policing bureaucracy in the handling of contextual crimes in the context of restorative justice in order to achieve substantive justice.

**D. Research Method.**

To answer the three issues mentioned above, the tradition of qualitative research methods with the socio-legal approach can be used. This construktivism qualitative research paradigm choose jurisdiction Riau islands regional police as study sites. Riau islands regional police is chosen as a location for research, because this area is an area that largely (96%) is water with various limitations, including in the form of supporting infrastructure (especially transportation). A region with a characteristic feature thus has an opportunity for the development of restorative justice model solution through the Police and Community Partnership Forum (FKPM) in handling contextual crime.

Moreover, Riau islands provincial police region has diverse population with different customs which allow the settlement of a problem to do with the cultural approach. According to the research paradigm used, that in doing this research observation, researchers will take a position as a participant observer, so basically the researcher is the main instrument (key instrument) in data collection. Because the reseacher is in charge in the Riau islands regional police, then the region is a research data.

**E. Discusion**

The study's findings indicate that the reality of law enforcement against contextual crime by conventional police bureaucracy, often deadlocked (deadlock formal legality), as a result of law enforcement is simply using the paradigm of positivism. The implications of the use of the paradigm of positivism in law enforcement, requiring law enforcement which is not required to interpret the law more than what is read textually and impossibility of application of discretion. Interpreted the law as law as what is written in the books, the rules that apply generally positive as Ius constitutum.

Therefore the use of this treatment paradigm contextual crime will always end up in the criminal justice system. Through this process, the justice which is earned by people who are seeking for justice is only a form of justice which is given by the State and delegated to law enforcement officials, such as the police, prosecutors, courts and prisons. In essence embodied justice is justice that is restitutif and retributive. While justice is actually required based on an understanding of the perpetrators, witnesses and victims affected communities from crime can not be realized, so that substantive justice become hope of those seeking justice to be ignored.

There are several factors that cause the handling of contextual crime by conventional police bureaucracy, substantive justice can not be realized, the factors are:

**1. Rule Making Institutions**

a. Police in essence is not a legislative body, but within the scope of administrative authority which has the authority to make the police internal regulations, such as regulations of Indonesian police chief of criminal investigation management and regulations of the Indonesian police chief of community policing programs.

b. Legal norms stated in the regulations of the Indonesian police chief, indicating the absence of harmonization with the legal norms which equals nature and the legal norms of higher nature, so it is not aligned with stupenbau theory. This can be seen from the Indonesian police chief regulations of management investigation of criminal offenses which do not give space for contextual crimes settlement resolved outside the criminal justice system. While the Indonesian police chief regulation on community policing programs, providing space for contextual crimes can be resolved outside the criminal justice system, through the restorative justice system.

c. Due to the lack of harmonization between the two regulations of the Indonesian police with legal norms that equals or is higher nature, at the level of practice often causes misunderstanding among the personnel in charge of law enforcement personnel in charge of the community policing program (Polmas).

d. The norms that govern the handling of contextual crimes can be completed outside the Criminal Justice System are not accomodated into a regulation indonesia police chief of the Crime Investigation Management, as the effect of the Internal Legal Culture in this case the police, who understand the law Rechtsdogmatik. In addition, it is also the existence of a concern if the model settlement outside the Criminal Justice System is set into the Regulation, it will be used as justification for the completion of the crime outside the context of existing procedures in order to meet the personal interests of individuals police, so it is feared causing Abuse of Power.

e. The absence of pressure groups, in this case a group of academics, non-governmental organizations and others as personal social forces which influence when Indonesian police chief regulations of criminal investigations management were made, resulting in failure to apply legal norms governing the handling of contextual crime can settled out of the criminal justice system.

f. Provision of space arrangement for the settlement of contextual crime through Restorative Justice in the Indonesia police chief regulation of the Crime Investigation Management, actually does not need to be a concern, if the lack of clarity about the terms, limits, mechanisms and models of supervision in Restorative Justice.

**2. Rule sanctioning Institutions**

a. Police work essentially as a work that is a profession including the aspects of law enforcement, which requires a high skill requirements to the bearers and executors. Therefore only be entered by those who undergo education and technical training is very advanced in nature. In order to realize these goals in recruitment should be based on Standard Operating Procedures (SOP), which is based on the objectivity, knowledge, expertise, experience, and through the assessment.

b. At the level of reality such procedures have been carried out, but the results of the recruitment is still not in line with expectations. This can be seen from the personnel in charge of law enforcement, only amounted to approximately 35% have a requirement as a professional such as an educational background in law, majoring in criminal detectives and have experience in the field of law enforcement.

c. One cause of not meeting the requirements as a professional, because in the recruitment pattern has not completely based on competence, but still there is a tendency based on the assessment of Project Implementing Unit Heads and considerations based on kinship, consequently the value of subjectivity is still quite high.

d. In general understanding of the law of police personnel conducted Rechtsdogmatik, so influential in terms of the handling of crimes using only contextual paradigm of positivism. As a result, law enforcement conducted a procedural nature and do not consider the social dimension where law enforcement is done.

e. Facilities and infrastructure and the budget will be very decisive for the level of success in law enforcement, but in reality the available budget to conduct an investigation into a crime, is not comparable with the needs of the ideal of the necessary budget. Budget provided by the state at this time, about 53, 28%, therefore it is not comparable with the number of crimes handled by the police.

**3. Rule Occupant**

a. Rule occupant will determine how much the effectiveness of the operation of law in the society. In the context of law enforcement against contextual crimes, some rule occupants who participate will also affect the working of the law, including the perpetrators of the crime, witnesses, lawyers, non-governmental organizations and communities affected by crime. How big is the influence of each occupant's rule will be determined by the social structure in which the laws are enforced.

b. Community structure can be a barrier as well as to provide social facilities, thereby enabling law can be applied as well as possible. That is because that law essentially has a reciprocal relationship with the community, as a regulator of the community and also work in the community.

c. In the social structure of the society which can be categorized as a public middle and modest people, as in the Natuna area and Tanjung Pinang, handling contextual crimes outside the Criminal Justice System, in this case through the Restorative Justice at Police and Community Partnership Forum (FKPM) look more effective, because of the diversity of the population level is not too high , the geographical position is mostly waters, so that when handling a crime contextual processed through the Criminal Justice System costs are quite expensive.

d. While the social structure of the community can be categorized as a modern society, such as the city of Batam, that the handling of contextual crime outside the Criminal Justice System, are not as effective in people with a simple and intermediate social structures. This is because the population diversity factor is very high, the emergence of professional specialties such as non-governmental organizations, lawyers / advocates who participated in the completion of the contextual crimes influences outside the Criminal Justice System.

e. In essence the effect of the rule occupant in the handling of crime contextual quite influential and has a different role pursuant to a growing social reality in which law enforcement is done. Therefore, in a particular social reality of law enforcement is likely to be directed to a pattern of law enforcement paradigm positivism, and at other social reality tends to be directed to law enforcement through outside the Criminal Justice System. If the social reality does not become one of the considerations in law enforcement, then law enforcement will not be able to run effectively.

f. Rule occupant in this case the perpetrators, witnesses, communities affected by crime and law enforcement officials will determine the handling of a contextual crime will be solved through or outside the Criminal Justice System, in this case through the Restorative Justice System on Police and Community Partnership Forum (FKPM).

Police bureaucracy conventional character mentioned above have created opportunities for abuse of authority in the form of: (1) Law enforcement used as a commodity for profit, thus mixing between public purpose with private purposes; (2) Arrogance in law enforcement, such as the interest among personnel who served in the field of criminal detectives with personnel who served in the field of community policing. As a result of the bureaucratic character of the police, resulting in the accumulation of matter at the stage of inquiry / investigation; energy depletion of the police to deal with crimes that are contextually while other issues have greater interest are not resolved; and ultimately lowers public confidence in the law enforcement carried out by the police bureaucracy.

Based on the handling of contextual crime by conventional police bureaucracy, as mentioned above, the authors propose the construction of progressive bureaucratic police in handling contextual crime, which can be done through a dialectical process with prismatic theoretical framework by Fred W. Riggs and utilization of the principles of constructivism. Based on the value of substantive justice, the police bureaucracy in handling contextual crime (ideal) and (existing) can be formed in the police bureaucracy handling contextual crime, called "prismatic". As for new construction in the handling of police bureaucracy contextual crime are as follows:

Table

New Construction Progressive Bureaucracy Police in handling contextual crime

|  |  |
| --- | --- |
| **NO** | No Progressive police bureaucracy in handling contextual crime (Prismatic) |
| 1 | **Basic:**a) Law No. 1 of 1946 of the book of criminal law, article 82 (Institute Afkoop)b) Law No. 8 of 1981 on Criminal Procedure, Article 7, paragraph (1) letter j;c) Law No. 2 of 2002 on the Indonesian National Police, Article 16, paragraph (1) letter L and paragraph (2);d) Indonesian police chief Decree No. Skep / 737 / X / 2005 dated October 13, 2005, on policies and strategies for the implementation of community policing models in the implementation of police duties;e) Indonesian police chief Decree No. Skep / 433 / VII / 2005 on the establishment of the operational manual of society (CBP);f) Indonesian police chief Regulation No. 7 of 2008 on the basis of guidelines and implementation of community policing strategies in the implementation of police dutiesg) Decree of the Indonesian police chief No.Pol: Skep / 507 / X / 2009 dated October 30, 2009 on Guidelines for the implementation of community policing application standards for implementing community policingh) Indonesian police chief Regulation No: Perkap / 3 / V / 2015 on Community Policing  |
| 2 | **Purpose / Objective:**a) Law enforcement is done with the aim of increasing public awareness and bring justice is really expected by society (substantive justice);b) To achieve these objectives, the rule of law must be oriented in accordance with its mission flexibly and in accordance with the evolving social reality in which law enforcement is done. |
| 3 | **Authority:**a) Law enforcement can be done through ad hoc teams or through a forum involving other parties, including community empowerment;b) Decentralization in law enforcement with the aim closer to the public service, law enforcement by the police leading resort, while police level sector is only problem solving;c) Law enforcement is done in a flexible manner taking into account the existence of legal pluralism;d) Qualitative measurement of success is calculated through the achievement of solving problems that occur in the community;e) The tolerance of the use of police discretion in enforcement, in accordance with the purpose of discretion, do not conflict with the provisions of the legislation; in accordance with AUPB; based on objective reasons and not cause Conflicts of Interest. |
| 4 | **Rules / Regulations**a) The lack of dependence on regulations / legislation, in this case related to the state law (state law);b) The law is the result of mental constructs between individuals through a consensus by taking into account local wisdom;Implementation can be done through the interpretation of the law by taking into account the social reality that developed where law enforcement is done |
| 5 | **Decision Making / Decision Makers**a) Decision making is made with the involvement of other parties (Participative);b) Decision-making is focused on the growing problem by taking into account the existing social reality.c) The existence of extensive devolution, so it does not depend on a person; |
| 6 | **Career**a) Can perform tasks concurrently and temporary not only from the Police;b) The involvement of other parties can be through sub-contract by taking into consideration the expertise / professionalism / competence;c) Designation based on ability / competence and absence of the element of subjectivity of kinship |
| 7 | **Consequence**a) In handling the contextual crime requires a change of mind by not only using the paradigm of positivism, but need to shift the paradigm from positivism to constructivism in accordance with evolving social reality in which law enforcement is done;b) The need for revision of the Regulation No. 14 of 2012 on the Management of criminal investigations, so as to give space to the settlement arrangements that are contextual crime through restorative justice;c) Handling contextual crime can through a forum, in this case the Police and Community Partnership Forum (FKPM), as containers for transporting dialogical in solving existing problems. |

Policy on settlement arrangements contextual crimes outside the Criminal Justice System, in this case through the Restorative Justice System, in fact has happened inconsistency. It is seen from disharmony between the legal norms governing the settlement of contextual crime outside the legal system, on the Regulation of the Crime Investigation Management does not provide space for settlement contextual crimes outside the Criminal Justice System. While on the Regulation governing Community Policing Program provides space for settlement contextual crime through restorative justice on Police and Community Partnership Forum (FKPM).

Therefore, through it’s administrative authority, the police can do rule breaking against the Indonesian police chief regulation No. 14 of 2012 on the management of criminal investigations. Rule breaking such as: (1) harmonization clauses that exist in the Indonesia police chief regulations with equal legal norms, in this case the Indonesia police chief regulation No: Perkap / 3 / V / 2015 on Community Policing; (2) To harmonize the legal norms which rank higher in character, in this case the Law of the Republic of Indonesia No. 8 of 1981 on Criminal Procedural Law, the Law of the Republic of Indonesia No. 2 of 2002 on the Indonesian National Police, even with Grund Norm in this case the 4th principle of Pancasila; (3) Adjust the tendency of the international community who have an idea / notion to approve the use of penal mediation (Penal mediation) to resolve certain crimes as written in several documents of the UN Congress.

Based on this, the actual basis in the settlement of contextual crimes outside the Criminal Justice System is clear and does not need to be a discourse in both the theoretical and the level of implementation, therefore it is recommended urgently needed revision of the Police Regulation No.14 of 2012 Investigation of the Management of Crime, the spirit returns to the legal norms which rank higher in character, in this case the Law on the Indonesian National Police, the Law on Criminal Procedure even with the spirit that existed at the Grund Norm The 4th principle of Pancasila.

 At the operational level in the framework of substantive justice in a contextual crimes process by the police bureaucracy, the main thing to do is to change cultural. Changes mean that any change in the legal understanding of the whole existing personnel in the police bureaucracy. Understanding of the law which was originally to be rechtsdogmatic toward understanding the laws that are pluralism, so as to implement the law it is possible to resolve through the restorative justice system. Beside that also the need for an intense socialization on the implementation of restorative justice programs in the handling of contextual crimes, especially the police internal bureaucracy and to society in general.