



The Criminal Law Policy in Cases of Criminal Infringement Made by Polri (Police of Republic of Indonesia) Members (Study in Regional Police in Central Java)

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Received February 25 2018, Accepted April 22 2018, Published May 30 2018

DOI: 10.15294/ijcls.v3i1.17167

How to cite:

Lihu, A.A.A.P (2018). 'The Criminal Law Policy in Cases of Criminal Infringement Made by Polri (Police of Republic of Indonesia) Members (Study in Regional Police in Central Java)', *Indonesian Journal of Criminal Law Studies* 3(1): 71-80. DOI: 10.15294/ijcls.v3i1.17167

Abstract

The Police of the Republic of Indonesia (Polri) has a role to realize the internal security of Indonesia. Many people consider that members of the Police who commit a criminal offense will not be prosecuted under the law as they should, and get protection from the Police institution itself. This study aims to determine the extent of criminal law policy in an effort to overcome criminal acts committed members of the Police either formulatively, applicative or executive. This research uses normative juridical method with empirical juridical approach to make this research more weighted. Normative juridical method is used to examine and analyze formulative policies related to criminal acts committed by Polri members, while empirical juridical approach is used to examine law enforcement practices against members of the Police who committed criminal acts in the territory of Regional Police of Central Java. The results of the study indicate that binding regulations for Indonesian citizens who commit criminal offenses both regulated in the Criminal Code of Indonesia and outside the Criminal Code of Indonesia, are also binding on the members of the Police who commit the crime. While the future criminal law policy regarding criminal acts committed by members of the Police has improved, although there are still some weaknesses that still need to be reviewed, in addition, also investigated the practice of criminal law enforcement against members of the Police who committed criminal acts. The results of this study attempt to straighten the view of the people of Indonesia who assume that every member of the Police who commit a criminal act will be protected by the Police institution itself.

Keyword: Criminal Law Policy, Crime, Police

INTRODUCTION

Today one of the major issues of law enforcement in Indonesia is how to enforce the law fairly, so that all Indonesians believe that its security is secure, its life is protected by law and its rights are respected. Achieving this law enforcement in Indonesia

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especially in criminal law must be effective, efficient, appropriate and efficient, and fulfillment of basic requirement that is fulfillment of rights of every person to be protected without seeing ethnic background, religion and culture.

In criminal law there are 3 (three) stages of concretization of criminal law. Concretization is making something workable from abstract things. The three stages are:

1. Formulation, namely the stipulation stage of criminal law (formulative / legislative powers) on the kinds of criminal acts and types of imposed sanctions;
2. Application, that is, the stage of applying criminal law or criminal imposition to a person or corporation by a judge on the acts committed by the person / corporation (applicative / judicial power);
3. Execution, ie the stage of criminal execution by the criminal execution apparatus of a person or corporation that has been sentenced to criminal (executive / administrative authority) (Nawawi Arief, 2005).

The state structure of the Republic of Indonesia has law enforcement elements assigned to run each stage, including the execution stage run by the Executive Board and comprises of Penitentiary and Police.

In law enforcement systems in Indonesia, law enforcement officers must be at the forefront, because they have the obligation of enforcement and supervision so that the function of the law can run well. As their law enforcement officers must set a good example, because it also affects the compliance of the community to the rule of law in force, one of the state apparatus that is in the structure of law enforcement in Indonesia is the Police of the Republic of Indonesia (POLRI). POLRI role as protector, protector and public servant and law enforcement, but as ordinary people, the police also did not escape from mistakes and criminal acts committed. POLRI in performing their duties are often faced with the point of saturation so that sometimes they make inappropriate decisions. Many allegations in the community about the police, such as police life not far from narcotics and drugs and police who are considered arrogant because of acts of arbitrary. which is inconsistent with the Disciplinary Rules and the Rules of Professional Codes of Ethics created by POLRI institutions.

The recent fact of criminal acts committed by POLRI members has resulted in a diminished image of POLRI in the eyes of the people. The act of deviation or abuse of power as practiced by law enforcement officials should be followed up with firm, transparent action, and proper legal action is needed enforcement) when there is a violation of the law, in accordance with the legal system or legal norms that are violated. In particular, concerning crimes affecting the good name of POLRI institutions should be role models in order to minimize criminal acts.

Criminal law enforcement efforts and the Police Code of Conduct are urgently needed for the realization of the implementation of the tasks imposed and the achievement of POLRI professionalism. It is very unlikely that law enforcement can work properly if the law enforcers themselves are not disciplined and unprofessional. The indiscipline and unprofessionalism of the POLRI will greatly affect the enforcement of the law or the disclosure of crimes committed in the community.

Based on the above description, it can be concluded that many parties have not fully understood how the policies applied for members of the Police who committed a crime. Likewise, the public sometimes even assumes that members of the Police are immune from the law, because they are protected by the institution, therefore, the authors conduct research entitled Criminal Law Policy in Crime Penalty Efforts Conducted by Police (Study in Regional Police Region of Central Java) by describing how is the current criminal law policy in the effort to overcome the crime committed by members of the police and how the criminal law policy concerning the effort to

overcome the criminal acts committed by the police in order to update the criminal law in Indonesia in the future.

RESEARCH METHOD

This research is focused on criminal law policy, and the approach taken is normative juridical approach. Normative juridical approach is the main approach in this research, because the main focus in this data, especially primary legal materials in the form of legislation, and secondary legal materials, in the form of Criminal Code of Indonesia and scientific work. However, to support this research, also conducted an empirical juridical approach. The use of this social method in addition to normative research, according to [Sunaryati Hartono \(1994\)](#) will give more weight to the research concerned.

FINDING AND DISCUSSION

Based on Act No. 2 Year 2002 on POLRI, it is important to understand the important roles, functions and tasks of the Police, namely:

- a. POLRI is a state instrument that plays a role in maintaining security and public order, upholding the law, and providing protection, protection and service to the community in the framework of maintaining internal security (Article 5 paragraph (1)).
- b. The function of the police is one of the functions of state government in the field of maintaining security and public order, law enforcement, protection, advisory, and service to society (Article 2).
- c. POLRI aims to realize domestic security which includes maintaining security and public order, orderliness and law enforcement, protecting, protecting, and serving the community, and ensuring the security of society by upholding human rights (Art. 4).

The above description shows that the Police is indeed one of the governmental institutions under the President who has role, functions and main tasks to carry out internal security affairs covering:

- a. maintaining security and public order;
- b. law enforcement;
- c. protection, shelter, and service to the community.

The three main tasks are actually not a sequence of priorities, because all three are equally important, while in the implementation of the main tasks which will be put forward depends on the situation of society and the environment encountered because basically the three main tasks are implemented simultaneously and can be combined. In the implementation of this task should be based on legal norms, heed the norms of religion, decency, and decency, and uphold human rights.

POLRI as a responsive government sub-system has been trying to contribute to realize the principles of Good Governance and Clean Government both in the implementation of the main duty to maintain Kamtibmas, uphold the law and protect, protect and serve the community as well as within the internal POLRI itself as proclaimed in the grand strategy POLRI in the form of Trust Building.

The complexity of the challenge of POLRI's duties in the reform era in its journey besides has benefited the POLRI with significant progress both in the field of power development, coaching and operation. On the other hand, honestly acknowledging there is a negative access to the implementation of the main task of deviating the behavior of members of the Police such as abuse of power, and committing other disgraceful acts

that violate moral, social and religious norms, including the possibility of doing criminal act.

Police and members of the police who are part of law enforcement have duties and authorities regulated by law. Police itself has a juridical definition, contained in Act Number 2 Year 2002 on the Indonesian National Police. Article 1 Sub-Article 1 of Act Number 2 Year 2002 regarding State Police of the Republic of Indonesia states that "*Police are all matters relating to the functions and police institutions in accordance with legislation*". Article 1 Sub-Article 2 of Act Number 2 Year 2002 regarding State Police of the Republic of Indonesia states that "*Member of the Indonesian National Police is a civil servant of the Indonesian National Police*".

In some criminal cases, not only the general public is the perpetrator but there are also members of the police who are involved in criminal acts. The criminal acts committed by members of the police include violations of the Disciplinary Rules and Code of Ethics of the Police Professionals of the Republic of Indonesia. Such provisions are governed by Regulation Government of the Republic of Indonesia Number 2 Year 2003 on the Discipline Regulation of Members of the Police of the Republic of Indonesia.

Article 1 paragraph (4) of Government Regulation of the Republic of Indonesia Number 2 Year 2003 regarding Disciplinary Regulation of Member of the State Police of the Republic of Indonesia states that "*Violation of Disciplinary Rules is the speech, writings, or actions of members of the Indonesian National Police who violate the rules of discipline*". Article 7 of Government Regulation of the Republic of Indonesia Number 2 Year 2003 concerning Discipline Regulation of Member of State Police of the Republic of Indonesia states that "*Members of the Indonesian National Police who are in fact violating the Disciplinary Regulations of Members of the Police of the Republic of Indonesia shall be liable to sanctions in the form of disciplinary action and / or disciplinary penalties*".

The two articles above are the juridical definitions of the Disciplinary Rules Violations and also the sanctions imposed on members of the police who turn out to violate disciplinary rules.

The disciplinary punishment of police officers committing a crime shall not remove their criminal prosecution. This is stipulated in Article 29 paragraph (1) of Act Number 2 Year 2002 regarding the State Police of the Republic of Indonesia states that "*Members of the State Police of the Republic of Indonesia shall be subject to the authority of the general judiciary*".

This provision is reinforced in Article 12 paragraph (1) of Government Regulation of the Republic of Indonesia No. 2 Year 2003 on Discipline Regulation of Members of the Police of the Republic of Indonesia stating that "*The disciplinary penalty does not remove criminal charges*".

The two articles above clearly state that the imposition of disciplinary punishment penalty will not eliminate criminal charges. Concerning Violations of the Code of Ethics of Police Professionals is stipulated in Chief of Police Regulation Number 14 Year 2011 regarding the Code of Ethics of Police Profession.

Article 1 Sub-Article 5 of the Police Chief Regulation Number 14 Year 2011 regarding the Code of Ethics of the Police Profession states that: Code of Ethics of the Police Profession, hereinafter abbreviated as KEPP is the norms or rules which inappropriate or inappropriate to be done by the Police Member in carrying out duty, authority and responsibility of office.

Furthermore, criminal law in Indonesia is divided into two, namely General Criminal Law and Special Criminal Law. Certainly, the General Criminal Law can be interpreted as criminal law and generally accepted, contained in the Criminal Code of

Indonesia and all legislation -disciples that alter and supplement the Criminal Code of Indonesia.

Special Criminal Law (Special Criminal Law Regulation) is defined as legislation in certain areas that have criminal sanctions, or criminal acts regulated in specific legislation, outside the Criminal Code of Indonesia, both criminal and non-criminal laws but has criminal sanctions (provisions that deviate from the Criminal Code of Indonesia) (Syamsudin, 2011).

Below the authors present two sub- chapters on the Criminal Law Policy in an effort to overcome the criminal acts committed by police officers who are Indonesia regulated in the Criminal Code of Indonesia and those outside the Criminal Code of Indonesia.

Criminal Justice Policy in Criminal Act Efforts that can be Conducted POLRI Members Arranged in the Criminal Code

In the second book on crime, several articles specifically regulate criminal acts committed by state officials, these articles relate to crimes that can be committed by members of the Police. There are 9 (nine) articles, all related to crimes that can be committed by members of the Police, except constitute the unity of the ethical or philosophical foundation relating to the behavior or speech regarding the things that are required, prohibited, for articles 427 and 429 which are articles directly addressed to members of the Police in relation to the Duties and Powers of Polri Members. The crimes described in the Criminal Code of Indonesia can be categorized as criminal acts of abuse of authority in power or position. Abuse of authority in power or position can be viewed as an act against the law. This is intended because the act of abuse of authority is a disgraceful act, because people tend to implement something not in accordance with the task, the principal and the functions that should be implemented. But on the contrary, that is taking advantage of opportunities that and with the authority or power possessed for committing a crime that is detrimental to the state and society. Considering the role and position of the civil servant is the state apparatus that also holds the power, it is not excessive to say that in state officials, especially members of the Police, there is the potential to abuse position, authority or power.

Criminal Law Policy in Criminal Act Efforts that Can Be Conducted POLRI Members Arranged in the Legislation Outside of the Criminal Code of Indonesia

In addition to being regulated in the Criminal Code of Indonesia, some written rules and regulations outside the Criminal Code of Indonesia also contain criminal justice policies intended for members of the INP. The position of the Special Criminal Law in the criminal law system is complementary to the criminal law codified in the Criminal Code of Indonesia. A codification of the penal law no matter how perfect it will at one time be difficult to meet the legal needs of the community.

The following authors present the results of analysis of several Laws, Government Regulations and Police Regulations containing criminal law policies for members of the Police who commit a crime. The selection of Laws, Government Regulations and Kapolri Regulations to be analyzed is limited by some laws and regulations only, because laws and regulations containing criminal justice policies for police officers who commit crimes are numerous. The selection of legislation is based on the personal assessment of the author and the actual data on the number and types of criminal acts by members of the Police in the Central Java Regional Police in 2014. The legislation that will be

described is related to the criminal acts committed by many state officials, in this case members of the Police.

- a. Act Number 31 Year 1999 in conjunction with Act Number 20 Year 2001 concerning the Eradication of Corruption
- b. Act Number 35 Year 2009 on Narcotics
- c. Legal Policies in the Use of Firearms by Police

Normatively, Indonesia is actually a country that is quite strictly apply the rules of ownership of firearms. There are a number of legal grounds governing this matter, ranging from Emergency Law No. 12 of 1951 and 1960 on Changing *Ordonnantietijdelijke Bijzondere Strafbepalingen* and Government Regulation No. 20 of 1960 on the Authority of Licensing Given According to the Laws Regarding Firearms. The rest is a regulation issued by the Police.

Legal Policies in Investigation and Investigation by POLRI Members

Polri as investigator is based on the provision of Article 14 paragraph (1) letter (g) of Law Number 2 Year 2002 regarding Police of the Republic of Indonesia, stating that "*Conduct investigations and investigations of all crimes in accordance with criminal procedural law and other laws and regulations*". In Law Number 2 Year 2002 regarding the Police of the Republic of Indonesia authorizes the Police to conduct investigation and investigation tasks, but does not explicitly regulate the investigation and investigation, so that Law Number 2 Year 2002 regarding the Police of the Republic of Indonesia is still referring to Criminal Procedure Code as well as other legislation relating to investigation and investigation.

Enforcement Practices against POLRI Members Conducting Criminal Acts in Central Java Regional Police Region

It is common knowledge that law enforcement in Indonesia is still weak. People are good at saying that the law is like a spear gun that is pointed down but dulled up. That is, the rules of law are only imposed on weak people or small people. They are weak in economic resources (poor), lowly educated, powerless, have no connection with officials, and will not be difficult to punish. Strong parties who are in opposition to the conditions already mentioned may escape punishment for committing a crime or, at least, a lighter sentence than a weaker party.

In the community's perspective this condition also applies to members of the INP who are committing criminal acts, is considered a strong party, the police are supposed to always protect their members who commit criminal offenses. Many comments argue that members of the Police who commit a crime may escape punishment, or at least the punishment can be lighter than the ordinary people.

The authors present simple data on the handling of criminal acts committed by members of the Police in the Year 2014 in the regional police of Central Java:

1. Abuse of Narcotics group I for myself. Criminal sanctions in the form of Imprisonment for 1 year (Verdict of The District Court of Batang No: 114/Pid.Sus/2012/PN. Batang date 9 Juli 2012). Disciplinary sanction in the form of liability of Violators to apologize verbally before the Trial KKEP and/or in writing to the Police leader and party were harmed also mutation to the different functions at least 1 (one) years (Verdict of the Commission Code Of ethucPolri Nomor: PUT KKEP/01/XII/2013/KKEP tanggal 2

Desember 2013).

2. Pemerasan dengan ancaman kekerasan. Sanksi pidana berupa Pidana Penjara selama 1 tahun (Putusan MA-RI Nomor: 311/K/Pid/2012 tanggal 26 Maret 2012). Sanksi disiplin berupa Pemberhentian Tidak Dengan Hormat (PTDH) (Kep Komisi Kode Etik Polri Nomor: PUT KKEP/05/VIII/2014/ KKEP tanggal 6 Agustus 2014)

Based on the above data, the public's assumption about the existence of special protection from the police for its members who commit a crime can be said to be inappropriate.

Polri is considered to protect its members from the public court, by no longer prosecuting the criminal acts committed by its members, so it does not continue in public court and only sanctioned by a minor disciplinary infraction. It is unlikely that the Police can protect its members from general judicial procedures and only sanction disciplinary violations, because of disciplinary sanctions imposed through the Commission of Ethics Commission of Police can only be carried out when crimes committed by members of the Police have been given a permanent legal decision.

According to Article 29 paragraph (1) of Law Number 2 Year 2002 concerning the Police of the Republic of Indonesia, members of the Police are subject to general judicial powers. This indicates that members of the Police are civilians and not subject to military legal subjects.

Members of the police including civilians, but against them also apply the provisions of the Disciplinary Rules and the Code of Ethics Profession. Regulation of Discipline Police regulated in Government Regulation No. 2 of 2003 on the Discipline Regulations Member of the Police of the Republic of Indonesia. Meanwhile, the code of ethics of the police is regulated in the Chief of Police Regulation No. 14 of 2011 on the Code of Ethics of the State Police of the Republic of Indonesia.

A police officer who commits a criminal act has violated the rules of discipline and code of ethics because every member of the Police is obliged to uphold the law and maintain the honor, reputation, and dignity of the Police of the Republic of Indonesia (Art 5 (a) PP No. 2 of 2003 jo Art 6 and 7 PP Kapolri No 14 of 2011).

Violations of disciplinary rules and codes of ethics will be examined and if proven to be sanctioned. The imposition of disciplinary sanctions as well as sanctions for violations of the code of ethics do not remove the criminal charges against the police officers concerned (Art 12 (1) PP No. 2 of 2003 jo Art 28 (2) PP Kapolri No 14 of 2011). Therefore, police officers who commit criminal acts will still be processed criminal procedural law despite having undergone disciplinary sanctions and sanctions violating the code of ethics.

The criminal ruling against the police officer has a permanent legal force, he is threatened with a disciplinary sanction imposed by the police, one of which is dismissed with no respect based on Article

12 paragraph (1) letter a of Government Regulation no. 1 of 2003 on the Dismissal of Members of the Police of the Republic of Indonesia, which states: *Members of the State Police of the Republic of Indonesia shall be dismissed with no respect from the Service of the State Police of the Republic of Indonesia if: the imprisonment is based on a court decision which has had permanent legal power and according to the consideration of the competent authority cannot be maintained to remain within the service of the Police of the Republic of Indonesia.*

Thus, even though the police officer has been convicted under a court of law of permanent jurisdiction, the police officer may only be dismissed with disrespect if according to the consideration of the competent authority he cannot be retained to remain within the police service. The dismissal of police officers shall be conducted after

the session of the Commission of Ethics Committee of the Republic of Indonesia Police. Thus, although police personnel are also civilians, there are differences in the process of investigating their case with other citizens because in addition to being subject to the laws and regulations, the members of the Police are also bound to disciplinary rules and codes of conduct which must also be obeyed.

Criminal Law Policy on Crime Action Efforts by POLRI Members in the Future of Criminal Law Reform in Indonesia in the Future

Renewal of the criminal law in its broadest sense includes three main matters, namely: the renewal of criminal law rules or often referred to as the renewal of material or substantive criminal law, the renewal of the legal procedure of the criminal law / criminal procedure law and the renewal of criminal law (Nawawi Arief, 2014). In the implementation of the reform of the criminal law, the three areas ideally should be jointly renewed, because if only one of them, will cause difficulties in the implementation, so the main purpose of criminal law renewal, ie crime prevention, will not be achieved maximally.

The meaning and substance of the criminal law reform, contains an attempt to reorient and reform the criminal law in accordance with the socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlie social policy, criminal policy and law enforcement policy in Indonesia (Nawawi Arief, 2010).

The concept of the Indonesia Penal Code now still has some of the weaknesses contained in the related articles on the prevention of corruption committed by state officials; related also members of Polri. Kelemahan are among others; a number of articles reduce the duration of punitive sanctions, and eliminate the minimum punishment and even eliminate the threat of capital punishment, with the regulation of sanctions that lighter. When enacted later, this regulation is very risky to be a legal umbrella for efforts to eradicate corruption in Indonesia.

Another weakness is that if the concept of the Criminal Code has been enacted into force, then by itself a special criminal act of corruption in a juridical manner is no longer valid. This raises the potential to eliminate the existence of KPK and related legal institutions in handling corruption in Indonesia; and also potentially increasingly widespread corruption practices in society.

Nevertheless, the concept of the Criminal Code is much better to codify the general and special rules that are binding on the members of the Police who commit the criminal offense. The Criminal Code concept contains rules that the legal force is expected to suppress criminal acts committed by Polri members, should tackle criminal acts

CONCLUSION

Members of the Police Force of the Republic of Indonesia are subject to the general judicial powers, that is to say, all police officers who commit crimes are subject to the Indonesia Criminal Code and other laws and regulations outside the Indonesia Criminal Code. The regulations governing the crime by members of the Police are quite numerous and spread within and outside the Criminal Code, or it can be said to be unqualified under one legislation. From a number of articles mentioned and attempted to be analyzed by the authors in advance, the concept of the Criminal Code of Indonesia is much better to codify general and special rules that are binding on police officers who commit crimes. The concept of the Indonesian Criminal Code contains regulations

whose legal powers can suppress criminal acts committed by members of the INP, especially members of the Police who are supposed to be security forces.

Suggestion based on this research are the need for increased knowledge in every police school, on the rules that bind itself as Indonesian citizen as well as law enforcement officers; police need to establish good relations with the community, through concrete actions, so that the public can recognize the police, and is expected to understand the rights, duties and authorities of Polri members and policies that apply to members of the Police. In the drafting of the Draft Law of the Criminal Code of Indonesia, it is necessary to conduct a more in-depth and continuous review, resulting in good and accountable criminal law guidelines

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