



THE PREVENTION OF VIOLATION THE RIGHTS OF SUSPECTS BY POLICE IN LAW ENFORCEMENT

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ABSTRACT

The national police, as well as being the stronghold of law enforcement, has such a duty of protection of human rights. The problem is precisely the police in carrying out law enforcement more violates Human Rights, both administrative and procedural violations, and violations of physical/violence. It occurs in the case of the light up to the case that the heavy procedural infringement. The violation of human rights by police as if become habit. Therefore, reinterpret human rights and human rights violations are understood by Police, is an attempt to answer the problem. Prevention of human rights violations requires such a cognitive approach. Placing mindset (thought) in the cognitive structure of apparatus as subject to change. The understanding of the criminal law and human rights instruments as knowledge and new awareness. Starting from the mental activity of apparatus for directing and controlling the mind for all the good things and open to do as well as close the negative things and not commendable. The police who realized that they have evidence of the important position that are empowered to enforce the law will give justice to man with wisdom and tact.

Key Words : Violation, The Rights of Suspects, Law Enforcement

1. Introduction

The reports of Commission Services Administration Complaints in 2015, noted that the data human rights violations which were done by the police was 2734. It is in contrast with reports of complaints of human rights violations by the prosecution only 252, and court 640.¹

Referring to the Convention on Civil and Political Rights, *Code of Conduct for Law Enforcement Officials* put a heavy duty protection of human rights of the public to the law enforcement officials, especially the police. The reality is still a lot of human right violations which are committed by the police. Human rights violations are not merely personal, but also structural, as an indirect means to uncover or solve problems.

The Law No. 8 of 1981 on the Code of Criminal Procedure (KUHAP), replaces *Het Herziene Inlandsch Reglement* (HIR) as an umbrella law on criminal procedure in Indonesia set up the entire process of inquiry, investigation, prosecution, judicial, investigation, appeals

¹ Komnas HAM, "Laporan Pengaduan Pelanggaran HAM" Tahun 2015.

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High Court to appeal and judicial review to the Supreme Court has a passion for lifting and placing the suspect or the accused on an equal footing before the law, through the guarantee of protection of the rights of suspects / defendants.

Some of the principles that underlie the protection of the rights of suspects such as : equal treatment before the law, presumption of innocence, the judiciary should be done quickly, simply, and the cost of lightweight, free, honest, and impartial basis must be applied consistently in all levels of court. In practice, some different forms of violations of the rights of suspects and defendants. As for the removal of BAP by witnesses, torture to obtain confessions from suspects, unlawful arrest until engineering cases.

The police is as a component of the criminal justice system ² is the entrance of law enforcement. Police is expected to be the bastion of law enforcement at the same time protecting human rights. Since, it is very worrying when the police were supposed to carry out the law and protect, but they violate human rights.

Based on the background above, it is needed the efforts to be formulated as the basic prevention of human rights violations by the police as, How is the prevention of Human Rights Violations in law enforcement?

2. Materials and Methods

To answer the problems, the writer uses the paradigm of constructivism,³ with the type of Socio legal.⁴It is to take out of the law of the objective world to the subjective as an effort to put the law is no longer in a vacuum, but causality interact with some aspects of intellectual and social Police in selecting and taking appropriate legal action and do not violate human rights. Reflective and interpretive approach are used to analyze referring to the tradition of hermeneutic as peculiar in human studies. Hermeneutic method is used to gain an understanding of the findings that is obtained from records constructive dialogue. Doing by way of explaining the processes formulationg the meaning and explaining how the meanings of happenings that are contained in the language and actions of law enforcement officers of the law, as an attempt to enforce the law. Furthermore, describing the results of reading and interpreting by arranging the construction of prevention of human rights violations.

² Mardjono Reksodiputro, *Kriminologi dan Sistem Peradilan Pidana, Kumpulan Karangan Buku Kedua* (Jakarta:PPKPH UL,1994)

³ Egon G.Guba, Yvonna S.Lincoln, *Berbagai Paradigma yang Bersaing dalam Penelitian Kualitatif* , dalam Norman k.Denzin dan Yvonna S.Lincoln, Ed. *Handbook of Qualitative Research* Terj.Daryatno Dkk (Yogyakarta:Pustaka Pelajar.2011)

⁴ Soetandyo Wignjosoebroto, *Ragam Penelitian Hukum dalam Sulistyowati Irianto dan Shidarta Ed. Metode Penelitian Hukum Konstelasi dan Refleksi* (Jakarta:Yayasan Obor,2011)

3.Results

3.1 Prevention Of Human Rights Violations By Police In Law Enforcement Human Rights Violations And Law Enforcement By Police

Human rights is rights that already belonged to someone since they were in the womb. Human rights apply universally. The basics of Human Rights is stated in the Universal Declaration of Human Right. In the Constitution of 1945 of the Republic of Indonesia, as contained in paragraph 1 of article 27, article 28 and article 29, paragraph 2, article 31, paragraph 1 and article 30 paragraph 1.

Human rights in law enforcement ⁵can be found in Explanation of the Criminal Procedure Code, according to Reksodiputro Mardjono ⁶there are 10 principles that should serve as a guide for law enforcement officials, especially the police to protect the rights of suspects, and can be divided into general principles and special principles, namely :

General principles :

1. Equal Treatment upfront without any discrimination of law;
2. The presumption of innocence;
3. The right to obtain (compensation) and rehabilitation;
4. The right to receive legal assistance;
5. The rights of the defendant's presence at trial;
6. Free trial done, fast and simple cost;
7. The judiciary is open to the public.

Special principles

8. Infringement of individual rights (detention, search, confiscation) should be done by law and carried out with a warrant;
9. The right of a suspect to be informed about defendant and suspect;
10. The obligation of the court to control the execution of court rulings.

Although, the Criminal Code has been explicitly reflects an understanding of human rights by placing the human rights principles, in the implementation has not been providing protection for the rights of suspects, especially the poor. In the context of law enforcement, police with the limited human resources in the field of inquiry and investigation, especially in the regions, studying the material and formal criminal law is not an easy thing.

It requires a lot of time and thought, and it requires skill intellects of Police (investigators) the Bachelor of Law and Bachelor of Laws as investigators, whereas the number of investigators in the police institution is limited. This situation is increasingly making Police investigators expanded the number of helpers (NCO rank), which is actually in terms of capabilities, knowledge of the law and lack of intellect can be assured. Such a rank is

⁵Iza Fadri, "HAM dan Polri dalam Penegakan Hukum di Indonesia", Jurnal Hak Asasi Manusia, Dignitas, Volume VII No. 1 Tahun 2011

⁶ Mardjono Reksodiputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana Indonesia, Kumpulan Karangan, Buku Ke III* (Jakarta:PPK-LKUI,1997)

certainly not in harmony if reviewed from the point of balance in the line of the public prosecutor or the judge.

This case becomes thing which is often found inadequate investigation and unfocused, resulting in frequent violations of the rights of suspects, as complained in a lot of complaints. Such as : intimidation, torture, forced to admit the deed, and reconstruction directed. Secondly, as the absence of the right to freedom from torture. Police attached by force, using ways of suppression and violence in order to give recognition. In addition, the existence of the offence of ignoring the right to legal assistance. Police investigators are still often prohibit\suspect using its own lawyers. Police did not provide lawyers for defendants even though the penalty of more than five years, if there is an appointed lawyer of concern is the behaviour of a designated lawyer does not provide legal assistance to its full potential.

The other violations are violations of the right to be free from arbitrary arrest. Two forms of violations are violent arrests, and arrests without warrant. It all can not be separated from the old habit of making laws just as security approach .1) The arrest and detention of a person for the sake of maintaining stability, without law. 2) The application of a culture of violence to crack down on citizens who are considered an extreme. 3) The silencing freedom of the press by means of Letter of Bussiness Permit (SIUP). 4) Restrictions on the right to association and assembly and expression, because it was feared would be the opposition government.⁷

Two International Human Rights Covenants, which were ratified by Act 11 of 2005 (for the Covenant on Economic, Social, Cultural), and by Act 12 of 2005 (for the Covenant of Civil and Political).⁸ Additionally, the Police spesifically have had Police Regulation No. 8 of 2009 on Implementation Principles and Human Rights Standards in the Discharge of Duties, in fact up to now protection of human rights is still a mere formality, in paktik still often happens violations.

In the context of the criminal justice system, the police as a criminal offense entrance, has a big hand in expediting the process of examination before the court which made Prosecutors and Judges in proving a suspect's guilt or innocence so that it can be punished or free. It also largely depends on results investigation of Police (investigators).

3.2 Definition Of The Legal Rights Of Suspects In Investigation

Based on the explanation above, the various forms of violations which are committed by the police in the handling of criminal acts, can be classified as (1) the administrative and procedural violations, and (2) physical violations od suspect. The violation of administrative and procedural in inquiry levels can occur in the form of light until the case is classified as severe procedural violations. Referring from several types of rights violations suspects were based on analysis of the practice of investigation and application of the Code of Criminal Procedure fundamentally can be interpreted as follows.

The police in carrying out their functions as Investigator almost never officially and the procedural rights of suspects tells to accompanied by legal counsel when handling a criminal

⁷ Iza Fadri, *Op.Cit.*

⁸Henry Simarmata, "Kovenan HAM Internasional, Pandangan Umum Mengenai Signifikansi dan Perkembangan," Jurnal HAM Komnas HAM, Vol.4 2007.

offence. The granting of the right of the suspect to obtain legal aid is an important instrument in a fair legal process in law enforcement and the protection of fundamental Human Rights be a part specifically for the rights of freedom and for the rights of the soul. Mentoring legal counsel basically reflecting the implementation of the principle of legality Article 1 of the Code of Penal (Penal Code). This provision has the substance and the same purpose, namely as a form of legal protection of the right to freedom and rights to body and soul of a suspect. Thus it is feasible if legal aid is seen as a concrete manifestation of the principle of legality.

In the explanation of Act No. 18 of 2003 about the advocate, affirm, "in an attempt to embody the principles of State law in the life of society and State, the role and functions of the profession as Advocates of free, independent and responsible is the important thing, in addition to the judiciary and law enforcement agencies such as the police and the Prosecutor's Office. Through the legal services which is provided, Advocate professional stints for justice under the law for the benefit of people seeking justice, including an attempt to empower communities to realize their fundamental rights before the law. Advocate as one element of the judicial system is one of the pillars in upholding the rule of law and human rights.

Despite the common explanation of the Advocate Law has laid a component Advocate as an important professions in the criminal justice system in fact the issue of protection of rights of suspects in particular mentoring by Advocate or Legal Counsel is in fact faced with the conditions of financial capability suspect to be assisted by Advocates and the provisions of criminal penalty of 5 years and above are required legal counselor.⁹ Therefore, it is understood the provisions of Article 54 of the Criminal Procedure Code, if studied and searched for its meaning, it can be found that in principle the right to legal aid was recognized, but not included in the rights that are required. There are certain conditions or requirements that must be met before the right to legal aid has become 'mandatory' or necessity. The special requirements concerning; (I) The financial capability; and, (ii) legal penalties for alleged criminal acts referred to in Article 56 paragraph (1) and (2) Criminal Procedure Code.

3.3 The Violation Of Human Right By Police

The efforts to prevent violations of human rights of suspects in criminal cases any investigation by the police is to do with how to interpret the meaning of human rights. Reinterpret human rights and human rights violations are expected to help reflecting the common sense is wrong in interpreting and understanding the application of human rights over the years. Therefore, it can prevent and reduce or even stop the practice of human rights violations that occurred in investigating that have become part of the habit of Police

The police is the main subject and Central in shaping the reality of their life. Their position is important in the criminal justice system, therefore, reserves the right to change and fix errors that occur in all its institutions. When the police on its activities perform good deeds and actions in accordance with the law, humane, fair and trustworthy. As a result the offense will get a positive response from the community. However, the opposite will happen if law

⁹Act 56 paragraf (1) and (2) KUHAP, Law Number 8:1981

enforcement officers committing despicable, dishonest, abuse of authority, or practice alleged human rights violations, then, people will be condemned and sass.

The study of the violations of the rights of suspects in the process of investigation both in textual or contextual can be summed up as follows 1) custom that takes place continuously, 2) lack of understanding of the science of criminal law and Human Rights instruments and their application pattern. Therefore, it was time Police that make changes internally (reform). The use of modal awareness (*common sense*) and openness requires that Police conducting the prevention of human rights violations. Police along with knowledge and consciousness will be able to think better to be able to determine a better choice anyway.

In the understanding of the legal constructivism¹⁰ Police with such an authority possessed, has the freedom to construct the law based on knowledge and experience. Having an important role in the achievement of law enforcement fair and impartial. Therefore, the reconstruction of critical reasoning and reinterpretation of the meaning of human rights and violations of human rights in cognition and legal action is needed.

Starting from the knowledge of Human Rights and the human rights abuses either as in the Code of Criminal Procedure as well as the various instruments of Human Rights, the police has a chance to establish himself again. An attempt of change and improvement in the activity of investigation has the meaning of the prevention of violations of the rights of suspects. The understanding of the science of criminal law and criminal procedure law and human rights instruments as a whole is the process of how to change or re-arrange the legal way of thinking, the police in deciding an act of punishment.

The concept of prevention of rights abuses of suspect refers to the dialectic of law values and humanity are integral. Both are used to describe the implementation of the science of criminal law as a discipline law that must be managed and human values in the form of legal action, as well as the meaning given to the law. As stated by John Bell that a certain way, the values of the conceptual, practical and integrated into the activities of the institutions of law and interpretation the text of law.¹¹

More precisely, the science of criminal law and human rights instruments lay down the basic principles of humanitarian values is used as a lawless manner that upholds the values of truth and justice that is contextual to the national legal system. Both conceptually and practically are being together in investigative activity in the handling of criminal acts. The arbitrate practices that determine the true meaning of the prevention of human rights violations of suspects.

Police who has mastery of criminal law (material / formal) and understanding of human rights instruments will reflect a thought, speech, and actions that reflect the culture of law sublime, containing the value system is derived from legal theory and practice of criminal law, as well as religious beliefs or philosophy of Pancasila which become signs lawless ways in the community.

With the construction of the legal reasoning as above, then the police are required to have awareness. In terms of ability to observe carefully, demanding the ability to see

¹⁰ Erlyn Indarti, “*Diskresi dan Paradigma Sebuah Telaah Filsafat Hukum*”, Pidato Pengukuhan Guru Besar Filsafat Hukum pada Fakultas Hukum Undip Semarang, 4 Novembe 2010

¹¹ Bell, John, *Comparative Law and Legal Theory dalam Krawietz*, W. Maccormick N, dan Von wright (Eds), 1995. *Prescriptive Formality and Normative Rationality in Modern Legal System*, (Berlin: Duncker and Humblot, 1995)

connections, irregularities, mistakes were veiled. As well as a cautious attitude toward his justification (rationalization) sought from all things that are not relevant, the prejudices, the blind of the sense of personal feelings or group / class.¹²

Based on this, the logical form of the work will proceed on the attempts to build.

- a) Awareness uphold truth and justice essentially put the essence of human dignity that have a natural tendency to do good for others.
- b) Awareness enforce the law without rights violations of suspects requires the scientific method, critical attitude, and the objective is rooted in truth and humanity as a reference.
- c) Conduct interpretasi (understanding), constructing, and systematization dialectically, criminal cases, covers acts, errors, and accountability in order to become concrete.
- d) Do an honest, open, and consistent and put the presumption of innocence as a principle of procedural law that should take precedence in determining fair legal action, for sure, and worth to society.

Efforts to prevent human rights violations in the investigation, require a cognitive approach. Placing mindset (thought) in the cognitive structure of apparatus are subject to change. The understanding of the science of criminal law and human rights instruments as knowledge and new awareness. Starting from mental activity apparatus to direct and control the mind for all things positive and open to do as well as closing the things that are negative and uncomplimentary.

The police were aware that they have important positions who are empowered to enforce the law will provide justice to the people wisely.¹³ Thus it includes upholding human rights is a noble and sublime legal action to enforce the law because it is part of the responsibility of the Police to promote truth and honesty for the good of society.

In this phase, the Police expand and modify mental representations in understanding a criminal case, cognition is trying to stimulate the science of criminal law and human rights instruments, the function that the law be obeyed and human rights are respected. If cognitive models depicted preventing human rights violations would look like the following.

¹² W. Puspoprojjo, *Logika Ilmu Menalar*, (Bandung:Pustaka Setia,2004).

¹³ Gisela Labouvievief dalam John W.Santrock, *Adolesence*, *Op.Cit.*

Table 1 Model Abuse Prevention Cognitive Rights Of Suspects By Police

No.	Parameter	Mental Activity	Scheme of Knowledge	Improvements to be constructed	Mental change to be achieved
1	2	3	4	5	6
	The concept of Cognitive Science of Criminal Law and Human Rights Instruments	Acomodation	The Cognitive Concepts IHP and human rights instruments as the object of a new internal knowledge.	new understanding to interpretation and reinterpretation as well as modifying the mental representation in understanding reality	Police stimulate colleagues to be part of internal knowledge through a understanding of the science of criminal law and human rights instruments

4. Conclusions

Law enforcement in the investigation process by the police, the implementation still in accordance with the protection of the rights of suspects. Efforts to create a business-Ham normative protection has been carried out. But not able to touch the humanity of Police (investigator / investigator). Through cultural policy. The cognitive approach to answer the weakness of human rights protection by the police.

The concept of cognitive protection and prevention of human rights violations are needed to unravel the root of the problem and finding transforming the values of knowledge of criminal law and human rights instruments in the implementation of human rights-based law enforcement.

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