



Formal Procedure Versus Victim's Interest: Antinomy of Handling Sexual Violence Cases in East Luwu

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ABSTRACT

Complexity and challenges in uncovering crimes by the police have brought the law enforcement process to purely formal matters. Since the Indonesian police agency separated from the armed forces, their formal and professional attitude has faced many realities on the ground: choosing formal precedence (legal procedures) and ignoring the interests of victims. Legal procedures are more focused on formal justice in accordance with existing, written rules of the game and cannot provide freedom of action. The police are only the spokesperson for written laws and regulations. The idea of being part of people's lives is collided with formal procedures. This condition requires the police to ignore substantial justice, whose importance is more important than mere procedural matters. Law enforcement that is only based on procedures without being balanced with efforts to achieve the goals of law enforcement actually has the potential to damage the order of human rights values. The type of research used is normative legal research using a legal approach, a historical approach, and a philosophical approach. Law enforcement by the police which tends to discriminate against the rights of victims has an impact on the low level of public trust in the police institution which ultimately makes many victims reluctant to report to the police.

Keywords: Justice, Legal Procedure, Interests of Victims.

1. Introduction

After more than twenty years of reformation, the spotlight on human rights issues and discriminatory law enforcement by the police has adorned the news in Indonesia. The image of the police deteriorated with the handling of cases that violated the victims' human rights. Law enforcement which tends to be discriminatory by violating the rights of victims has an impact on the low level of trust of victims in the police institution. Many victims are reluctant to report to the police. Data from the Central Statistics Agency (BPS) of the Republic of Indonesia 2021 shows that from 2017 to 2020 there are 72% of crime victims who prefer not to report their problems. This level of confidence is relatively low considering the number of victims who report does not exceed 25%. This level of reporting is used as an indicator in observing access to justice for victims. Victims have an important role to be able to overcome or resolve this case. (Amrullah, 2019)

The conclusion on the BPS data was written by Dwi Hadya Jayani who stated that the low level of reporting indicated that the public still lacked confidence in the performance of the police. The loss of public trust in the performance of the police is due to the community's stigma that victims are not assisted when reporting crimes (Hadya Jayani, 2021). It is easy for the police to stop a case simply because it is not in accordance with applicable procedures. Of course this can ignore the interests of victims who are seeking justice for their problems.

Prioritizing formal rules and ignoring the interests of victims has lost public trust. The way the police work like this cannot be taken for granted by the community. This is not in accordance with the idea of separating the police from the military after the reform, which makes the community part of the role of the police which they should protect, protect and serve in accordance with Article 5 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police. The police must be able to play a dual role, both as law enforcers and as social workers in social and community aspects (Barda Nawawi, 2005).

One of the facts of the handling of the law by the police that prioritizes formal rules and ignores the interests of the victims occurred in East Luwu Regency. The process of prioritizing formal rules for implementing sentencing and ignoring the interests of victims is carried out by the police against the local community. There was a termination of the investigation process from a case of sexual violence against minors there only for reasons of lack of evidence. This way of working is, of course, considered unfair to the victim. Moreover, in this case, there is an omission of facts from the police investigators in East Luwu. Police investigators did not look further into the facts experienced by the victim. This is unfair to the victim. How can the police be more concerned with "following procedures" than the "interests of the victims" that have been damaged by the perpetrators? Several statements by Public Relations of the Police have also provided explanations regarding the case in East Luwu, that the police in handling the case have complied with legal procedures (rules).

2. Methodology

Type of research used is normative legal research using a legal approach, a historical approach, and a philosophical approach. Data collection techniques are carried out by means of read scientific books, magazines, newspapers and other readings related to research (Mustika & Salam, 2021). The research was conducted by means of a literature/documentation study and then analyzed qualitatively based on primary legal materials (laws and regulations), secondary legal materials (libraries and scientific journals) and tertiary legal materials (legal dictionaries).

3. Result and Discussion

3.1 Separation of the Police from the Military

One of the demands of Indonesia's reforms in 1998 was to separate the police from the military. Reformasi wants the police to act more humanely to the community and abandon military-style violence. This desire is driven by studies on the function of the police whose goal is not to designate a battlefield, but to identify the social conditions of the community (Nuraini Siregar, 2017). that the existence of law to humanize humans (benefits aspect). (Salam, 2020) The instability of political conditions at that time prompted police thinkers to recommend that the position of the police institution be directly under the President. This position was the impact of the situation that occurred at that time, as well as the starting point for reforming the police organization.

In the end, the separation of these institutions has brought consequences for the police to focus on maintaining internal security, which includes public order and law enforcement, as well as protection, protection and service to the community by upholding human rights values. This paradigm has changed the police institution from violent methods to a form of protection, protection and service to the community in maintaining state security.

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The contents of the preamble to letter b of Law no. 2 of 2002 mention the separation of these institutions has brought consequences for the police to focus on maintaining internal security, which includes public order and law enforcement, as well as protection, protection and service to the community by upholding human rights values. This paradigm has changed the police institution from violent methods to a form of protection, protection and service to the community in maintaining state security.

In the book "Sejarah Perkembangan Kepolisian di Indonesia", argue that there is a difference in duties between the police and the army. According to them, if the military is tasked with securing the country from enemy threats with violence and under certain conditions, such as a state of war, it can override human rights, on the other hand the police are tasked with securing the community so that order and security can be created and cannot rule out human rights (Djamin et al., 2007). The Indonesian police agency was established as part of government institutions that assist the government in dealing with, smuggling, or embezzlement related to

people's economic problems. This institution was not originally formed to focus on the issue of public order because the condition of the country at that time was not yet stable after independence.

By definition the police are state institutions that carry out operations under the national authority or ideally under the control of the civil and political authorities of the country. In general, the police are the most visible representatives of the state in society. Therefore there are different types of police agencies which can vary from country to country. The institutional characteristics of a police force will always depend on the country and its population. They will always reflect the nation or region in the political culture and history of the development of society and the country's economy (Osse, 2007).

Four years after *the reform*, the Indonesian government passed Law No. 2 of 2002 concerning the Indonesian National Police. Article 1 paragraph (5) in this rule stipulates that element of security and public order are prerequisites for the sustainability of national development. The police must ensure law enforcement and foster peace in the community by preventing, preventing, and overcoming potential violations of community law. According to Soerjono Soekanto, law and law enforcement are important factors in law enforcement that cannot be ignored (Soekanto, 2004). According to Article 5 paragraph (1) of the Indonesian National Police Law, the police institution is a state instrument that plays a role in maintaining public security and order, by enforcing the law, providing legal protection, protection and legal services to the community in order to maintain security conditions of domestic. The police in carrying out their duties should recognize the social conditions of the community because they are an inseparable part of the community. The police must be able to listen and find out the nature of a problem faced by the community, especially those related to security issues. Satjipto Rahardjo said that the process of identifying the social conditions of the community by the police can be called an act of community policing (Rahardjo, 2007).

In the first decade since the reforms were rolled out, police report cards have not shown all of their civil character by respecting civil rights and prioritizing a humanitarian approach. This is indeed related to the old paradigm of the police which still considers part of the military force. The old paradigm of the police as part of the military force was conveyed by a former general, Farouk Muhammad, in his professorial inauguration speech, who considered that the working relationship between superiors and subordinates is still structural and hierarchical, subordinates only carry out orders and not as technical decision makers. According to Farouk, this makes subordinates not dare to express different opinions and the organization works according to the personal wishes of superiors (Yanuarti, 2016).

In addition, other factors of this militaristic culture can be observed from the actions taken by the police in the community who still violate human rights values. This spotlight is mostly focused on the handling of criminal acts of terrorism which are often carried out by special anti-terror units in the police institution. They often carry out acts of violence by ignoring the principle of *presumption of innocence* by immobilizing and killing someone who is considered a terrorist at the raid site. According to S. N. Siregar, this culture has not yet been eroded from the police institution. It must be acknowledged that the actions of some members of the police force in the community are still acting by using violence and injustice against the community (Nuraini Siregar, 2016).

In the second decade, the spotlight on law enforcement issues that tended to be discriminatory and violated human rights made the image of the police deteriorate. Law enforcement that tends to discriminate against the rights of victims has an impact on the lack of public trust in the police institution. Many victims are reluctant to report to the police. BPS records that there are around 72% of crime victims who prefer not to report their problems in 2017 to 2020. This level of confidence is relatively low considering the number of victims who report it does not exceed 25%. This level of reporting is used as an indicator in observing access to justice for victims.

3.2 Prioritizing Formal Procedures over the Interests of the Victim

In Max Weber's view, the law is a reflection of rationality and authority. According to him, the level of rationality and the model of authority in a society determines the legal style in a society. Each rationality in question is a substantive-irrational, informal-rational, and formal-rational level.

The substantive-irrational level can mean law which is only intuition, without rules. The informal-rational level can mean the existence of general rules that are completely informal. And the formal-rational level can mean the existence of detailed, codified, and more specific rules (Vilhelm, 1969).

Prioritizing procedures over the interests of victims is a formal-rational type of law. This type relies on formal power with authority based on quality and technical capabilities that are formally recognized by the state. The formal-rational type in formulating laws is basically so planned, systematic, and adapted to needs. The discovery of the law focuses more on the regulations contained in a statutory book. In general it gives us the description that the formal-rational type must be guided first by rules. So, if it is not in accordance with the applicable procedural rules, then the handling of legal issues must be stopped.

It is very crucial, of course, to apply a rational-formal legal model without being based on the search for empirical evidence that supports the existence of a crime. As in the following case that occurred in Luwu, Indonesia. The chronology of events occurred on October 7, 2019, at that time his youngest child, AZ, complained about the condition of his vital organs and rectum. So the curious RA then checked his son's physique. When examined, the victim's mother finally found abnormalities as complained by the child. Besides AZ, previously, his other son, AL, also rarely played with his younger brother. Her mother also noticed that the membranes under her eyes were black. Her mother then gathered all three of her children. His mother asked them to tell the story but they could only stay silent until finally their second child, MR, told me that he had seen his brother being raped by his father.

Initially, the mother of the three victims reported this case to the local police, in October 2019. After receiving the report, the police conducted an investigation. However, only two months after the report was made, the case was terminated, due to insufficient evidence, as requested in Article 184 paragraph (1) of the Criminal Procedure Code. The article states that valid evidence is: witness statements, expert statements, letters, instructions, and statements from the defendant. As far as this case has progressed, witness statements have been asked for, but it is suspected that the case was fabricated by procedural errors. Lembaga Bantuan Hukum (LBH) Makassar had urged the police to reopen an investigation into the alleged rape of a child. LBH Makassar has concluded that there is some evidence that can only be obtained from the investigation, such as a comparison visa and statements from witnesses and victims that must be re-examined.

This case has caught the public's attention. Seeing a bad way of working made the public call for the hashtag #PercumaLaporPolisi. Not surprisingly, with this call, according to Satjipto Raharjo, "the public's spotlight and criticism have included their daily diet. This is because the police are law enforcement bureaucracies that are directly in the community, street law enforcers who have to clean up all the dirt in the community".

The police, who prioritize procedures and ignore the interests of the victims, in accordance with the case in Luwu, have basically harmed human dignity and the values that live in society. There is a legal value that is ignored by local police investigators, namely the value of justice. This value is a legal goal that should be upheld by every reasonable human being, including armed civilians. What is the reason, a professional police investigator still often repeats the same way of working, a way that prioritizes procedures over the interests of the victim? We can explain this, if we observe the working process of the legal system in Indonesia where we can find the fact that many police investigators are still lacking in legal knowledge. Maybe they understand the operation of the law, which in this case is a "rule", but they don't understand the science.

The term investigation in the police world was first used in 1961. This term is contained in Law no. 13 of 1961 concerning the Basic Provisions of the Police. The term investigation has been found previously in Dutch called *opsporing*, parallel to the term *investigation* in English and *stratagem* in Malaysian (Hamzah, 2008). According to de Pinto, to investigate (*opsporing*) means an initial examination by officials appointed by law to act immediately upon hearing news of a violation of the law (Andi Hamzah, 2008).

Law no. 13 of 1961 stipulates that Indonesian police investigators were formed as a revolutionary tool tasked with securing the stability of the country. Investigation is the main task of police investigators in the field of justice. Investigations are a shield for any Indonesian citizen who wants to hinder the goal of the revolution: the achievement of a just and prosperous society. From the outset, the legislation never required police investigators to have knowledge of the law. As long as they are able to secure the stability of the country, the police investigators are considered successful in carrying out their duties. However, herein lies the problem. There is a process of allowing knowledge from the start. Human resources in police institutions have never been equipped with adequate legal knowledge in handling legal cases. The requirements for police investigators in Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code show us that police institutions do not really care about the provision of legal knowledge for police investigators. Article 2 of

Government Regulation Number 27 of 1983 emphasizes matters of rank rather than knowledge. Here's the description:

- a. Investigators are:
 - 1) Certain Indonesian National Police Officers who are at least the rank of Assistant to Second Lieutenant of Police;
 - 2) Certain Civil Servant Officials who at least hold the rank of Level I Young Registrar (Group 11/b) or the equivalent.
- b. In the event that in a police sector there is no investigating officer as referred to in paragraph (1) letter a, then the Police Sector Commander who holds the rank of non-commissioned officer is under the Assistant to the Police Second Lieutenant, because his position is an investigator.
- c. The investigator as referred to in paragraph (1) letter a is appointed by the Head of the Indonesian National Police in accordance with the prevailing laws and regulations.
- d. The appointing authority as referred to in paragraph (3) may be delegated to officials of the State Police of the Republic of Indonesia in accordance with the prevailing laws and regulations.
- e. The investigator as referred to in paragraph (1) letter b is appointed by the Minister at the suggestion of the Ministry in charge of the civil servant. The Minister before carrying out the appointment must first hear the considerations of the Attorney General and the Chief of the Indonesian National Police.
- f. The authority to appoint as referred to in paragraph (5) may be delegated to an official appointed by the Minister.

The situation changed slightly after the issuance of Government Regulation Number 58 of 2010 concerning Amendments to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. Which in Article 2A requires that police investigators must:

- 1) The lowest rank of Inspector Two of Police and have a minimum education of a bachelor's degree or its equivalent;
- 2) Served in the field of investigation function for a minimum of 2 (two) years;
- 3) Follow and pass education in the specialization of criminal investigation functions;
- 4) Physically and mentally healthy as evidenced by a doctor's certificate; and
- 5) Have high moral ability and integrity.

Although experiencing a paradigm shift by including the educational requirements of "undergraduate strata one" in Government Regulation Number 58 of 2010, it still leaves gaps. The "bachelor degree" education specified in these conditions does not provide a direct focus on the investigation function which is closely related to legal science. Police investigators can be from "undergraduate strata one" various fields of science. This is certainly difficult when "undergraduates" outside the legal disciplines who are appointed as investigators handle legal cases. There are values, principles, rights, obligations, habits, ethics, and norms inherent in a legal event that requires a more adequate knowledge of legal science.

Police investigators are closely related to humanitarian affairs. In taking action, investigators must be careful. Investigators must be professional in taking action. Investigators need to prove the academic portfolio that has been passed in higher law education. Those who have a position as police investigators must first receive legal education. Ideal conditions certainly need to be proposed, although it is known that this is quite difficult to agree on. Even if the requirements for a police investigator with a law degree are agreed upon, there must be an improvement in the legal education system in Indonesia. It must be known that there are influences other than the investigator recruitment system that still leaves gaps in the regulations so far. This comes from the style of legal education in Indonesia. There is a condition of glorification of legal understanding from the colonial period which is well established and difficult to shake up until now.

Legal education was originally designed in Indonesia to serve colonial interests, securing all the assets of the Kingdom of the Netherlands in the Dutch East Indies. Satjipto Rahardjo called the state of legal education at that time a colonial-based policy. Legal higher education after Indonesian independence, its scope began to be

expanded which not only includes Jakarta and its surroundings, but has also been opened in Yogyakarta. Even entering the period of the 70s to 80s, higher legal education has been established in several campuses in the provincial capital.

The general pattern of legal education in Indonesia cannot be separated from the influence of colonial politics. The first formal law school existed in Indonesia in 1909, named *Rechtsschool*, founded by Governor General JB van Heutsz. The basis for the establishment of *Rechtsschool* refers to the *Reglement voor de Opleiding voor Inlandsche Rechtskundigen* which is then archived in the *Staatsblad*. No. 93/1909. *Rechtsschool* was formed with the aim of educating people in Indonesia at that time as *landraad* who were tasked with trying indigenous and equated groups. In fact, behind this goal there is a hidden interest: the maintenance of order and security (*rust en orde*) (Reksodiputro, 2004). In addition to the *Rechtsschool*, in 1924 a university-level *Rechtshogeschool* was formed with the basis of the formation referring to the *Hooger Onderwijs Wet 1924 Ordonnantie*, dated October 9, 1924 No.1 which was then archived in the *Staatsblad*. No. 457/1924. *Rechtshogeschool* is more concerned with legal skills education (skill development), not legal education (*rechtswetenschap*). Mochtar Kusumaatmadja detailed that graduates are prepared in terms of: judicial staff, civil servants, and advocates. Satjipto Rahardjo said that graduates like this are tasked with implementing the law, not focusing on making laws (Rahardjo, 2009).

Even though it has been separated from colonialism, the colonial symbol in law colleges at that time has not been separated at all. Professors and textbooks are still dominated by Dutch lecturers and Dutch writers. This situation continued to carry over as an impact on the politics of concordance, which inevitably forced law students to follow the Dutch legal education model with the Continental European legal system. This legal system is identical to the source of law that comes from the codification of written law (Rosen et al., 2010). Continental European legal education was closely related to academies, not professions, and was oriented towards mastery of rules and doctrines. Continental European tradition or commonly called *Civil Law* based on logical rules, whatever is in accordance with the procedure then that must be carried out. This condition makes legal dynamism slow down and has implications for the purpose of law.

The law should always be in motion, following the needs and development of humans. Laws need to be made for the benefit of society in order to achieve security, peace, justice, balance and prosperity. Moving law is a law that can follow the needs and developments of society. The birth of modern law creates a new condition for human life and civilization. Legal life is at a crossroads, between the search for justice or focusing on the operation of modern law. The modern legal order is full of rational structures that are deliberately created, along with the emergence of the modern state. Regulations must be made by a public body whose makers are specially recruited as part of professionalism.

Legal education that emphasizes graduates who are ready to work or simply fulfills the needs of today's modern world market will have an impact on the law enforcement process in society. Law enforcement officials will only know that an action that is in accordance with the procedure is the right action, while on the other hand, not following the procedure is a wrong action. Law enforcement officials like this only reach the level of right and wrong, but do not touch the issue of good and bad.

4. Conclusion

The separation of the police from the military has had the consequence of being more focused on maintaining domestic security, including public order and law enforcement, as well as protection, shelter and service to the community by upholding human rights values. This paradigm has changed the police institution from violent methods to a form of protection, protection and service to the community in maintaining state security. It's just that law enforcement by the police which tends to be discriminatory against the rights of victims has an impact on the lack of public trust in the police institution which ultimately makes many victims reluctant to report to the police.

References

- Amrullah, M. S. (2019). Reconstruction of Law Criminal Development On Victims of Restoration as Form of Renewal Criminal Law. *Jurnal Hukum Volkgeist*, 3(2), 160–165.
- Barda Nawawi, A. (2005). *Bunga Rampai Kebijakan Hukum Pidana*. PT. Citra Aditya Bakti.

- Djamin, Awaloedin, Ketut Ratta, I., Gde Putu Gunawan, I., & Ambar Wulan, G. (2007). *Sejarah perkembangan kepolisian di Indonesia*. Yayasan Brata Bhakti.
- Hadya Jayani, D. (2021). *76.54% of Crime Victims Did Not Report to Police in 2020*. Databoks.
- Hamzah, A. (2008). *Hukum Acara Pidana Indonesia*. Sinar Grafika.
- Mustika, R., & Salam, S. (2021). Implementation of State Administrative Court Decisions: Conception, and Barriers. *Musamus Law Review*, 3(2), 49–57.
- Nuraini Siregar, S. (2016). Evaluasi Sepuluh Tahun Reformasi Polri. *Jurnal Penelitian Politik*, 5(1).
- Nuraini Siregar, S. (2017). Polisi Sipil dalam Reformasi Polri: Upaya & Dilema Antara Penegakan HAM dan Fungsi Kepolisian. *Jurnal Penelitian Politik*, 14(2).
- Osse, A. (2007). *Memahami Pemolisian*. Rinam Antartika.
- Rahardjo, S. (2007). *Membangun Polisi Sipil : Perspektif Hukum, Sosial, dan Kemasyarakatan*. Kompas.
- Rahardjo, S. (2009). *Pendidikan Hukum Sebagai Pendidikan Manusia*. Genta Publishing.
- Reksodiputro, M. (2004). *Reformasi dan Reorientasi Pendidikan Tinggi Hukum di Indonesia*. Tim Peneliti Komisi Hukum Nasional.
- Rosen, D., Aronson, B., G.Litt, D., Paul Mcalinn, G., & P.Stern, J. (2010). *An Introduction to American Law*. Academic Press.
- Salam, S. (2020). Rekonstruksi Paradigma Filsafat Ilmu : Studi Kritis Terhadap Ilmu Hukum Sebagai Ilmu. *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan*, 18(2), 885–896. <https://doi.org/10.30863/ekspose.v18i2.511>
- Soekanto, S. (2004). *Faktor-faktor yang Mempengaruhi Penegakan Hukum*. Rajawali Pers.
- Vilhelm, A. (1969). *Sociology of Law : Selected Readings*. Penguin Books.
- Yanuarti, S. (2016). Polri di Era Demokrasi: Dinamika Pemikiran Internal. *Jurnal Penelitian Politik*, 8(1).