

POLICE DISCRETION IN HANDLING THE SOCIAL CONFLICT

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ABSTRACT

The concept of conflict prevention is regulated in Law no. 7 Year 2012 about Handling Social Conflict. However, not all the problems that exist in social conflicts can be solved by criminal act. One of the alternatives which is owned by the police to solve social conflicts that exist in society is called discretion. The main tasks of the police as stated in law No. 2 Year 2002 gives authority to the police to perform the act of police discretion that is the authority to act, including in law enforcement for the sake of public interest according to their own assessment. This paper aims to describe the implementation of discretion in the handling of social conflicts and constraints in implementation. Discretion can be done by Alternative Dispute Resolution (ADR) approach with emphasizing sociologic and anthropology cultural. Various obstacles in the discretion of handling social conflicts include legal factors, personnel factor of Indonesian Police and prone to abuse so that required limitation of discretion.

Keywords: Discretion, Social Conflicts, Indonesian Police, ADR

Introduction

Indonesia is one of the largest multicultural countries in the world. This can be seen from the sociocultural and geographical conditions of Indonesia which are very complex, broad and diverse. "Indonesia is made up of a large number of ethnic, cultural, religious and other groups that are both plural and at the same time heterogeneous and diverse"¹. As a plural and heterogeneous country, Indonesia has a multi-ethnic, multi-cultural, and multi-religious that is all potential to build a multicultural country.

Multiculturalism is the term used to describe the view of the diversity of life in the world, or cultural policy that emphasizes the acceptance of diversity and plurality, as the ultimate reality in people's lives concerning the values, socio-cultural systems, and politics that they profess².

This is a unique thing for Indonesia which is united in a strength and religious harmony that must be understood consciously. However, pluralism sometimes brings the problems and potential conflicts that lead to divisions. The diversity of multicultural society as a nation's wealth on the other hand is also very prone to trigger conflict and split³. The diversity of Indonesian society must be seen from its two unique characteristics. The first is horizontally characterized by the fact of social unity based on differences of ethnicity, nation, religion, customs and regional differences. The second is vertically which is characterized by vertical differences between the top layer and the sharp underlay.

Based on the data of social conflicts in the year 2013 to 2016 in Indonesia the conflict occurred as follows: in the year 2013 a total of 92 incidents of conflict, including clashes between citizens amounted to 37 cases, security issues 16 cases, SARA issues 9 cases, social gap 2 cases, conflict in educational institution 2 cases, ORMAS conflict 6 cases, land dispute 11 cases, and 9 cases of political excess⁴.

Whereas in 2014 the total number of conflict is 83 cases with details of clash between citizens amounted to 40 cases, security issues 20 cases, SARA 1 case, ORMAS conflict 3 cases, land dispute 14 cases, excesses of political conflict 4 cases. In 2015 the total number of conflicts that occurred 78 cases, with details of clashes between citizens amounted to 8 cases, security issues 9 cases, ORMAS conflict 1 case, land dispute 6 cases, and last conflict due to political excesses amounted to 2 cases. The last is in 2016 the total number of conflict is 92 cases.

¹ Kusumohadimidjojo. *Kebhinnekaan Masyarakat Indonesia: Suatu Problematik Filsafat Kebudayaan*, Jakarta: Grasindo, 2000, p. 25

² Azyumardi. *Merawat Kemajuan Merawat Indonesia: Seri Orasi Budaya*, Yogyakarta: Kanisius, 2007, p. 50

³ Azyumardi. *Merawat Kemajuan Merawat Indonesia: Seri Orasi Budaya*, Yogyakarta: Kanisius, 2007, p. 50

⁴ Andreas, 2017. *Menyimak Konflik Sosial di Indonesia*. Download from <http://www.papuapos.com/index.php/opini/item/7125-menyimak-konflik-sosial-di-indonesia> on 23 October 2017 at 05.32 WIB

The central role of social control in society is held by the state which is an institution with the authority to regulate direct action and develop a series of policies and regulations in implementing social control. In this case the government includes the president and the local government apparatus.

According to the Law No. 2 in year 2002 about the Indonesian National Police, stated that the police have a central role in the handling of the conflict. The law explains that the police are a state instrument in charge of maintaining security, public order, enforcing the law and providing protection, shelter and society service⁵. In carrying out its duties the Indonesian Police has preventive functions inherent in its responsibility and authority to anticipate the potential for conflict in the society.

Some of the conflicts that occurred in the society are indicating a failure of the police for the handling of conflicts in the society. For example, the conflict that occurred in the Balinuraga village, South Lampung in October 2012 involving the citizens of Lampung with the citizens of Bali which is the completion is not complete. There is also a case of conflict in Ambon, which is happened since January 1999. Ambon conflict lasted so long without any resolution and the police as the authorities did not find a solution to the settlement of the conflict, because the arrests actually further confuse the atmosphere. The conflict which is taken too long is causing many losses, both properties and lives. After taking so long, finally in February 2002 the conflict could be gully completed with the meeting between the two parties involved. Meanwhile, different way of handling the conflict is done in conflict which is happened in Sigi District, Central Sulawesi in 2012-2013, where the settlement is by way of peace agreement initiated by the Governor on August 22, 2012 but the idea has not been able to stop the conflict, so that the Police of Lampung and Central Sulawesi imposed curfews and restrictions on carrying sharp weapons and other dangerous objects⁶.

Settling conflicts in society is very important. But how to prevent social conflicts in society not happen again is more important. So it takes alternative solutions in conflict resolution. This is because the settlement with the application of criminal law is considered not able to resolve social conflicts, even that often occur the application of criminal law is the trigger of the greater conflict. Therefore, it is necessary to approach the supremacy of law, human rights, democracy, decentralization, transparency and accountability, in the implementation of Indonesian Police's basic tasks that are oriented towards community justice.

The main task of the Indonesian Police as stipulated in Law No. 2 in year 2002 gives the Police authority to perform a police discretionary action, namely the authority to act, including in law enforcement in the public interest according to their own assessment. This is stated in Article 15 paragraph 1 sub-paragraph b of Law No. 2 in year 2002 about Indonesian Police. One form of discretion that can be done by the police is to use the Alternative Dispute Resolution (ADR) approach, which is an alternative approach in the settlement of a case with an approach outside the criminal law.

So this paper will discuss about the police discretion in handling the social conflict and its constraints.

Discussion

1. Handling Social Conflict

Conflict comes from English language which means disputes, disagreement. Conflict itself comes from the Latin verb *configere* which means to hit each other⁷.

Conflict in this definition is defined as a misunderstanding between groups or opposing ideas. This conflict can also mean war, or an attempt on the opposite side, or disagreement between some parties⁸.

Otomar J. Bartos defines conflict as a situation in which actors use conflict behavior against each other in solving opposite goals or expressing hostile instincts⁹.

When associated with social terms, conflict can be interpreted as a contradiction between community members that are comprehensive in life. In other words, the interaction or social process between two or more people (or groups) happen where one party is trying to get rid of the other by destroying or at least making them powerless¹⁰.

⁵ Undang-Undang No. 2 tahun 2002

⁶ Zulfia, E., Pratadina, S. Diskresi Kepolisian dalam Penanganan Konflik Sosial: Kedudukan Peraturan Internal Kepolisian dalam Penanganan Konflik di dalam Peraturan Perundang-Undangan. *Jurnal Hukum & Pembangunan*, 46(4), 2016, p. 538-551

⁷ Echols., Hassan, S, *Kamus Inggris-Indonesia, Cet. XVIII*, Jakarta: PT. Gramedia, Jakarta, 1990, p.138.

⁸ Aisyah, Konflik sosial dalam hubungan antar umat beragama. *Jurnal dakwah tabligh*. 15(2), 2014 p. 192.

⁹ Ibid., hlm. 193

¹⁰ Ibid., hlm. 194

Social conflict hereinafter referred as conflict is feud and / or physical clash with violence between two groups of community or more that take place in a certain time and have wide impact causing insecurity and social disintegration so as to disrupt national stability and hamper national development¹¹.

Conflict can come from several things, including (1) issues related to politics, economy, and social culture; (2) the feud between religious and / or religious interfaith, tribal, and interethnic; (3) border disputes of village, regency / city, and / or provincial boundaries; (4) natural resource disputes between communities and / or between communities with business actors; and (5) unequal distribution of natural resources in the community¹².

The concept of conflict prevention is regulated in Law no. 7 in year 2012 on Handling Social Conflict. Which is the scope includes conflict prevention of conflict, cessation of conflict and post-conflict recovery.

Prevention Conflict is a series of activities taken to prevent conflicts with institutional capacity building and early warning systems. Termination The conflict is a series of activities to end violence, rescue victims, limit extensions and escalation of conflicts, and prevent the increasing number of victims and property losses. While post-conflict recovery is a series of activities to restore the situation and improve the harmonious relationships in society due to conflict through reconciliation, rehabilitation and reconstruction activities.

The handling of conflicts has several objectives including; (1) to create a safe, secure, peaceful and prosperous society; (2) maintaining peaceful and harmonious conditions in social relations; (3) to increase tolerance in the life of the society and the state; (4) maintaining the sustainability of government functions; (5) protecting the soul, property, and public facilities and infrastructure; (6) provide protection and fulfillment of victims' rights; and (7) restoring the physical and mental condition of the society and the public facilities and infrastructure.

To create a peaceful society, it is necessary to maintain the condition so that the society is always peaceful in order to minimize the conflict, so everyone should develop a tolerance and mutual respect, recognize and treat people according to their dignity, recognize equality of rights and obligations, develop unity and respect for the opinions of others¹³.

Beside the society as individuals who are obliged to reduce conflict, the central and local governments also have an obligation to sustain potential conflicts by carrying out the planning and developing that takes into account the aspirations of the society, implements the principles of good governance, conducts peace programs in potential conflict areas, dialogue among society groups intensively, enforce law without discrimination, build national character, preserve Pancasila values and local wisdom also organize consultations with society groups to build partnerships with local business actors¹⁴.

2. Discretion

Discretion is the authority of the police to make decisions or choose various actions in resolving the issue of law violations or criminal cases being dealt with¹⁵.

In addition, according to Erlyn (2017) discretion is the authority of a person, group of persons or institutions to independently, wisely, and considerably determine the choice of decision-making regarding the implementation of certain actions which are deemed most appropriate¹⁶.

Article 1 section 9 of Law No 30 in year 2014 describes discretion as a decision and / or done by a government official to settle the concrete problems faced in the administration of the government in the case of eligible, non-regulating, incomplete or unclear and / government stagnation.

There are eight elements contained in the discretion that are (1) independence, (2) authority, (3) wisdom, (4) considerations, (5) choice, (6) decisions, (7) actions, and (8) precisions. By formulating all the eight elements, it can be formulated that the independence and / or process of authority (a person or group of persons or institutions) to wisely and considerably make choices in terms of making decisions and or taking the most appropriate measures¹⁷.

¹¹ Undang-Undang Republik Indonesia Nomor 7 Tahun 2012 tentang Penanganan Konflik Sosial

¹² Ibid., p. 6

¹³ Ibid., p. 7

¹⁴ Ibid., p. 7-8

¹⁵ Markum, dkk, *Diskresi Kepolisian*. Semarang, Semarang, Lembaga Pendidikan dan Pelatihan Polri, 2017, p. 10

¹⁶ Erlyn, 2017, Penggunaan Diskresi dalam Pelaksanaa Tugas Polri, disampaikan dalam seminar penggunaan diskresi dalam pelaksanaan tugas Polri di Polres Kebumen on 11 Juli 2017

¹⁷ Ibid., p. 11

In order that the application of police discretion is not seen as a tool of engineering from police officers to obtain personal gain, there are several legal basis that can be used as legal protection of the application of discretion¹⁸, such as:

- a. Article 15 section (2) sub-section k of Law no. 2 in year 2002 about the Indonesian National Police, which states: the Indonesian National Police in accordance with other legislation is **authorized: to exercise other authorities within the scope of the police duty;**
- b. Article 16 section (1) sub-section l of Law no. 2 in year 2002. In the context of carrying out duties in the criminal process, the Indonesian National Police is authorized to: **conduct other acts under responsible law.** Section (2) Other acts as referred to in section (1) sub-section l is investigation and investigation actions carried out if they meet the following requirements:
 - 1) is not contrary to a rule of law;
 - 2) consistent with the legal obligations that require such action to take place;
 - 3) should be proper, reasonable, and included in the environment of his position;
 - 4) appropriate consideration based on coercive circumstances; and
 - 5) respect for human rights.
- c. Article 18 section (1) of Law no. 2 in year 2002 about Indonesian National Police states: For the public interest, the officers of the Indonesian National Police in carrying out their duties and authorities **may act in their own judgment.** Section (2) The implementation of the provisions referred to in section (1) can only be done in a very necessary circumstances with due observance of laws and regulations, as well as the Code of Ethics of the Indonesian National Police.

In addition to the application of discretion which must be based on existing legislation, discretion must be enforced based on local law or custom. It should be noted, even if the police have the authority to act on the basis of their own judgement, this should not be interpreted narrowly, so that the police apparatus easily impose discretionary powers. Therefore, the existence of discretion cannot be separated from the existence of a police authority in general and the existence of laws governing to act, so discretion must be done within the framework of the authority granted by law.

3. Alternative Dispute Resolution (ADR)

Alternative dispute resolution is a foreign term that needs to be found in the Indonesian equivalent. Various Indonesian terms have been introduced in various forums by various parties, such as the Dispute Resolution Option (PPS), Alternative Dispute Resolution Mechanism (MAPS), non-court dispute resolution options, and cooperative dispute resolution mechanisms.

Alternative dispute resolution is an alternative to dispute resolution through a procedure agreed upon by the parties that is an out-of-court settlement in consultation, negotiation, mediation, conciliation or expert judgment¹⁹.

According to Priyatna Abdurrasyid, ADR is a private dispute by the private parties agreed by the parties with the objective of saving the cost of the case, eliminating publicity and eliminating vigorous examination²⁰.

The objectives of the ADR according to Bostwick in Priyatna are to resolve legal disputes outside the court for the benefit of the parties, reducing the costs of conventional litigation and usual time-outs, and preventing legal disputes normally brought to justice²¹.

Joni Emirzon declares the most common forms of dispute resolution in dispute are negotiation, mediation, conciliation and arbitration. The four forms of settlement are out of court which each have advantages and disadvantages that choose based on the most appropriate possibility to apply²².

Negotiation is a direct discussion between parties without any involvement of third parties, in the hope that decision makers can resolve disputes without existing formal trials outside. Mediation is an intermediate procedure in which a person sides as a vehicle to communicate between the parties, so that different views of the dispute can be understood and reconciled. Conciliation is a rather uncomplicated procedure that involves someone reviewing the demands of both parties in a dispute and offering a settlement conclusion that principally does not focus on false allocations but focuses on improving the losses /

¹⁸ Diktat Diskresi Kepolisian, 2012, Akademi Kepolisian

¹⁹ Mahdi., Din., Bantasyam, Perdamaian dalam Tindakan Pidana Kecelakaan Lalu Lintas. *Jurnal Ilmu Hukum*. 2(1), 2013 p. 46.

²⁰ Priyatna Abdurrasyid, *Arbitrase & Alternatif Penyelesaian Sengketa*, Jakarta: Fikhati Aneska, 2002, p. 15

²¹ Ibid., hlm. 16

²² Priyatna Abdurrasyid, Op.Cit, hlm. 16

suffering caused. Whereas arbitration is the settlement of a dispute based on an arbitration agreement made in writing by the parties to the dispute.

4. The Implementation of Discretion in the Handling of Social Conflict by the Police

Associated with the implementation of police discretion in solving the problems, there are some common considerations used as a handle²³, among others:

- a. Accelerate the settlement process. This is done considering through the formal channels, cases that are being examined will be completed in the long term.
- b. Avoid the build up of cases. Duties and responsibilities carried by police officers from day to day increase, so that discretionary action can be used as an effective means to reduce the workload.
- c. There is a desire for the case to be completed by a win-win solution, remembering through formal means can be sure there will be a losing party and some are winning;
- d. The feeling of compassion (mercy) from the victim, so that the victim does not want his case extended.

The role of the Police in dealing with social conflicts desperately needs skills, conflict management and discretionary skills in solving social conflict problems in Indonesia. In order to resolve the conflicts, the Police concerned the sociological and anthropological approaches and the restoration of the rights of victims involving stakeholders (public figures and religious leaders) so as to prioritize plurality and social tolerance.

Discretion forms that can be done by the police in handling social conflicts are carried out in three stages of conflict management, namely pre-conflict stage, crisis / conflict settlement stage and post conflict stage. In each of these stages, the Police use their authority to engage in discretionary action of the police with a view to the public interest, and social justice. To conduct the police discretion, the Police consider elements in discretion.

The discretion levels are as follows²⁴:

- a. **Level 1:** there should be no legal, written or unwritten provisions, build agreements, and implement agreements.
- b. **Level 2:** there should be no written legal provisions, must interpret the existing legal provisions, must apply the provisions of the law that has been interpreted.
- c. **Level 3:** there should be no written legal provisions governing, must interpret the existing legal provisions, and should not apply the legal provisions as they are.
- d. **Level 4:** there must be a written legal provision, should not interpret the existing legal provisions, and must apply the legal provisions as they are.
- e. **Level 5:** there must be a written legal provision governing, must not interpret the existing legal provisions, and should apply the legal provisions as they are.

The implementation of police discretion is carried out in every stage of social conflict with following implementation:

- a. Pre-conflict stage. At this stage the police are able to do police discretion against social problems that can trigger social conflict, for example the police close a public road by diverting the path to another road for public interest in the form of community activities.
- b. Conflict settlement stage. At the time of the social conflict will result in the emergence of public acts that are contrary to existing law and even the emergence of criminal actions that demand the police must take action police. At this stage the police will do the police action by screening cases that have criminal impacts by the community considering that if the criminal act of the community is done completely with the approach of criminal law then the goal of conflict resolution will not be achieved. For that Police do filtering problems of society with action of police discretion to:
 1. Not reporting a criminal act
 2. Putting aside public reports on criminal acts
 3. Continuing criminal cases by law
- c. Post-conflict stage. At this stage conflict management focuses on police actions resulting from social conflicts. The consequences are murder, rape, robbery, torture, theft, and so on. Conflict settlement can be done when the parties get justice according to the parties. For that in the post-conflict stage, if applied with a legal approach it will not be able to achieve real conflict settlement.

²³ Ibid., p. 46-47

²⁴ Erlyn, 2017, *Penggunaan Diskresi dalam Pelaksanaan Tugas Polri*, stated in seminar of the use of discretion in realization police task in Polres Kebumen on 11 Juli 2017

Thus, the results of police discretionary actions may take the form of litigation and non litigation. The litigation action where with the agreement of the Police as a facilitator of the handling of social conflict continue criminal cases that occur at each stage of the conflict to be resolved through law enforcement approach that is through the judicial process.

Non-litigation actions result in conflict management at each stage of the conflict by doing Alternative Dispute Resolution (ADR). The consensus model that is thought to lead to new conflicts should be replaced by the asensus model, since dialogue between the parties to solve the problem is a very positive step. ADR is better suited to justice and efficient demands in conflict resolution by the parties. ADR actions that can be carried out by the police include negotiation, mediation, conciliation and abitation between the parties to the conflict.

According to Adam Graycar, Director of the Australian Institute of Criminology, states that in practice restorative justice, requires the support of *reintegrative* shaming theory in resolving conflicts. Graycar explains by quoting Braithwaite's opinion on the theory of *reintegrative shaming*, that there are two main aspects attached to the restorative process. First to achieve reintegration success, the process must involve the participation and participation of the community for the support of the perpetrator and the victim. The second is a process that requires the presence of shame as a confrontation of wrongdoing between the perpetrator and the victim.

Another form of discretion that can be done is by creating policy-oriented to reduce social conflict that occurred. This policy can be either repressive or preventive policies. One example that can be taken is the policy issued to handle conflict in Central Sulawesi District by Central Sulawesi Police Chief by issuing the prohibition of carrying sharp weapons and other dangerous objects.

4. The Problems of Discretion Implementation

Some problems in the police discretionary action when handling social conflicts are, as follows:

1. Legal factors. Laws governing the discretion of the police on the handling of social conflicts have not been explicitly regulated, this may lead to the occurrence of subscribers of the principle of legality. Discretion without strong legal foundation has an impact on the settlement of conflict that cannot be resolved properly, the existence of the doubts of Police personnel (superiors and subordinates) to perform discretionary measures.
2. Factor of personnel capability. Not all police personnel have the ability to assess when discretionary action is used. In the act of police discrimination conducted self assessment by personnel of Indonesian Police individually or institution. The inability to provide assessments has an impact on the ongoing escalation of the conflict.
3. The discretion issued also has the potential to be used as a means to gain personal or group benefits. Therefore, there is a need for tolerance limits. The limitation of the diction is necessary given the discretionary user as well as the ordinary human being who can be wrong and false. If discretion has been exploited for private or group interests then there will be parties who certainly sacrificed, of course this is contrary to the principle of justice and will also damage the professionalism of the police.

Therefore, once again, restrictions on discretion are taken, the limits of tolerance of this discretion include (1) the existence of freedom or breadth of state administration to act on its own initiative, (2) solve urgent problems that have no rules, (3) no harm society, and (4) can be justified by law and value

Conclusion

1. Not all of the problems in social conflict can be solved by criminal law. One form of conflict management efforts is with discretion. Through discretion, conflict settlement can not only be handled repressively but also through Alternative Dispute Resolution (ADR) approaches with sociological and anthropological cultural approaches and the provision of mechanisms for restoring the rights of victims, and involving stakeholders (society leaders and religious leaders) In this case the dialogue between the disputants to solve the problem is a very positive step. In addition, the form of discretion can also be done with the issuance of policy-oriented to reduce social conflict that occurred. This policy can be either repressive or preventive policies.
2. Discretion as an alternative form of choice that can be taken by police officers which is a form of freedom of action is certainly going to be vulnerable to problems. Some constraints in discretionary actions include (1) legal factors. Laws governing the discretion of the police on the handling of social conflicts have not been explicitly regulated, this may lead to the occurrence of subscribers of the principle of legality. (2) personnel capability factor. Not all police personnel have the ability to assess when discretionary action is being used, and (3) the discretion issued also has the potential to be used as a means to reap a personal or group benefit. Therefore, there is a need for tolerance limits.

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