

Progressive Police: Contextual Crime Handling Through *Restorative Justice*

Hadi Purnomo^{1*}, Andre Yosua M²

¹Perguruan Tinggi Ilmu Kepolisian, Indonesia

²Perguruan Tinggi Ilmu Kepolisian

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*Corresponding author: Hadi Purnomo

Abstract

The phenomenon of crime from time to time shows an increasing trend in *graph*, both in quantity and quality, but such increase is not balanced with the ability to resolve the crimes. The average ability of the investigators to resolve crimes that occur is approximately only 47%. Law enforcement for various types of crimes is generally carried out through the mechanisms or procedures that are regulated in the Criminal Procedure Code, namely through the Criminal Justice System (SPP). This is as a result of using positivistic paradigm in the law enforcement. Law is only understood as a mere law. Therefore, in resolving criminal cases, the figure of police, who not only understand the text of rules of law but also the contextual aspects of case, is necessary. Such police figure can be referred to as Progressive Police, namely police who are willing to think and act *out of the box* so that they are not confined to rules (*rule bounded*). In Riau Islands, contextual crimes frequently occur so that they need to be handled contextually by the police. The actions are carried out through *restorative justice*, specifically through the Partnership Forum of Police and Society (FKPM). This study was conducted to elaborate the characteristics of Progressive Police and create "*police gentlement*" so as to be able to solve contextual crimes through *restorative justice*.

Keywords: Progressive Police, Contextual Crime, Restorative Justice.

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INTRODUCTION

Although law and justice are often regarded as two sides of one coin, it must be remembered that law is completely different from justice. In essence, upholding law does not at the same time bring justice, let alone what is called comprehensive justice. I have tried to trace what kind of justice that can be compared to comprehensive justice. It is found in the literature a type of justice called perfect justice [1].

This is in accordance with Menski's statement that through the legal pluralism approach, a legal decision maker should always pay attention to the complexity of the case that happens. Such complexity is the basis for the construction of legal reasoning before the police, prosecutors and judges decide on certain policies. The complexity is present in the form of *state law*, *living law (socio-legal)* and *natural law (morale, ethics, and religion)*.

In line with crime handling policy (criminal politics), the criminal case administration, in fact, can go through 2 (two) channels, namely the criminal line

(using criminal law facilities) and non-criminal line (efforts outside the means of criminal law). Therefore, in their efforts to deal with crimes, the police with their inherent discretionary authority can make a decision by choosing to use *penal policy* or *non-penal policy*, with the aim of realizing justice expected by the community (*substantive justice*) [2].

To be able to carry out law enforcement through non-penal policy, there is a need of re-arrangement by making changes in the tradition of thinking (changes of mindset and view) towards law, namely from the traditional legal thinking that only uses normative paradigm (positivistic paradigm) to the new one which is more progressive (constructivism paradigm). In addition, in the re-arrangement, it is also necessary to pay attention to the Indonesian-characterized concept of justice, namely living and dynamic justice in the society, and to consider the tendency of global society to include *Restorative Justice* as a way of resolving crime, so that the Criminal Justice System is more appropriately applied.

RESEARCH METHODOLOGY

This study uses a qualitative research method with a socio-legal approach [3]. Qualitative research with constructivist paradigm chose the Riau Islands Police jurisdiction as the research location. The research location of Riau Islands Regional Police was chosen because the area is mostly (96%) waters area with various limitations, including supporting facilities (mainly transportation modes). Such regional characteristics pose an opportunity for the development of a settlement model through *restorative justice* by the Partnership Forum of Police and Society (FKPM) in handling contextual crimes. In addition, the Riau Islands Regional Police deals with heterogeneous population with various customs that enables the local wisdom approach to be applied in the problem resolution [4].

FRAMEWORK

The position of police as the frontline in the Criminal Justice System (SPP) and the use of the positivistic paradigm in law enforcement has implications for almost all law enforcement processes through traditional procedural justice. The impact of such law enforcement model makes the law enforcement very rigid and on occasion becomes violent and arrogant, the high cost that denies the principles of simple, economical, and prompt law enforcement. As a basis, every law enforcement for any case handled by police should comply with the intended principles; however, in reality there is a very significant difference.

In accordance with the criminal policy, police, in fact, have options of criminal proceeding, namely through *penal policy* or *non-penal policy*. The logical consequence of choosing the option is that the police should change their way of thinking to be out of the box, which is changing their consideration and action in enforcing the law using another paradigm, through *non-penal policy* or *restorative justice*. Through such mindset change, the transformation of police culture (changes in the culture of police law), for the purpose of law enforcement, is expected to meet the principles of simple, economical, and prompt law enforcement; it cuts off bureaucracy so that it requires a short duration of time, is not intricate for those who seek justice, reduces the occurrence of cases that are overload in the criminal justice system, significantly cuts down the overload in correctional institutions, and especially lowers down recidivism as a result of the malfunctioning of correctional institutions in guiding fostered citizens to be able to re-assimilate in the community. To be able to realize those goals, Progressive Police who have special characters are needed.

DISCUSSION

The Process of Contextual Crime Handling

The use of the Criminal Justice System in the processing of criminal cases by the National Police is motivated by its position in the system. The National

Police is an 'integral' part of the Criminal Justice System, which through their hands an incident is reconstructed to see whether it is a criminal case or not; if it is a criminal case, then an investigation is conducted. As a logical consequence of the position of the National Police in the system, therefore, every criminal case processed by the Police uses the instrument of Criminal Law. Although, in reality, the National Police occasionally resolve criminal cases outside the Criminal Justice System.

The framework of thinking used as a foundation for theoretical analysis is the progressive law introduced by Satjipto Rahardjo. The presence of progressive law is not something that is coincident, or born without a cause, or is not something that falls from the sky. Progressive Law is a part of the never-ending truth-seeking process. Progressive law departs from the empirical fact of the operation of law in society, concerning dissatisfaction and concern towards the performance and quality of law enforcement in the *setting* of Indonesia in the late 20th century.

Progressive Law departs from two basic assumptions: first, law is for humans, not vice versa. From this basic assumption, the presence of law is not for itself, but for something that is broader and bigger. That is why when there is problem in law, then the law should be reviewed and corrected, not forcing the humans to be involved in the legal scheme. Second, law is not an absolute and final institution, because law is always *law as a process, law in the making*[5].

Speaking of crime, something that can be spontaneously spot is an act that harms others or public, or more simply, crime is an act that is contrary to legal norms. The concept of crime according to Quinney published in *The Social Reality Of Crime*, Quinney explains it in 6 (six) prepositions, namely: [6].

- a. *Definition of crime*. Crime is defined by humans who are the agents of authority in the political organization of society [6]. Crime is defined to people who behave.
- b. *Formulation of criminal definition*. Crime defines behavior as different from the comfort and needs of the people who have power to change the form of public policy. Quinney explained that crime is not only defined by political agents in the society, but also defined as referring to the interests of the segments of society who have power to change their interests towards the public policy.
- c. *Application of criminal definition*. The definition of crime is proposed by the segments of society that have power to change law enforcement and the administration of criminal law [6]. Quinney [6] confirmed in the proposition that "the interests of the authorities intervene at all levels in the criminal definition that is created" and the interests of the authorities also control the application of such definition of crime.
- d. *Development of behavior patterns in relation to criminal definition*. The forms of behavior are

developed by the segments of society in relation to the definition of crime and in the context of individuals relating to the actions that have a relative probability to the definition of crime [6]. In the proposition 2 to 4, Quinney stated that economic and political power defines behavior with weak power as a crime, especially when such behavior is in conflict with the interests of the authorities. Furthermore, although authorities can define their behavior as crime, it is very difficult for them to get affected by law enforcement rather than those who have less "power" and are economically disadvantaged.

- e. *Construction of criminal conception.* The concept of crime is constructed and diffused in each segment of society through various means of communication [6] Quinney argued that the ruling class creates ideology of crime to protect its interest. This description of crime is illustrated through the mass media and diffused through the community. Marx also asserted the ideology of the ruling class presented to society to be a consensus of the total value of society.
- f. *The social reality of crime.* The social reality of crime is constructed by the formula and application of the definition of crime, the development of the forms of behavior related to the definition of crime, and the construction of the concept of crime [6]. In this sixth proposition Quinney compiled the first 5 (five) propositions to draw conclusions. The social reality of crime has been constructed in the initial proposition.

Departing from Quinney's concept of crime as mentioned above, the construction of a crime is determined by the authorities in the community who always pay attention to existing social reality (economic, political, cultural and so on). Therefore, the handling of crimes should always be correlated or contextual with the social reality when the law enforcement is carried out, although at the implementation level it often does not consider the social reality that develops in society.

Based on the previous explanation, in order to realize the justice that is actually expected by the community, the crime handling should always be correlated with the social reality that develops when law enforcement is carried out. Therefore, virtually, crime is always contextual. From the findings in the field what is meant by contextual crime is the crime or criminal act that is defined in the Criminal Code or in other legislations (outside the provisions of the Criminal Code). Contextual crimes are not only limited to minor crimes, but also include the crimes that are qualified as ordinary ones, such as crimes against property, crimes against life, crimes against Intellectual Property Rights, crimes that are included in religious offenses, crime against domestic violence, cyber crime, narcotics crime (in the context of abusers / addicts and victims), crimes

as defined in the Law of Child Protection and Juvenile Delinquency, traffic accidents as defined in the Law of Traffic and Road Transportation, but not crimes against state's security.

In the Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia, the main duties of police are (1) maintaining security and public order; (2) providing protection, shelter, and service to the community; and (3) enforce the law. The most prominent task that often becomes public's discussion is the law enforcement. This is because the law enforcement always directly deals with the community who seek justice and is considered as restraining human rights for those who violate the law. In carrying out its function as law enforcer, police should not only be oriented towards the realization of the value of legal certainty, but also pay attention to the value and usefulness of justice. Thus, to be able to realize that, police should act progressively and if necessary use their authority by using discretion as appropriately as possible as regulated in the article 18 of Law No. 2 of 2002 concerning the Indonesian National Police. Police as law enforcers who have progressive legal characters need to be analyzed more deeply and sharply, accompanied by arguments, to show that the potential for the formation of progressive police is not a possible thing.

The research findings show that the reality of law enforcement towards the contextual crimes by conventional Police Bureaucracy often finds a deadlock (formal legal deadlock) as a result of the law enforcement that only uses positivistic paradigm. The implication of using positivistic paradigm in the law enforcement requires the law enforcer not to interpret the law more than what is textually read and results in the impossibility of police discretion application. Law is interpreted as *law as what is written in the books*, which are the positive rules that generally apply as *Ius Constitutum*. Legal justice for the police who use positivistic paradigm in their law enforcement is actually when they enforce the law as textually read in the legal regulation.

As a result of using the positivism paradigm, the handling of contextual crimes always ends in the Criminal Justice System. Through such process, justice obtained by the justice seeking community is only in the one that is given by the state and delegated to the law enforcement officials, namely the police, prosecutors, court and correctional institution. Basically, justice that is realized is the one that is restitutive and retributive. Meanwhile, the true justice that is needed based on the understanding of the perpetrators of crime, witnesses, victims, and communities affected by the crimes cannot be achieved, so that the substantive justice that is expected by the justice seekers is ignored. This can actually be attained through *restorative justice*.

Restorative Justice is often interpreted by many people as a philosophy, a process, an idea, a theory and an intervention [7]. *Restorative Justice* is the justice that emphasizes the compensation for the loss caused by or related to a criminal act. *Restorative Justice* is carried out through a cooperative process that involves all stakeholders, as explained in the definition below: [8]

“Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through cooperative process that includes all stakeholders.”

In addition, the definition given by Dignan is as follows:

“Restorative Justice is a valued-based approach to responding to wrong doing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community.”

Restorative justice is an alternative format of criminal justice by prioritizing the *integration* approach towards the perpetrator on one hand and victim/society on the other hand. The key word for *Restorative Justice* is "*Empowerment*"; such "*Empowerment*", moreover, is the heart of *Restorative justice* (*the heart of restorative ideology*); therefore, *Restorative justice* is successfully enhanced by this empowerment [9]. In the traditional concept, victims are expected to remain silent, acceptive, and not interfere with the criminal proceeding. Fundamentally, the idea of *Restorative justice* intends to re-control such roles of victim, from being passively waiting and seeing how the Criminal Justice System handles "their" crimes to empowering them to have their personal rights to participate in criminal proceeding. In the literature on *Restorative Justice*, it is said that "*empowerment*" is related to parties in criminal cases (victims, perpetrators, and community). Scholars interpret it as follows:

“Has describe empowerment as the action of meeting, discussing and resolving criminal justice matter in order to meet material and emotional need. To him, empowerment in the power for people to choose between the different alternative that are available to resolve one’s own matter. The option to make such decision should be present during the whole process.” [10]

Empowerment in the context of *restorative justice* is a process of the meeting between perpetrator and victim or public to actively discuss to participate in the resolution of crime problems (resolution of criminal matter). This is an alternative to avoid the effect of response towards crime.

The response to crime is originally carried out by holding criminal justice by the state to find the wrongdoer and then followed by the imposition of sanction to denounce and impose suffering or misery on him/her, which in principle is isolation/disintegration. *Restorative Justice*, on the other hand, carries the philosophy of solutive integration where each party plays an active role in solving the problem. Therefore, it can be said that the concept of *restorative justice* is to integrate the principle of deliberation in the resolution of criminal cases.

The concept of *restorative justice* theory offers answers to crucial issues in the resolution of criminal cases, namely: first, the criticism for the Criminal Justice System that does not provide special opportunities for victims (criminal justice systems that weaken individuals); second, the conflict elimination between victim and community; third, the fact that feeling of powerlessness that is experienced as a result of criminal act should be resolved for improvement (in order to achieve reparation)

There are several factors that cause contextual crimes are handled by the conventional police bureaucracy, so that substantive justice cannot be realized, including:

1) *Rule Making Institution*

- a. Police are essentially not a legislative body, but within the scope of administrative competency, they have authority to make internal police regulations, such as the National Police Regulation on Management of Criminal Investigation and the National Police Regulation on Community Policing Program.
- b. The legal norms regulated in those two National Police regulations are not in harmony with other equal legal norms or with the higher ones, so that they are not either in harmony with the *stupenbau theory*. This can be seen in the National Police Regulation on Management of Investigation of criminal acts, which does not provide space for the contextual crime settlement outside the Criminal Justice System. Meanwhile, the National Police Chief Regulation on Community Policing Program provides space for contextual crimes that can be resolved outside the Criminal Justice System, namely through the *Restorative Justice System*.
- c. As a result of the absence of harmonization between both the National Police Chief Regulation and other legal norms which are equal or higher in nature, at the level of practice, it often results in misunderstanding between the personnel in charge of law enforcement and the personnel in charge of the Community Policing program.

- d. The norms regulating the handling of contextual crimes that can be resolved outside the Criminal Justice System are not accommodated in the National Police Chief Regulation on The Management of Criminal Investigation; it is essentially as an influence of the Internal Legal Culture, in this case, the police legal culture, which understands the law in *Rechtsdogmatik*. In addition, there is also a concern that if the settlement model outside the Criminal Justice System is regulated in this regulation, it will be used as a justification for settling contextual crimes outside the existing procedures in order to fulfill the personal interests of the individual police officers, so that the potential for power abuse may occur.
- e. The absence of pressure groups, in this case the academic groups, NGOs, and others as personal social forces that are influential when the National Police Regulation on Management of Criminal Investigation is constructed results in the not-accommodated legal norms that regulate the handling of contextual crimes that can be resolved outside the Criminal Justice System.
- f. The provision of regulatory space for the resolution of contextual crimes through *Restorative Justice* in the National Police Chief Regulation on Management of Criminal Investigation is not actually being a concern, if there is clarity about the condition, limitation, mechanism, and model of supervision in *Restorative Justice*.

2) Rule Sanctioning Institution

- a. The duties of the Police are essentially professional work in its nature including those in the aspect of law enforcement, thus demanding high skill requirements from the caretakers and executors. Therefore, the profession can only be joined by those who have undergone advanced technical education and training. Therefore, in order to be able to realize that, the recruitment should be based on Standard Operating Procedure (SOP), which are based on objectivity, knowledge, expertise, experience and through *assessment*.
- b. In the reality, the procedure has been carried out, but the results of the recruitment are still not as expected. It can be seen from the personnel who deal with law enforcement, only about 35% of them meet the requirements as a professional, that is, they have background of legal education, criminal investigation vocational education, and experience in the field of law enforcement.
- c. One of the causes of the unmet requirements as professional officers is because the recruitment is not entirely based on the competence, but

there is still a tendency of consideration based on the assessment by the Head of work unit and kinship; as a result, the value of subjectivity is relatively high.

- d. In general, the legal understanding of police personnel is carried out in *Rechtsdogmatic*, thus influencing the handling of contextual crimes that only use the positivism paradigm. As a consequence, the law enforcement is performed procedurally and does not consider the social dimensions where the law enforcement is carried out.
- e. Facilities and infrastructure as well as budget also determine the level of success of law enforcement. In reality, the budget available to carry out an investigation of a crime is not comparable with the ideal need. The current budget provided by the state is only around 53.28% of the total need so that it is not proportional with the number of crimes handled by the police.

3) Rule Occupant

- a. The *rule occupant* may determine how effective the law is working in the community. In the context of law enforcement for contextual crimes, some *rule occupants* who participate in influencing the operation of law include criminals, victims, witnesses, advocates, non-governmental organizations, and communities affected by crimes. How much each *rule occupant* may influence is determined by the social structure in which the law is enforced.
- b. The structure of the society can be an obstacle but can also provide social facilities for the law to be applied as well as possible. This is due to the fact that law has a reciprocal relationship with community, namely as a means of regulating the community and at the same time working in the community.
- c. In societies where the social structure is categorized as middle and simple society, such as in Natuna and Tanjung Pinang, handling contextual crimes outside the Criminal Justice System, in this case through *Restorative Justice* **under** the the Partnership Forum of Police and Society (FKPM), looks more effective due to the level of population's heterogeneity that is not too high and the geographical location that is mostly waters so that if the handling of contextual crimes is processed through the Criminal Justice System, it requires quite expensive cost.
- d. Meanwhile, in societies whose social structure is categorized as modern societies, such as in Batam city area, the handling of contextual crimes outside the Criminal Justice System is not as effective as in the societies with middle and simple social structures. This is due to its very high heterogeneity of the population, the emergence of professional specialization such as Non-Governmental

Organizations and lawyers/advocates who also influence the resolution of contextual crimes outside the Criminal Justice System.

- e. Basically, the influence of the role holders in handling contextual crimes is quite significant and in accordance with the evolving social reality in which law enforcement is carried out. Therefore, in certain social realities, law enforcement tends to be directed to the pattern of law enforcement with the positivism paradigm. Meanwhile, in some other social realities, the law enforcement tends to be proceeded through channels outside the Criminal Justice System. If the social reality is not one of the considerations in carrying out law enforcement, it may not be effective.
- f. The role holders, in this case the perpetrators, witnesses, victims, and communities, affected by crimes as well as law enforcement officials, may determine the handling of contextual crime that is resolved through or outside the Criminal Justice System, in this case through the *Restorative Justice System* by the Partnership Forum of Police and Society (FKPM).

The conventional characters of police bureaucracy as mentioned above have created an opportunity for an power abuse in the form of: (1) Making law enforcement as a commodity for profit, so that public goals are mixed with personal goals; (2) Law enforcement arrogance, namely the occurrence of tug-of-war between personnel of criminal detective and personnel of community policing. Besides, the characters of police bureaucracy also result in the accumulation of cases at the investigation stage; the depletion of police energy in dealing with crimes that are contextual while other issues that possess greater interests are not handled; and eventually reduced public confidence on the law enforcement carried out by the police bureaucracy.

Based on the contextual handling of crimes by conventional police bureaucracy as mentioned above, the authors propose the construction of a progressive police bureaucracy in contextual crime handling, which can be done through a dialectical process under Fred W Riggs' prismatic theoretical framework and the use of the principles of constructivism paradigm. On the basis of the value of substantive justice, the police bureaucracy in handling contextual (ideal) and (existing) crimes can be created in the form of what is called "prismatic".

Three hundred years before Christ, Ulpianus had implanted three main principles of natural law, namely *honeste vivere* (live honestly), *alterum non laedere* (do not harm others), and *suum cuique tribuere* (give others their rights). The three basic principles are actually the basis of all human morality so that if all these three are positioned as commands, then the commands cannot be bargained by humans (imperative

category). The commands can humanize humans and make law enforcement humanistic. Being honest, not hurting others and being fair are the humanistic characteristics of law enforcement. When life is not so complex and complicated, those three traits may not be rare as in today's instantaneous life and interactions among humans who possess short-axis views and like to cut through as what is onced popularized by the anthropologist Koentjaraningrat [11].

There are several poor quality mentalities, according to Koentjaraningrat, which are continuously maintained by most people of this nation and passed down to the next generations. Some of such mentalities include being abusive, underestimating quality, lacking confidence, pseudo-discipline, and disregarding responsibilities. Cutting through is an act of getting quickly and directly through something in a fast or instant way. Most of our society is reluctant to take on the proper track due to its long-time consideration. They consider why to bother themselves when there is an easier way. The act of cutting through is also often associated with the mentality of disregarding propriety.

Police life is complex and complicated so that the knowledge it possesses cannot only be mono-disciplinary but should be multi-disciplinary and even inter-disciplinary. Possessing law and social sciences are not enough; police should also master forensic science, psychology, politics, knowledge of culture and military, and so on. Especially in its position in *optima forma* in the criminal justice system, police are the front guard who should be able to act as living law. In the hands of police, law is manifested.

The good and bad face of law enforcement starts from this first stage. At this stage as well the police may fall into a wallow of taint if they are dishonest, harming others, and cannot act fairly. Therefore, in some literatures, it is mentioned that the work of the police is referred to as *tainted occupation*.

The Characters of Progressive Police in Handling Contextual Crimes

To create progressive police, a reform is needed in various fields, even the reform cannot be carried out gradually and in particular but should be *sustainably* and systematically. Police have actually improved themselves in the midst of disrespect from various parties because of several cases that hit some of its bureaucratic apparatus such as the corrupt actions of its members. So, the reformation should continue, especially upon the behavior of the personnel and at the same time upon its bureaucracy. It is useless to reform the behavior of police personnel if the bureaucratic system is not reformed and it is useless to reform the bureaucracy if the personnel are not reformed. Both areas of reformation actually intersect at one point, namely *police culture* reform or can be put more concretely in the form of "*police gentlement*".

In the 1970s, Robert B. Seidman conducted a research on the role of informal institutions in the law enforcement in British-occupied Africa. When Britain came to Africa, Africa's legal life was in a very poor quality, with many "holes", inconsistencies, corrupt acts as well as legal and political intrigues. Britain thought that it was impossible in a short period of time to make a complete restoration of the legal system in Africa at that time. Therefore, they sought a way to overcome it by establishing what was called "English Gentlemen" which contains characters of being (1) Modest (maintaining dignity), (2) Incorruptible and cannot be bribed, (3) Honest and, (4) Fair. These four characters mended the "holes" of the African law at the time so that the legal life would be better even if the bad law was used. However, when the British left Africa, Africa's legal life slumped down again.

The reform of police culture should lead to the formation of responsive police as expected by the president Susilo Bambang Yudhoyono when giving his speech at the 67th anniversary of the Indonesian National Police [12]. To head to the responsive police, the National Police have Quick Wins program. The Quick Wins is the Police's Acceleration and Transformation Program in order to improve the National Police in accordance with its main tasks, roles, and functions. The National Police has also established its Grand Strategy for the period of 2005 to 2025 which is divided into three stages, namely 2005-2010: *Trust building*, 2010-2015: *Partnership building*, and 2015-2025: *Strive for excellence*. One of the programs in the Quick Wins of the National Police is the Quick Response (Samapta), which represents the National Police responsiveness in serving the community with one of the Community Policing Strategies which is expected to be able to realize equality between police and community and create cooperation in solving not only security issues, but also eradicating problems from *extra ordinary crimes* such as corruption to contextual crimes.

The National Police's responsive character is not sufficiently realized just by waiting for community reports, especially if after there are reports from community, they are not directly followed up just because of prioritizing superiors' orders and procedures that are too complicated (very bureaucratic). If a police officer in carrying out the law is still *caged* by complicated procedures, orders, and instructions from the superior, then it is very difficult to realize responsive police. At the theoretical level, this responsive character should be supported by a bureaucracy that is post-bureaucratic (Nonet and Selznick), which conceptually prioritizes *purpose* rather than procedures and is not confined by rules (*no rule boundedness*), so that the National Police's responsive character can ultimately lead it to be progressive police who does not consider valid discretion as taboo in

carrying out its duties, including duties as the first guard in eradicating corruption.

Being "progressive police" is not just a utopia, but a model of strong hope accompanied by complex challenges and obstacles. The complexity of life and the obstacles should not dampen down the efforts to reach "progressive police" or at least to be responsive police so that the problems of security and public order and the eradication of corruption can be executed in all jurisdictions including sector police, resort police, regional police, and national level. For this reason, the role of the National Police Chief is the main key to achieving and guarding the objectives of the *National Police Grand Strategy*.

The characters of *vigilante* and *braveness* in making new leaps are very much needed by the National Police so that the "progressive police" behind Aiptu Sulaiman more and more come up. Do the chiefs of sector police, resort police, regional police, even the National Police chief dare to start to be "progressive police" who are not corrupt? If the senior police officers are unable to become progressive police, is it possible to continue hoping that the low ranking police officers will become the progressive police pioneers so that they possess the "*police gentlement*" as the English gentlement so that they do not become the corrupt police. Police actions that lead to corrupt actions in the future should be detected as early as possible so that such actions of its members are not counter-productive with the Grand Strategy of the National Police as the front guard in combating corruption.

The handling of various cases of contextual crime as investigated in the Riau Islands by the police may be an example of an effort to form police character that is progressive character --- because the "progressive" element that intends to resolve the case by presenting substantive justice does not always prioritize the formal justice through litigation channel (criminal channel). This nation has so many types of law that frame its life. In handling legal cases in a multi-plural country like Indonesia, the using of state law as the main basic material for constructing the legal reasoning for law enforcement officers is not enough. It is necessary to include the legal facets in addition to the statutory law facets considering that the law is multifaceted, interdisciplinary and this means that it should be comprehensive.

The Benefits of Contextual Crimes Handling Through Restorative Justice by Progressive Police

Restorative justice has been translated into various variants of formulation with various philosophical values or basis, conditions, strategies, mechanisms, programs, and even types and criminal acts and against those who can be involved in it. In some regulations, this mechanism is even translated in

detail. But what is interesting about the various regulations is that:

- a. There are several countries, namely Australia, Canada, Finland, Ghana, Bulgaria, and Belgium, that translate the *Restorative justice* as a concept of mediation where the opportunity to settle criminal cases is opened outside the temporary justice system, or
- b. There are several other countries, namely the United Kingdom, New Zealand, and South Africa that incorporate the concept of *Restorative justice* as part of the criminal system.

Accordingly, the authors consider that *restorative justice*, in the view of the parties making the regulations, is interpreted as a mechanism for handling criminal cases outside the criminal justice system and as a new philosophical conviction known so far [13].

The above is a few examples from many countries that are trying to apply the paradigm of *restorative justice* in handling the criminal cases. It is interesting to see the development of the adoption of *restorative justice* approach that is rife lately because there is an assumption that the paradigm brings about many positive changes to society and state. A number of benefits that can be noted are as follows:

(a) That the community has been given space to deal with on its own the legal issues which are considered fairer. In this case, the principles of simple, clear, and cash which are more widely known and used in customary law in handling civil cases can also be applied in criminal law. It is because the Indonesian customary law basically does not recognize the differences between criminal and civil cases.

(b) The state's burden in some cases becomes reduced for example:

(1) Burden to deal with various criminal acts which can still be resolved independently by the community. The police, prosecutors and court officials can focus more on eradicating criminal offenses which are more dangerous, such as narcotics, terrorism, human trafficking or major human rights violations, or various crimes included in extra ordinary crimes.

(2) Administratively, the number of cases that come into justice system can be reduced so that the burden of court institution as stated above is reduced.

(c) The burden of providing budget for the operation of the criminal justice system is primarily in the case of correctional institution wherein the focus of settlement of criminal cases mostly ends in imprisonment, causing many problems to emerge in the penitentiary. A new and more effective form of sanction can be expected (as currently being developed in the Indonesian Penal Code draft).

Such benefits are perhaps only the records that need to be considered for the applicability of the *restorative justice* approach by the Partnership Forum of Police and Society (FKPM) in the criminal law and its institutionalization.

The Strategy of Contextual Crimes Handling by Progressive Police

a. Substantive justice is the priority

Progressive police should not merely be the mouth of law (*la bouche de la loi*) and the conventional tradition should not either impede creativity in realizing justice. Shouldn't justice be prioritized over legal certainty as stated by its initiator, Gustav Radbruch? Although law and justice are often said to be two sides of one coin, it should be remembered that law is completely different from justice. Upholding the law does not at the same time bring justice, especially in what is called substantive justice. The authors attempt to trace what kind of justice that can be compared to substantive justice. In the literature, it is found a type of justice called perfect justice [1].

According to Menski, the seeking for justice through law has been carried out by people using 3 (three) approaches, namely philosophical approach - the result is ideal justice, positivist normative - the result is formal justice, and socio-legal - the result is material justice. Menski offers the fourth type of approach called the legal pluralism approach. The kind of justice expected to be born from the legal pluralism approach is perfect justice which can be equated with substantive justice. This is in accordance with Menski's statement that through the legal pluralism approach, a legal decision maker should always pay attention to the complexity of the case. Such complexity is the basis for the construction of legal reasoning before the police, prosecutors and judges decide on certain policies. The complexity can be in the forms of state law, living law (socio-legal) and natural law (morale, ethics, and religion).

In handling legal cases, including corruption, in a pluralistic country like Indonesia, it seems that it is not enough for the police to resolve contextual crimes by only using state law as the main basic material for constructing a legal reasoning for the law enforcement officers. It is necessary to include the legal facets in addition to the statutory law facets considering that the law is multifaceted, interdisciplinary and this means that it must be comprehensive. If the legal facets are not enough to encourage police to act progressively, then the facets of morale, ethics and religion may be able to boost police's adrenaline to think, behave, and act progressively in examining and resolving contextual crimes through restorative justice by the Partnership Form of Police and Society (FKPM).

b. The Reform of Law Higher Education and Police Education

If the police are legal culture and leadership do not support the creativity and progressiveness of the officers in handling cases, is there still any hope to bring justice to the community? Of course, there is, namely through the reform of Law Higher Education (PTH) and Police Education (National Police School/SPN, Police Academy/AKPOL and Police Science College/PTIK). This is necessary to be offered as a solution considering the three educational institutions as the foster mothers for the police. They are forced and born from these school institutions. The Law Higher Education (PTH) so far tends to teach law in only one facet, the legal facet, which is in fact very dry in terms of morale, ethics and religion so that it is harsh, rigid and cold like a skeleton.

The duties of the Police Law Higher Education and Police Education are to uphold the science of law so that the officers are humanist and progressive in their characters, namely (1) with their spiritual intelligence (spiritual quotient) as law enforcers including judges are not confined with the existing regulations. (2) law enforcers intend to make legal findings (*rechtsvinding*) through the in-depth interpretation of a text and legal context so that so that it is not trapped by the superficial grammatical meanings; and (3) The police as law enforcers desire to have concern and partiality for the people, the weak parties whose rights should be secured and protected (*compassion*). The Law Higher Education and Police Education in Indonesia are forced to improve and change in response to the crises in the law enforcement which put us lower in the international rankings, which is 62 out of 126 countries surveyed by the Global Justice Project. Progressive decisions and policies in the first line of the criminal justice system can only be produced by progressive police.

Progressive police can only be produced by the Law Higher Education and progressive Police Education, which are responsive to the inadequacy of law which is only seen as a regulation. For this reason, changes in the curriculum of the Law Higher Education and Police Education should be initiated as well as in the mindset of lecturers, instructors in the legal profession training towards progressive education curriculum, which is no longer conventional-legal positivistic. The Law Higher Education and Police Education in Indonesia should have thought to introduce a course that can develop the progressive law. The only tertiary education that has included Progressive Law course in its curriculum is the Police Academy (AKPOL) in Semarang, while police education which has a higher level, namely the Police Science College (PTIK) has not included it in its curriculum. This material should be included in the PTIK curriculum with a higher level than previous education, so that its graduates get the correct understanding about the operation of law in the society.

The Faculty of Law University of Diponegoro (UNDIP) as the birthplace of progressive law has not yet included the subject in its curriculum. Progressive law material is only inserted into the Law and Society/Sociology of Law course. However, in the UNDIP Law Doctoral Program; many of the lecturers have got the ideas and thoughts of progressive law. In the authors' view, even though it seems difficult to produce progressive police, there is still a hope that a police officer will be born resulting from higher education in law and police education which is full of progressive nuances by carrying out the progressive law of Professor Satjipto Rahardjo.

CONCLUSION

The urgency of the search for substantive justice and the existence of Law Higher Education (PTH) and Police Education (National Police School/SPN, Police Academy/AKPOL and Police Science College/PTIK) with the progressive characters are actually the main capital to form progressive police in the midst of hegemony of life that is very practical and pragmatic. Progressive characters are very appropriate to be used in solving contextual crimes. The characters are shown in the following behaviors:

1. With his spiritual intelligence, (*spiritual quotient*) law enforcers including police are not constrained by the rules if the rules do not bring justice.
2. Police as law enforcers intend to interpret the legal regulations, especially in making legal findings (*rechtsvinding*) through deep interpretation of a text and legal context so that it is not trapped by the superficial grammatical meanings; and
3. The police as law enforcers desire to have concern and partiality for the people, the weak parties whose rights should be secured and protected (*compassion*).
4. The National Police's responsive character is not sufficiently realized just by waiting for community reports, especially when the community reports are not immediately followed up because of prioritizing superiors' orders and procedures that are sometimes too complicated (very bureaucratic).
5. The behavior contains what is called "*Police Gentlement*" which involves the characters of being (1) Modest (maintaining dignity), (2) Incorruptible and cannot be bribed, (3) Honest and, (4) Fair.

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