

# Policy Responsibilities In Police Report Handling On Criminal Actions Related To Good Government General Principles (AUPB)

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## I. BACKGROUND

The police as part of the State Administration Agency, and members of the police as personally police officers, can be held accountable, meaning that there is an act of responsibility, or something that is accountable.

Generally there is no point in including obligations or prohibitions for citizens in the state administrative legislation, when the rules of conduct cannot be imposed by the state administration (in the case where necessary).<sup>1</sup> What criteria are used to designate an action as a legal measure for state administration? To draw a distinction between government actions based on public law and private legal actions can be done using basic criteria to carry out legal actions. For the Government the basis for carrying out public legal actions is the existence of authority relating to a particular position (*ambt*).<sup>2</sup>

Responsibility is the basic willingness to carry out what is required by it. "*Respondeo ergo sum*" (I am responsible, so I am there), said Emmanuel Levinas. The description as follows: Freedom provides choices for humans to behave and behave. Therefore, humans are responsible for the choices they have made.<sup>3</sup>

Regarding police responsibilities, Muhammad Tito Karnavian and Hermawan Sulistyio revealed that the police are currently challenged to meet public demands. The quality that must be fulfilled by the police, among them is "responsible". The police must recognize the nature and level of authority of their discretion and must always be accountable to the public (community), and legislation. The police must be as transparent as possible in their decision making.<sup>4</sup>

It is undeniable that the community needs the presence of a police agency to create order and security. In the context of public order in the country, the existence of institutions and the role of

the police in Indonesia can be understood through several limits of understanding and concepts that will fully describe the functions of the police. The police are also required to behave in repairs. Improvement here means before and after an event occurs called preventive behavior that is to foster and develop the potential and strength of the community in deterring, preventing and overcoming all forms of violations of the law and the implementation of protection, protection, and service to the community.<sup>5</sup>

Community relations with the police are very close. It is difficult to separate the close relationship between the community and the police. The police and the community are likened to water like fish. There is no society without police. On the contrary, the existence of the police cannot be separated from the community. Where there is a community there is an institution called the police (*ubi societas ubi politie*).<sup>6</sup>

The main function of the government is to provide services, conduct development and organize government to regulate and take care of the community. The implementation of public services has a dimensional aspect, therefore in the discussion and implementation of the implementation strategy it cannot be based on only one aspect, for example only economic or political aspects. The approach must be integrated to cover other aspects, such as socio-cultural aspects, geographical conditions and legal / regulatory aspects.<sup>7</sup>

Information regarding the actions of the police apparatus, for example the reasons underlying the action, the form of the action as well as the time and manner of action, must be available to the wider community. The need for the public to know the actions of the police, is also part of the control of the police. Therefore according to Roy Reming as quoted by Suwarni<sup>8</sup>, that the wider audience must know how the police handle a crime: from arrest to surrender to the prosecutor's office. What was SP3 (terminated investigation) was also widely announced to the

<sup>1</sup> Philipus M.Hadjon et al, *Pengantar Hukum Administrasi Indonesia – Introduction To The Indonesian Administrative Law*, Gajahmada University Press, Yogyakarta, 2002, h.245.

<sup>2</sup> *Ibid.*, h.139.

<sup>3</sup> Muhamad Erwin, *Fulsafat Hukum – Refleksi Kritis terhadap Hukum dan Hukum Indonesia (dalam Dimensi Ide dan Aplikasi)*, PT. RajaGrafindo, Jakarta, 2015, h.340.

<sup>4</sup> Muhammad Tito Karnavian dan Hermawan Sulistyio, *Democratic Policing*, Penerbit Pensil-324, Jakarta, 2017, h.45.

<sup>5</sup>Rycko Amelza Dahniel dan Surya Dharma, *Perilaku Organisasi Kepolisian*, Pustaka Pelajar, Yogyakarta, 2014, h.7.

<sup>6</sup>Pudi Rahardi, *Hukum Kepolisian*, Penerbit Laksbang Grafika, 2014, h.187.

<sup>7</sup>Hardiyansyah, *Komunikasi Pelayanan Publik*, Penerbit Gava Media, Yogyakarta, 2015, h.15.

<sup>8</sup>Suwarni, *Reformasi Kepolisian – Studi atas Budaya Organisasi dan Pola Komunikasi*, Penerbit UII Press, Yogyakarta, 2010, h.5.

public, complete with the reasons. This method can be a strong control for the police to minimize opportunities for corruption. The service of handling Criminal Reports is part of the role of the Indonesian National Police in maintaining security and public order, enforcing the law, as well as providing protection, protection and services to the public in the context of maintaining domestic security.

AUPB can be understood as general principles that are used as a basis and procedure for the implementation of good governance, in such a way that the administration is good, polite, just and respectable, free from tyranny, violation of regulations, acts of abuse of authority, and arbitrary actions.<sup>9</sup>

## II. FORMULATION OF THE PROBLEM

Based on the above background, a problem can be formulated, namely how is Handling of Police Reports Regarding Criminal Acts Associated With AUPB?

## III. DISCUSSION

In "responsibility" contained the notion of "cause". People are responsible for something caused by it. People who are not the cause of something by it, are also not the cause of an effect and cannot be held accountable.<sup>10</sup> But to be responsible, it is not enough for a person to become a cause, it is also necessary for people to become a cause of "free". Freedom is an absolute requirement for responsibility.<sup>11</sup>

For our moral awareness, a cause must be free to be held responsible. That means that only man as a rational being can be held responsible and he is only responsible insofar as he is free.<sup>12</sup> With a strategic position in the justice process, ideally the police are filled with professional people with high integrity. The police are expected to be independent and independent and have apparatus that can carry out state power in the field of law enforcement and public services in a proportional, professional and fair manner. This demand should not be excessive, considering that in various circumstances / difficulties it is very possible for members and leaders of the National Police to commit corruption, namely in all functions and parts of the National Police organization the opportunity to do so, let alone the functions relating to public services.<sup>13</sup>

According to a bureaucratic perspective, *responsibility* is the responsibility arising from giving authority by superiors to carry out a policy. While *accountability* is an obligation to explain how the realization of the authority it has received. Accountability involves how the attitude and character of humans, both internally and externally. Someone said to be accountable (internal), if the person concerned can account for what is done to God. A person is said to be accountable (external) if he can account for his actions and attitudes to his environment, both in the formal environment (subordinate relations with his superiors) and those that are external (community). Public accountability can also be

interpreted as an obligation of individuals or authorities for what is entrusted to him in managing public resources, to account for matters relating to fiscal, managerial and program.

accountability is closely related to the evaluation (evaluation) of the implementation of work (activities). The basic question is whether the standards created (which can be in the form of SOPs) have been implemented properly (accordingly) when officers face situations and conditions that must be resolved. Accountability is an instrument to control the extent to which officers can provide results in providing services to the community.

A good government is a government that does not only work on the routine work that has been made before. However, the government is able to involve the public, private sector and other interest groups to play an active role and become an equal actor in improving public services.<sup>14</sup>

Philosophical foundation is the foundation that is "ideal" to motivate law enforcement officers, direct the spirit and dedication of the service of law enforcement, and realize the nobility of truth and justice. Thus, every law enforcement action must be aligned with the ideals contained in the spirit and nobleness of the intended philosophical goals. The philosophical foundation of the Criminal Procedure Code (KUHAP) as can be read in letter a considerations, is none other than Pancasila. The philosophical foundation of the Criminal Procedure Code is based on Pancasila, especially those that are closely related to the precepts of the Godhead and Humanity.

The Police Report on Crimes refers to the Regulation of the Head of the Indonesian National Police Number 14 of 2012 concerning Management of Criminal Investigations, Chapter I General Provisions Article 1 point 16, which states that the Police Report is a written report made by Polri officers about the existence of an incident that it is suspected that the criminal was found either by himself or through a notification given by someone because of rights or obligations based on statutory regulations.

Regarding the "report" in item 14 of the Republic of Indonesia National Police Chief Regulation Number 14 of 2012 concerning Management of Criminal Investigations, Chapter I General Provisions Article 1, the contents of which are the same as Article 1 point 24 of Law Number 8 of 1981 concerning Criminal Procedures ( hereinafter referred to as the Criminal Procedure Code), stated: A report is a notification given by a person because of a statutory right or obligation to the competent authority regarding whether or has been or is suspected of a criminal event.

About officials authorized to receive reports mentioned in Article 5 of the Criminal Procedure Code are investigators. To find out who has the authority to conduct an investigation, we return to Article 1 point 4 of the Criminal Procedure Code which states that the Investigator is an official of the Republic of Indonesia police who is authorized by this law to conduct an investigation. According to the Criminal Procedure Code as formulated in Article 4 it is stated that the Investigator is every police official of the Republic of Indonesia. Strictly speaking: the investigator is

<sup>9</sup>Ridwan HR, *Op Cit*, h. 234.

<sup>10</sup>Muhamad Erwin, *Opcit*, h.341.

<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid.*

<sup>13</sup>Suwarni, *Op Cit*, h.3.

<sup>14</sup>Agus Pramusinto dan Wahyudi Kumorotomo (editor), *Governance Reform di Indonesia*, Penerbit Gava Media dan MAP-UGM, Yogyakarta, 2009, h.310.

every police official. Prosecutors or other officials are not authorized to conduct an investigation. Investigation, a single monopoly for the Police.<sup>15</sup>

The role of the police in providing protection, protection and service to this community legally needs to obtain a legal basis. As an institution that carries out government functions in the field of maintaining security and public order, law enforcement, protectors, protecting and serving people based on the principle of legality (*rechtmatigheid*) regulated in the 1945 Constitution, Law No.8 of 1981 concerning the Criminal Procedure Code, Laws Law No.2 of 2002 concerning the National Police as well as other laws that specifically regulate, the police function consists of two functions, namely the preventive and repressive functions. The preventive function is carried out in order to provide protection, protection and service to the community, and the repressive function as a function of law enforcement. Therefore, in carrying out these government functions must rely on the principles of good governance as formulated in the AUPB.

Handling criminal report in the police is regulated in Article 4 Jo Article 5 paragraph (1) of the Criminal Procedure Code, which states that: "Investigators are any police officers of the Republic of Indonesia who, because of their obligations, have the authority to receive reports or complaints from someone about a criminal act". Therefore the handling of police reports on criminal acts is a KTUN issued under the Criminal Procedure Code. Whereas AUPB, are general principles that are used as a basis and procedure for the implementation of good governance, which in this way the administration of governance is good and free from violations of regulations and acts of abuse of authority. The availability of sanctions in relation to the implementation of duties and authority of the police is an important closing part in the law, not least in administrative law. In general, there is no point in including obligations or prohibitions and requirements for the police in the state administrative legislation which contains AUPB, when the rules of conduct cannot be imposed by state administration.

The responsibility for handling police reports on criminal offenses related to AUPB, is a form of legal liability for every action of a police official within the framework of legal authority and if the act exceeds legal authority, then it is considered as an act that must be legally accounted for. The form of legal liability is (a). Legal liability discipline, (b). Civil liability, (c). Legal responsibility of state administration, (d) Criminal liability. Referring to Article 10 of Law Number 30 Year 2014 concerning Government Administration related to AUPB, the use of authority in the service of handling police reports on crimes is normatively measured in line with the AUPB. Based on Article 2 point d of the UUPTUN it is stated that the KTUN based on the provisions of KUHAP are not included in the definition of KTUN according to the UUPTUN. Whereas Article 2 of the Police Law stipulates that the function of the police is one of the functions of the government of the state, so that the implementation of the duties and authority of the police referred to is in the context of carrying out governmental functions, and therefore police officers are Officials of State Administration Institutions. If the police in carrying out their duties and authorities issue a decree based on applicable laws, which are concrete, individual and final, cause legal

consequences for a person or a legal entity, then those who feel their interests are harmed by a State Administration Decree, which attempts the law is not accommodated by the Criminal Procedure Code and the Constitutional Court Decision Number MK. 21 / PUU-XII / 2014 which is related to the expansion of the competencies of the Pre-Judicial institution, then the person or legal entity can file a written claim to the State Administrative Court. Therefore, there is a legal problem in the form of conflicting norms between Article 2 letter d of the Company Law and Article 53 paragraph (2) point b of the Company Law. That is because based on Article 2 point d of the UUPTUN it is stated that the KTUN based on the Criminal Procedure Code are not included in the definition of KTUN according to the UUPTUN. Therefore the handling of police reports about criminal acts cannot be sued through the PTUN. Whereas according to Article 53 paragraph (1) of UUPTUN, it is stated that a person or legal entity who feels his interests have been harmed by a KTUN can file a written claim to the competent court which contains demands that the disputed KTUN be declared invalid or invalid, with or without a claim for compensation loss and / or rehabilitation. Article 53 paragraph (2) point b of the UUPTUN states that the reasons that can be used in the lawsuit as referred to in paragraph (1) are that the KTUN sued is contrary to the AUPB.

#### IV. CLOSING

In order to strengthen the responsibility of the police in handling police reports regarding criminal acts related to AUPB, it is recommended to the Government, namely that the availability of sanctions be related to the responsibility of the police in handling police reports regarding criminal acts related to AUPB, given that sanctions are an important closing part in the law, so there is no point in including obligations or prohibitions and requirements for the police in the state administrative legislation which contains AUPB, when the rules of conduct have no sanctions and cannot be imposed by state administration. Furthermore, it is necessary to synchronize and harmonize between Article 2 letter d of the Act on State Administrative Court (UUPTUN) with Article 53 paragraph (2) item b of UUPTUN, so that the KTUN is based on the provisions of the Criminal Procedure Code other than those provided by legal channels through Pre-Trial, also including in terms of KTUN according to the Company Law, so that the handling of police reports about criminal acts that are not in accordance with the AUPB can be sued through the PTUN.

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