



The Existence of National Police Commission in Indonesia Governmental System

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ABSTRACT: *The National Police Commission is a jargon of National Police Institution in which its existence is in accordance with Ketetapan MPR No. VII/ MPR/2000 and The Law Number 2 year 2000 concerning with the National Police. Furthermore, the president degree of the year of 2011 number 17 relates to National Police Commission that contains the regulation about the function such commission, as it is stated in article 3 in which it states that; (1) Kompolnas (National Police Commission) is in charge as the supervisor to do supervision tasks towards the function of National Police to ensure the professionalism and the independency of the national police, (2) The implementation the supervision functional role as it is stated in article (1) that is conducted in terms of observation and assessment toward the function and the integrity of the members and the whole police officers in accordance to the constitutions. It is caused by the weaknesses and the limited authority of the national police commission that causes the institution of National Police Commission is unable to carry out its function maximally. It can be identified through the large amount of deviation done by some police members personally in holding their responsibilities and functions as the public protector and guardian.*

KEYWORDS: The National Police Commission, The governmental System, Republic of Indonesia.

I. INTRODUCTION

A nation is a power organization has an authority to organize the society in a nation in accordance to the pattern of the police governmental. An instrument to organize such social live is society rules obeyed and followed the whole members of society of particular country both written and oral rules. If only the writer followed formal system of the governmental rules as it is suggested by Logemann (1975:16) [1], so the elaboration about law institution is related to the authority of the official or functionary, the elaboration is viewed as an authority; conversely it is not in consideration about an officer that holds an authority. Furthermore, Logemann (1975:16) [1] *states in het stellig state recht verscijt het ambt als* person, personally, right and responsibility are embedded in an authority (Official) that represents such authority. Moreover, according to Bagir Manan (Ridwan HR, 2006:73) [2], an authority is a regular task that contains definite functions represent the goal and tasks arrangement of an organization as a whole. A nation has various authorities and work fields are equipped with functions to reach the goal of a nation. Furthermore, by quoting Utrecht, Ridwan HR (Ridwan HR, 2006:73) [2] it is stated that an authority is a regular work field set as a necessity of a nation. The character of an authority is regular, while the officer of an authority (*ambtsdrager*) is replaceable, for instance, a position as a president, vice of president, minister, governor, etc, is relatively permanent, whilst the one who holds the position is replaceable.

Even so, the implementation of the governmental policies that are held by the officers that have been provided with such authority to do governmental tasks should be limited by constitutions of a nation. The idea about the government power that should be limited has ever been formulized by England historian named Lord Acton, by stating that the governmental is always hold by human being, and in which human being has some weaknesses and it can happen to whoever without exception. His popular argument in a slogan; *power tends to corrupt, but absolute power corrupts absolutely*" (human being who has power tends to misuse the power, but human being has unlimited power will misuse the power unlimited as well). (Miriam Budiardjo, 2008:107) [3].

Meanwhile, Munir Faudy (Munir Faudy, 2009:1) [4] states, in a nation in which law is the main actor to hold the government, the limitation between the authorities of a nation and politic should be clearly defined,

in which it cannot be broken by anyone. That is why, in a law nation, the role of law is particularly important, and it is placed above the authority of a nation and politics. It is the reason for the emergence of the term of government under the law.

According to Montesquieu, in his book "*L'Esprit des Lois*" in which it is inspired by John Lock's point of view, divides a nation's authority into three parts, i.e.; (i) legislative authority, the creator of constitutions, (ii) executive authority that implements the constitution and (iii) Judicative authority is the authority to judge. One organ can only hold a single function, and they may not absolutely take overlapping roles to each other (Jimly Assiddiqie, 2006:12-13) [5].

It is in accordance with C.F. Strong (Abdul Ghoffar, 2009:12) [6] that such a phenomenon of authority division is caused by the existence of a normal process of specialization of the function. The phenomena can be identified through all sides of point of view and through an action caused by the more improved civilization, the development of the activities, and because some governmental organs become more complex.

Conversely, according to Jimly Assiddiqie (Jimly Assiddiqie, 2010:V) [7] the conception of *trias politica* is no longer relevant to the modern era, by considering that it is impossible to keep those three organizations carry out governmental business exclusively only towards one of those three functions. According to Jimly, the present fact shows that the relationship between the branches of the authority is impossible without relating to each other, even the three organizations are equally in level and control to each other, it is in accordance with the principle of *check and balance*.

Samuel P Huntington (Wahyudi Djafar, 2010) [8], states that as a result of the new wave of the present democratic system, in some countries, particularly in the countries that are on the democratic transition from authoritarian to democratic, there appear some new authority organs both independent organs and state auxiliary agencies. This phenomenon can be called as the form of the *trias politica* defeat toward the movement of government paradigm. The evolution of new authority organs can be termed as the form of nation adaptation, to defend the stability of the system in the scheme of the organization of *trias politica*, toward to the political discipline condition.

The development of new institutions apart of previous existing nation institutions become an interesting and important to analyze and to discuss in depth. There is a tendency that many nation commissions in Indonesia Governmental System are still unable to provide sufficient service to public, their presence even creates an overlapping authority among nation commissions. In one hand, there are some nation commissions with some urgency in terms of fulfillment of the society's right particularly in a well up holding law, but it is still considered have some weaknesses in the authority and without independency, and one of the intended institutions is the National Police Commission.

Problem Formulation

Based on the background mentioned above, so in more concrete, the question of this research as follows : what is an ideal model of national police commission that is suitable with dynamics and the need of public?

Purposed of Research

1. To know and describe the important position of the objective of this study is to explore to find out the essence of the existence of the National Police Commission in Republic of Indonesia governmental system
2. To know and describe also find out an ideal model of national police commission that is suitable with dynamics and the need of public

Benefit of Research

This research is expected to give some benefit:

Regulations and statutes in which they relate to the object in the area of the study, i.e.; the existence of the National Police Commission in Republic Indonesia Governmental System.

II. RESEARCH METHOD

This is a descriptive study. In order to have a deep analysis toward the formulated problem of the research, the writer employs the Normative Law research. A Juridical Normative research is a research that discusses about doctrines or principles in law. The research on Normative Law is a library study. By considering that the research is normative law research, so it automatically employs gained law instruments and writer is going to study law instrument of constitutions as law decision (*das sollen*) and law facts (*das sein*) in which the fact that creates such law decision is the facts that is categorized as a nation commission in Republic Indonesia governmental system. The research is conducted by using statute approach, conceptual approach, and comparative approach.

III. RESULT AND DISCUSSION

A. The Essence Existence of the National Police Commission

The existence of the National Police Commission as a new institution in Republic Indonesia governmental system in which its appearance is in line with the emergence of The Law Number 2 year 2002 concerning with Republic Indonesia Police. Unfortunately, the establishment of this institution was just conducted in 2005 through president decree 17, 2005 and the recruitment and inauguration of its members was done in 2006. Although it is in fact that its existence is considered late; people expect that the establishment of National Police Commission can contribute new atmosphere for the existence of the renovation in Republic of Indonesia Police Institution.

The goal of the establishment of National Police Commission is to provide assistance for the presidents in stating the policy course of National Police and providing consideration to president in appointment and dismissal the head of Republic of Indonesia Police, as it is stated in article 3 president decrees 17, 2011, the National Police Commission has an authority (1), to collect and to analyze data as a consideration instruments to the president concerning with the budget, the development of human resource, and the development of instrument for Republic of Indonesia Police; (2) to provide the president with suggestion other consideration in an effort to realize a professional and independent Republic of Indonesia Police, and (3) to provide the society with chance to suggest and complaint relating to work performance of police and delivers it to the president. That is why, it can't be denied that the existence of National Police Commission in Republic Indonesia Governmental System, is caused by the presence of the society ignorance toward the police institution itself. It is the reason why it is considered that the existence of an institution that is responsible for supervising the role of police institution is necessary.

Nowadays, the existence of the police is in paradox condition, in one hand, the police have implemented some steps and effort to reach the successfulness of reformation agenda, and it has showed an achievement in law enforcement, particularly in sweeping away the terrorists. But, on the other hand the misbehavior of police officers still exists. The fact becomes the main essence of the existence of National Police Commission.

a. The Misbehavior of Police Officers

Simply, Tom Baker (defines the police misbehavior as police malpractice. Here are some examples of those diverges the infraction of criminal law, departments orders and another regulations, and police standard disciplines that occurs during the works activities and is related to the work as a police. In Indonesia police diverges occurs variously, from corruption habitual to over action. It is related to the violence done by the members of police, the writer did an interview to Chrisbiantoro the one who is from Violence Anti Commission Jakarta that exposed some facts about the violence by police officers in Indonesia. Police violence practice in six year latest (2005-2010), tends to stable and consistent. It can be interpreted that the police do not take a lesson from previous mistakes in doing today's violence that is considered over action. It happened two hundreds violence cases in 2005, and there were thirteen violence cases 2006, there were forty-three violence cases, there were twenty-three violence cases, there were twenty-six violence cases in 2009, and there were twenty violence cases done by police officers" Here some kinds of violence done by police officers that is categorized as follows (1) Striking and mistreatment 40 cases; (2) Over violence in handling demonstration 10 cases; (3) Arbitrary catching 61 cases; (4) Public aggression 3 cases; (5) Raping / sexual harassment 5 cases; (6) Murder 6 cases; (7) Robbery 4 cases; (8) Fighting 3 cases; (9) Extortion 2 cases; and (10) Insulting action/abusive 1 cases.

Moreover, in relation to police diverges, Ida Tarbell, elaborates that the police diverges is a wider term than corruption. In this case, police diverge covers all actions and inconsistent behavior toward norms and values or ethics both are considered through police point of view and society point of view. One of criminology theories states that it is very useful to learn when human being does not only go beyond society norms, but also norms of their social groups.

Meanwhile, Barker and Carter categorize the cases that are included as police diverges; they are brutality of the police, discrimination, and sexual harassment, intimidation and the use of illegal weapon. Dealing with fact above, Gufron who is as a Jakarta impartial manager states that the high tense diverges done by police officers in Indonesia will more ensure that the existence of National Police Commission does not only enlarge its authority, but also how to enlarge the coverage of its responsibility to all regions.

There are some public eye-catching cases about the involvement of police members in criminal actions. They are among other the cooperation trade of narcotic evidence between Aiptu Irfan, the member of Pademangan Police station Northern Jakarta, and Esther who is one of the prosecutors. Esther is a general prosecutor of narcotic case in Jakarta state council took the evidence that consists of 300 ecstasy pills from the suspected. Esther then traded the evidence to Aiptu Irfan with one Blackberry as the repayment and the newest Nokia. Another case is the involvement of Kombes (Pol) Wiliardy Wizard in the murder of a director of a big company;

Putra Rajawali Banjaran ltd; Nasruddin Zulkarnain in Tangerang, March 14, 2009, that involved the former head of the Corruption Extermination Commission; Antasari Azhar.

b. The Democratic Obligation

The existence of National Police commission cannot be separated from the presence of global demand concerning with the obligation of democratic governmental implementation. i.e.; there is a willingness to establish democratic governmental by implementing check and balance principle which equally conducted among the branches of the authority. The existence of supervision institution is considered important to ensure that the implementation of good governance runs well, in accordance with legality and in line with the competence and public need. The implementation of governmental system is susceptible with misusing the authority without any control and supervision; and it includes in the area of national police.

The progress and the establishment of new institution in the system and the structure of nation authority is an implication of demand of reformation and the inspiration of social justice widely spread in the society, and it is also as an effort to reach the realization of democratic nation, the upright existence of human right and equitable law, and the clean and responsible governance (Firmasyah Arifin, 2005:1) [9]. Futhermore, Jimly Assiddiqie (Jimly Assiddiqie, 2010:11) [7] states that the establishment of independent organization or nation institutions such as nation commissions, figures out the great change and it is basically in the form and the structure of the present organization. Nowadays, kinds of nation institutions with the complexity of its administration system have improved drastically and it is unimaginable if it is related to trias politica paradigm Montesqueieu of the eighteen century. These institutions carry out their mixture functions between regulative functions, administrative and punishment function that is usually separated, but they are even simultaneously held by new institutions.

B. The Authority of National Police Commission

The goal of the establishment of National Police Commission is to provide assistance for the president in stating the policy course of National Police and providing consideration to president in appointment and dismissal the head of Republic of Indonesia Police. In order to reach such goal, as it is stated in precedent decree, 17 of 2011, the National Police Commission has an authority (1), to collect and to analyze data as a consideration instruments to the president concerning with the budget, the development of human resource, and the development of instrument for Republic of Indonesia Police; (2) to provide the president with suggestion other consideration in an effort to realize a professional and independent Republic of Indonesia Police, and (3) to provide the society with chance to suggest and complaint relating to work performance of police and delivers it to the president. It is in relation to the fact above; the writers did an interview to one of the Republic Indonesia parliament members of the III commission; Sayrifuddin Sudding, in which he expressed idea about the authority of National Police Commission as follows:

“ The National Police Commission has some authorities that are categorized as simple authorities relates to its position as a national commission that has in charge to provide the presidents with an assistance.

Moreover, it is even categorized as too weak authority for a commission that is strongly expected to carry out supervision function toward National Police work performance. It is not only the case of accepting and storing suggestions and complaints from the society members about the work performance of the national police; and delivering them to the president. Such responsibility even can be carried out by the police itself without involving National Police Commission. The affectivity of the supervision toward the National Police is still questionable if the National Police Commission has only a responsibility to store public complaint about law enforcement, investigation and interrogation without any authority to provide an assessment on police or police discretion. However importance the obedience toward religion norms, politeness, ethics or other ethic consideration, one of the keys for the public judgment for the national police work performance is the ability of the National Police officers carry out the service function and fair, consistent, and consequent law enforcement.

a. The Legitimacy Authority of the National Police Commission.

By referring to the principle of law nation, every single nation action should be in accordance with law norms, it includes the establishment of nation commission in which it has equal position and function with other nation institutions in realizing the nation goal as it stated in the 1945 constitution of Republic of Indonesia. Based on hierarchy theory of law norm, as it is stated in The Law Number 12 year 2011 about the establishment of regulation of constitution in paragraph 7 article 1 The Law Number 12 year2011, it is stated kinds and hierarchy or the arrangement of regulation of constitution as follows:

1. The 1945 constitution of Republic of Indonesia
2. The Decision of National Parliament
3. Constitutions / Government Regulations the Replacement of Constitution
4. Government Regulation

5. President Regulation
6. Province Regulation
7. Regency Regulation

Based on the hierarchy of constitutional regulation, the basic law of the establishment and the legitimacy of the authority of independent nation commission both conceptually and normatively as it is stated by Gunawan A. Tauda (Gunawan A. Tauda, 2011:92) [10] is classified into three parts, i.e.;

1. Nation commission that is established in accordance to the constitution (Constitutional organ)
2. The independent nation commission that is established based on constitutions divided into independent nation commission in which (a) it has constitutional importance (equal level with nation institution which are established by the constitution, for the sake of realizing democratishe rechtsstaat) (b) it does not have constitutional importance.

3. Independent nation commission that is established based on the other constitutional regulation under the constitution, i.e.; the National Police Commission that is established based on the present regulation.

Based on the classification above, it is clear that independent nation commissions are not equal in level among others and it is no all of independent nation commissions established based on constitutional design that becomes a basic law of their existence, but it is based on partial issues, incidental, and as particular answer toward being encountered problem. According to A. Ahsin Thohari (Ahsin Thohari, 2006:32-33) [11], he indicates two important things , i.e.,

a. Juridical legitimacy for the existence independent nation commission is considered too weak that leads find many blocks in carrying out its authority. The higher hierarchy will emerge an unbalance authority to independents nation commission that is established based on the lower regulations.

b. It seems that independent nation commission independently acts out without a definite synergy work system that provides collaboration with one another that sometimes ignore the function of another commission.

Dealing with the independency of a nation commission, Jimly Assiddiqie categorized it into the five independencies:

1. Institutional independency as it is shown in internal and external relationship among the institutions.
2. Functional independency as it is shown in decision making; it can be in form of (a) goal independency; an institution independently determines the goal or basic policy that it should achieve, (b) instrument independency, an institution independently states policy instrument that previously stated by another institutions.
3. Administration independency; an institution independently states an administrative policy to support the two independencies previously stated (institutional and functional independencies); it covers: (a) budgeting independency, an independency to determine supporting financial, and (b) personal independency, an institution independently organizes and determines the appointment and dismissal internal administrative staffs.

b. Models of Police Commissions in Some Countries

It is unarguable that the existence of National Police Commission in Indonesia is as the result of comparative study from the countries that have already established police watch institution, they are among other :

1. Japan

Japan Police Watch Commission is organized in Police Law (Law-No.162, June 1954) that was latest change in Law Number 82 December 19, 1989. This Watch Commission is popularly known as The National Public Safety Commission, and it has a level under the Prime Minister. This commission is in charge and responsible for police operational activities, police education, communication, crime identification, crime statistic, police supporting instruments, the coordination on police administration.

2. Philippine

Philippine Police Watch Commission is named the National Commission established in Republic Act Number 697. This commission is under the Minister of Domestic Affairs. Its authority covers: (a) National Police Administration Control, (b) provides the president with suggestions concerning with police function and administration, (c) provides an assistance to arrange and to spread regulation constitution and the police professional procedure service.

3. British

In England, local or regional police is responsible for watching police work performance. It is not done by institution or Police Commission. Police Watch is done hierarchal by watch institution in tripartite arrangement section 2 Police Act 1997 comprise of :

- (a) Police Authority is under local government
- (b) Her Majesty Inspectorate is under Minister Home Affairs
- (c) Police Constabulary

4. Hongkong

Hongkong Police Commission consists of a leader, three vices leader and eight members and it includes ombudsman or the representation of the member of ex-officio. In Hongkong, Watching Institution towards police is popularly called IPCC (Independent Police Compliant Council).

c. An Ideal Police Watch in Indonesia

In his book entitles “Membangun Polri yang Kuat” , Anton Tabah (Sadjijono, 2008:299-300) [12] states that in whatever countries in the world, the society absolutely expected a good police work performance. It means that, in carrying out police functions, it should in accordance with the need of the society. For this reason, it is needed an ideal police prerequisites. There are some formulas and prerequisites that have been agreed by the world wide countries concerning with an ideal police prerequisite, they are among other:

1. Well motivated; it means that in order to achieve police better quality, a candidate of police member should have good motivation, when a candidate decides to be a police.
2. Well educated; in order to have better police candidate, the candidate should be educated to be a good police staff. It is in relation to education system, curriculum and complex and complicated teaching and learning process.
3. Well trained; in order to have a good police staff, it is necessary to have a good training by implementing a tight managerial process so that education and training can be a solution of the problem encountered by the police in the future.
4. Well equipment; it concerns with police instruments that covers police equipment and technology.
5. Welfare; it is important thing to consider the adequate police welfare.

Based on the explanation above, an ideal the existence of the National Police Commission in accordance to the public need and expectation is absolutely on the existence of a capable institution in realizing the well organized police institution (*good police standard*). It can only be achieved if it is supported by the institutional status, institutional structure, and it is supported by the availability of the instrument and equipment that is possible to sustain tasks and functions of the National Police in watching police work performance in Indonesia.

IV. CONCLUSION

The existence of National Police Commission in Governmental System in Indonesia is based on the two main factors, because there were found some police misbehaviors (*police deviance*); it is an inconsistent behavior according to norms, values and ethics. The second factor is because the existence of global influence, i.e.; democratic obligation that expects the existed democratic government based on the *checks and balance* principle, in which it is expected to be equal among nation organs.

The National Police Commission authority is too simple for a National Commission that is in charge to provide the president with assistance. Conversely, it is even categorized as too weak authority for a commission that is strongly expected to carry out supervision function toward National Police work performance. Based on the fact above, it is necessary to establish an ideal model of National Police Commission, i.e.; a commission that is supported by permanent institution status and the independent institutional structure; as it is in Japan, in which it has tasks and responsibility for implementation of police operational activities, police educational organization, etc.

The fact above can be achieved by empowering the National Police commission authority in which the primary action to do is to revise president regulation Number 17, 2011, by establishing internal constitutions of the National Police Commission apart from The Law Number 2 year 2002 concerning with the Republic of Indonesia Police.

V. SUGGESTION

1. Use the creation of good governance Constabulary should all phases of activity of Indonesian police from members of the candidate selection policy is in control of the national policy committee.
2. Should implement a monitoring system as a model of the Japanese police in charge of the overall operations of police

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