

Conference Paper

Cultural Studies and Criminology for Indonesia: An Analysis of the Structure of Crime Control Policy

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Abstract

The criminal policy of a heterogeneous society like Indonesia should consider the diversity of the social values and norms of the society. The Indonesian ongoing criminal policies do not meet with this notion since it simply relies on the assumption that in order to unite Indonesia, there should be only one single criminal policy for all. This paper promoted cultural criminology in dealing with crime problems that fit with the diversity of ethnic groups in Indonesia, in that the criminal policy maker should let that every ethnic group solve their crime problems based on their own wisdom, i.e., the tradition of toleration, adaptation, and restoration.

Received: 19 March 2018

Accepted: 27 July 2018

Published: 29 August 2018

Publishing services provided by
Knowledge E

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Selection and Peer-review under the responsibility of the ICSPI 2016 Conference Committee.

1. Introduction

One of the aim of postmodern thought is to make that science useful for the best sake of the society. So that criminology. In this regard, the application of cultural studies in criminology as a part of the postmodern thought, i.e. cultural criminology, has widen the criminological perspective in defining the boundary of the ontology of crime, and enable criminology to be used to solve crime problems that would not resulting other problems. The postmodern thought is also arguing that in the scientific world they should not a hegemony of scientific validity, as claimed by positivistic approach. Accordingly, the scientific validity is not a single, but many (for detail discussion see, Dragan Milovanovic, 1997).

The structure of thought which brought about by cultural criminology will lead to an appropriate understanding of cultural relativism. In this sense, there should be no single culture that could claim to be the most civilized one, and then to underestimate others. Crime problems, as the central focus of criminological study, cannot be generalized, applicable to all types of culture. Each culture will face its own crime problems and might be controlled effectively through their own local knowledge. The meaning of cultural studies itself according to Le Hir (1996) "*is not a discipline in the*

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traditional sense; it is not primarily defined by its object and methodology but rather by a "choice of practice" which is "pragmatic, strategic and self-reflexive" (Le Hir, 1996: 77). While founding concepts of cultural criminology is that: *"...cultural dynamics carry within them the meaning of crime"*. Cultural criminology understands 'culture' to be stuff of collective meaning and identity; within it and by way of it, the government claims authority, the consumer considers brands of bread – and 'the criminal', as both person and perception, comes alive (Ferrell, Hayward, Young, 2008: 2). The *"cultural criminology's principle assumptions are that crime and deviance constitute more than the simple enactment of a static group culture"* (Ferrell, Hayward, Young, 2008: 3). Crime and deviance are dynamics relative phenomena which cannot regarded as a generalisable phenomenon. In this regard, *"culture and ethnicity are in themselves qualities that require explanation, and not fixed givens of traditions that provide an explanation for whatever phenomena are under examination, such as special forms of crime"* (Bovenkerk, Yesilgöz, 2004: 86).

Based on the description aforementioned, this essay will argue that in order to developed crime control policy in Indonesia for the best sake of Indonesian, the policy makers should not simply rely on the modern theoretical framework which are not necessarily applicable to the Indonesian cultural context, but they should take account the local wisdom of the various Indonesian indigenous ethnic groups, in combination with generalized knowledge.

2. Discussion

For Indonesia, as one of a multicultural state, in which the state consists of hundreds of diverse ethnic groups, cultural criminology has a favorable arena for the application of its theoretical thought. In regard to the diversity of Indonesia indigenous ethnic groups, van Vollenhaven identified nineteen customary law (adat) jurisdictions, and five special jurisdictions, except Papua (Simorangkir and W. Sastropranoto, 1960: pp. 75-76). However, it has happened for a long times that most of the Indonesian scientific ideas in social sciences and the legal science, uncritically simply rely on the Western thought. As a consequent, the most of the crime control policies (at least during New Order era) were established based on the assumption that the social structure of Indonesia resembles a consensus model of society. Even though that Thomas Dye (2011) as a prominent public policy thinker mention that: *"Public policy is whatever governments choose to do or not to do"* (Dye, 2011: 1), this definition should be regarded

as a warning that the policy makers should not to do that way. A good policy should base on a reality or the nature in with the policy will be applied.

In regard to consensus model assumption of the society, according to Michalowski (1977), this perspective believe that they need a well-integrated social system, which is established upon mutually shared and agreed of ways of conducting social interaction, formulated into a unified legal system. As Indonesia composed of diverse ethnic groups, the consensus model of crime control policy is simply not applicable, but the pluralist model, which is in line with the multicultural reality. However, promoting the theoretical perspective of the cultural criminology as a base for developing crime control policies in Indonesia is not an easy task, because in a such diverse society they will exist differing definition of right and wrong. In this sense, Dye stated that *"policy analysis cannot offer solutions to problems when there is no general agreement on what the problems are"* (Dye, 2011: 7).

Not only that the ongoing theoretical thought in Indonesia are highly affected by the Western thought, the crime control policy is also dominated by the positivistic approach. In these sense, most of the crime control policy were developed under the assumption that Indonesia is a homogeneous type of society, so that a general crime control policy is believed can be applied any were and everywhere. The positivist approach itself, according to Michalowski, may be functional only in a homogeneous type of community in which the law (national/state level) constitute as the collective will of the society [7]. As Indonesia is not a homogeneous society, therefore positivistic approach is in contradictory with the multicultural reality of Indonesia.

Ironically, even thought that some basic ideas of cultural criminology, such as the concept of restorative justice, peacemaking criminology, and participatory democracy originally based on the oriental legal philosophy including Indonesia, most of the Indonesian criminologists and legal scholars are not aware right away that these concepts are originated from the Eastern philosophical thought. As Newburn (2007) assert that much of the modern restorative justice has been inspired by indigenous practicing originating in New Zealand, Australia. In this sense, it is reasonable to say that in the present practice of modern criminal justice system in Indonesia, the indigenous thought of the indigenous people, namely the local wisdom, has been defeated by the Western positivistic thought. This argument based on the fact that the Indonesia's politics of law was oriented to unify various customary laws into one single unified law for all members of the society. That politic of law has neglected the diversity of ethnic groups, as well as the local or traditional authorities, as was stipulated on the Law on Village Governmental Structure (Pemerintahan Desa) No.5/1979 in that the Village

Governmental Structure should be established uniformly, and the legitimacy of the authority will be given by central government. As a result, the role of adat (custom) and its indigenous cultural structure were faded away. Fortunately, since the reformation era, started in 1998, there were evidences, that some legal policy has reconsidered that for the development of Indonesia the local wisdom as important one. For example, the fourth amendment of the constitution, i.e. (article 18B: 2), explicitly acknowledges adat (custom) as the cultural identity and the legal rights of every indigenous ethnic groups in Indonesia. The Constitutional Court of Indonesia, in their verdict on the presidential election dispute in 2014, acknowledges traditional election mode applied by some indigenous ethnic groups in Papua (Constitutional Court Verdict No. 31/PUU-XII/2014). In this regard, the individual Papuan has given their formal individual political right in electing president candidates to their tribe's chief through participatory democracy process. This mandate has been given based on long discussion amongst them to consider whose candidates who most likely favorable for their common interest. In the discussion, every adult member of the tribe has the right to express their personal opinion. The final decision was taken based on the assumption that the candidate is elected for the best sake of the tribe. They believed that If their individual political rights is used individually, it could endangered their cohesiveness and lead to the disintegration of the tribe. Through this mechanism, disintegration and lack of cohesiveness of the tribe will be avoided, otherwise it may have weakened the tribe unity. This kind of indigenous election mode, locally known as "noken" system, is in line with the notion of peacemaking criminology and participatory democracy (See, Arizona, 2010). According to "noken" system, individuals are the prominent party in the public policy process, not their representative as applied in the liberal democracy system [4, 5, 10].

The most difficult think in promoting cultural criminology as a base for crime control policy is to reconstruct the society as well as the community or the ethnic groups into their somewhat original culture. In their original culture, the community was constructed as relatively complex functional structure. There are many social institutions established to preserve the existence of the culture. One of the most important social institution which function in maintaining order is a customary (adat) court. For such a diverse culture like Indonesia, the application of legal pluralism policy is unavoidable. However, in 1951, The Martial Law, which promote one single unified law for all society members, has nullified the jurisdiction of adat courts. Thus to apply cultural criminology into practice, this Martial Law of 1951 should be nullified as well, because based on Law of Regional Autonomy and the acknowledgement of adat, the jurisdiction of adat courts should be reenacted. Law on Local Government (Law Number 22 / 1999, which

has been amended by Law Number 32/2004) which is also known as "Law of Local Autonomy" and Law on Special Autonomy for Aceh (Law Number 18/2001) and Papua Provinces (Law Number 21/2001) are examples of the acknowledgement of the adat diversities. This tendency is in contrary with Bovenkerk and Yesilgöz (2004) position who do not agree to grant special justice system to group of people who share a culture. It should be noted that, Bovenkerk and Yesilgöz analyzed The Netherland as a modern multicultural society, who become like this as a result of people migration into The Netherland. Whilst Indonesia, become a multicultural society because it originated from diverse indigenous ethnic groups existed in Indonesia who established a unite modern state.

Considering cultural criminology, crime problems which are faced by every community are constitute as distinct, dynamic and not permanent. The may not a single theory that can be applied in explaining all situation. The community itself should be permitted to identify their own crime problems and to find out the appropriate solution based on their own wisdom. In this regard criminological theories which are already well-known do not necessarily applied in any circumstances.

In criminology there are at least two traditional theoretical thoughts that are relevant to be applied in explaining cultural crime problem in Indonesia. However, these theories should be modified critically and scrutinized based on the traditional wisdom perspective of Indonesian. The first theory is the "conflict of conduct norms" formulated by Sellin (1938). In his first proposition of his theory, he asserted that conflict of conduct norms may arise due to differences in the mode of life and the social values. He wrote that "*conflict between the norms of divergent cultural codes may arise when these codes clash on the border of contagious culture areas*" (Sellin, 1970: 198). As Indonesia is a multicultural state, there are many contagious border of cultural areas. Thus if Sellin's proposition is true, they should lead to frequent social conflict among such contagious culture areas in Indonesia. In fact, such a conflict is almost not existed or at least rarely existed in Indonesia. In this regard, Sellin proposition is false because he has not considered that in contagious cultural area, conflict of conduct norms could be avoided. In the Indonesian context, it can be found a mechanism that govern to eliminate conflict. Because conflict could harm the community, in various cultural values and norms in Indonesia, they recognize a mechanism of avoiding conflict through toleration. Toleration is an embedded social value, socialized through cultural system, such as sayings. It is said that "*lain lubuk lain ikannya, lain lading lain belalangnya*" (there will be different norms and values amongst different culture). The people aware that they may have possible norms conflict during their interaction with people of

other culture, so if they face this situation, they will discuss such a matter through "*musyawarah untuk mufakat*" (participatory democracy). For example, when a young Batak wants to marry a young Minang, they will face a conflict of conduct norms. The social conflict may arise in this area as a consequence of that Batak culture which is bordering with Minang culture, each has quite different marriage traditions in terms of the position of groom and bride. Batak kinship system is patrilineal, while Minang kinship system is matrilineal. According to Batak tradition, the party who has the obligation to propose the future bride is the future groom family. It is in contradiction with the Minang tradition in which the party who has the right to propose is the future bride family. If we follow Sellin's conflict of conduct norms proposition, social conflict between Batak and Minang should come into reality frequently because they have divergent cultural codes in many aspects. However, it is hard to find out that there are frequent social conflicts in that area, because they have their own solution in preventing conflict, namely through *musyawarah untuk mufakat*. Future bride and groom families will decide peacefully, in deciding which cultural tradition which will be used in conducting married ceremony. This peacefully mechanism in preventing latent conflict into existence, is an example of a coupling structure terminology as one of the cultural identities of the Eastern people [8].

The third Sellin's proposition is that "*conflict between the norms of divergent cultural codes may arise when members of one cultural group migrate to another*" (Sellin, 1970:186). This proposition does not necessarily come into reality in the culturally divergent of the Indonesian context. In most of the Indonesian cultures they have a value to govern that one who visits other cultural areas should have observed and adapted to the local values and norms. This value and norms system are socialized through a saying that "*di mana bumi dipijak di situ langit dijunjung*" (when people are present in other cultures, they should observe and adapt to the local norms and values system).

The second traditional cultural theory of crime was formulated by Wolfgang and Ferracuti (1967). In their *Subculture of Violence*, they asserted that in the area with the highest rates of homicide, we should find in the most intense degree a subculture of violence. For the Indonesian context it is somewhat true because there is a high rate of violent crimes found in South Sulawesi (See Table for the number of violent crimes from 2012 to 2015 in the South Sulawesi Regional Police), and there is a subculture of violence in existence that may lead to homicide. This subculture is known as the "siri" concept. However, this culture governs a mechanism of preventing violence conflict, that has not been taken into consideration by Wolfgang and Ferracuti.

TABLE 1: Violent Crimes Reported to the Police and Cleared in South Sulawesi 2012-2015.

TYPES OF CRIMES	2012		2013		2014		2015	
	Reported	Cleared	Reported	Cleared	Reported	Cleared	Reported	Cleared
Murder	94	80	110	86	94	82	107	101
Agg. Assaults	476	370	453	346	287	287	209	184
Other Assaults	3619	2562	3531	2933	3475	3064	3873	3221
Domestic Violent	526	462	526	512	563	558	597	525

Source: South Sulawesi Regional Indonesia National Police

In South Sulawesi, individual who has downgrades others honor aware of a revenge from the victim that may lead to homicide. However, he/she may have asked to the local leader (chief of the tribe) to reconcile their dispute. Usually, the conflicting parties followed the decision of the chief, otherwise it may be downgrading the honor of the chief, and lead to greater conflict (Mustofa, 1992). Now in the criminological literature, this traditional dispute resolution mechanism is known as restorative justice system, an informal conflict resolution [2]. However, even though that there is peaceful reconciliation mechanism among the conflicting people in this area, the violent crime rate in this area are consistently high, and that it has happen for decades (See Table). This evidence show that the local police do not consider the sociocultural circumstances which predisposed violent crime and simply proceed the problem through legal mechanism (Mustofa, 1992: 28).

Traditionally, *Pabicara*, the customary leader in Buginese-Makassarese society, has the power to mediate between their followers and the government, to arrange marriages, to conduct customary ceremonies, and settle disputes. This reconciliation mechanism is an evidence that restorative justice philosophy was known in this culture. However, such a traditional authority has been repealed by Martial Law No.1/1951 and Law No 5/1979. More than that, the traditional restorative justice system has not been acknowledge by the formal legal system, or it is adopted as a formal mechanism that should be primarily choose by the police in the formal juvenile justice system (See Law No 11/2012 on Juvenile Justice System).

3. Conclusion

To conclude the discussion, thus in order to understand a culture comprehensively, we should study the culture totally as the way of life of its members on how they give subjective meaning to their traditions. However, cultural criminology does not evaluate the culture from the perspective of the criminologists but the perspective of the people in which the study is carried out. To prevent crime problems which is in association with cultural values and norms, should be based on the cultural wisdom of the society or community itself. Toleration and adaptation are structural coupling of the Indonesian culture which should be taken into consideration in controlling crime in Indonesia. As a consequent the policy makers should reformulate the law in order to acknowledge the existence of the adat consistently and reenact the role of adat court as a mechanism of every culture in settling disputes among their members.

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