

## Police Discretion Policy In Handling Middle/Minor Crimes (Tipiring) Based On Justice Value

Saptanti Lastari\*) and Sri Kusriyah\*\*)

\*) Prosecutor's Office of the Republic of Indonesia, E-mail: [saptanti.lastari1@gmail.com](mailto:saptanti.lastari1@gmail.com)

\*\*\*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang

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### Abstract

*The purpose of this study is to analyze the police discretionary policy in handling minor crimes (Tipiring) not based on the value of justice, analyze the constraints of the police discretionary policy in handling minor crimes (Tipiring) at this time and analyze the police discretionary policy in handling criminal acts (Tipiring) in the future. This study uses a sociological juridical approach, with analytical descriptive research methods. The data used are primary and secondary data which will be analyzed qualitatively. The research problem was analyzed using the theory of justice and the theory of the operation of law. The results of the study conclude that discretion is a police action that must be accounted for based on applicable laws and norms, police discretion is very vulnerable to irregularities and abuse so it needs to be given limits and supervision, so it can be said that it is not fair. Constraints on police discretionary policy in handling minor crimes consist of internal constraints and external constraints on the part of the police. The ideal policy of the Police's discretion in handling minor crimes (Tipiring) is: a) Not against a rule of law. b) In line with legal obligations that require an official action to be taken. c) The action must be appropriate and reasonable and included in the environment of his office, on appropriate considerations based on compelling circumstances, respecting human rights*

*Keywords: Discretion; Minor Crime; Justice.*

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### 1. Introduction

For modern countries, the desire to effectively guarantee the rights of citizens and regulate the orderly state administration has encouraged every country to adopt constitutionalism. It is believed that the best way to this end is with a constitution, so constitutionalism for modern countries is a necessity.<sup>1</sup> The dominance of the Criminal Code as a representation of Western Law brought by the Dutch to Indonesia has led to a transformation of the legal system and social values of society, which have directly marginalized the existence of customary law if it cannot be said to be "deadly". The dominance of Western law controls the regulation of people's lives, both in the public and private fields. Mutatis mutandis, the implementation of Western law has resulted in the imposition of the Western value system on the value system of Indonesian society, both of which are different value systems.<sup>2</sup>

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<sup>1</sup>Adhe I smail A, *Constitutionalism Concept in Implementation of Indonesian State Administration*. Jurnal Daulat Hukum Volume 4 Issue 2, June 2021 ISSN: 2614-560X.

<sup>2</sup> Pujjiono, "Hukum Pidana Adat Sub-Culture Kehidupan Hukum Di Indonesia", *Jurnal Masalah-Masalah Hukum*, Jilid 40 Nomor 2, April 2011, p. 149.

A criminal act is an act that is prohibited by a statutory regulation, where the prohibition is accompanied by the threat of sanctions in the form of certain crimes for anyone who violates the prohibition. The settlement of criminal cases is carried out through the evidentiary process, namely the prosecution process which is carried out directly in an experiment.<sup>3</sup> In judicial practice, the process always begins with an arrest, detention, then being prosecuted by the public prosecutor, which ends with a judge's decision.<sup>4</sup>

The settlement of criminal cases that puts forward positivism has completely contradicted the sense of justice in the life of the Indonesian people, which long before the founding of this country (later adopting the Dutch criminal law system) already had a settlement system that prioritized deliberation and peace. What would happen if every criminal offense had to be formally resolved and put forward positivists, we can see in reality. Prisons become full, there are piles of cases in the judiciary, even one case gives birth to subsequent cases because of feelings and acts of revenge, and in many cases ex-convicts actually become more professional ("upgrading") in committing crimes due to "prison". "In fact, it became a school of crime. Litigation is a way of solving problems through the Court, while non-litigation is a way of solving problems outside the Court. In the perspective of criminal law in Indonesia, it is already familiar with the settlement of criminal cases outside the court<sup>5</sup>

In relation to the above, basically in the criminal law enforcement system in Indonesia, especially at the police level, it is known and the possibility of discretionary actions as a form or effort to accommodate the legal values that live in the community Discretion is defined as an action outside the rule of law carried out by police officers for the public interest, humanity, justice and education<sup>6</sup>. The general term that is popular regarding the application of discretion by the police is to make peace in cases of criminal offenses. The settlement of criminal cases with peace, of course, can be facilitated by the police themselves, by the parties (internal), or submitted to settlements according to the law that lives in the community/customary (non-judicial).

The police is a subsystem in the criminal justice system that is sufficient to determine the success and work of the entire system in providing services to the public.<sup>7</sup> From a legal point of view, every power will be based on and limited by legal provisions. However, the discretionary power that is so broad and its

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<sup>3</sup>Ardito, Y P, Umar Ma'ruf and Aryani Witasari. *Implementation of Criminal Action Prosecution Online in Realizing Principle of Fast Prosecution, Simple & Low Cost*, Jurnal Daulat Hukum, Volume 4 Issue 2, June 2021 ISSN: 2614-560X.

<sup>4</sup>Feri, S W, and Arpangi. *Settlement Policy of Criminal Actions which Performed by Children through Penal Mediation*. Jurnal Daulat Hukum Volume 4 Issue 2, June 2021 ISSN: 2614-560X.

<sup>5</sup>Arif Septria Hendra Saputra, Gunarto, Lathifah Hanim, "Penerapan Restorative Justice Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan di Satreskrim Polsek Lasem", Jurnal Daulat Hukum, Vol. 1 No. 1, March 2018, p. 10-11.

<sup>6</sup> The Indonesian National Police for the Riau Region, "The Development of Law Enforcement in Indonesia", Presented at a national seminar with the theme Synergy of the Police, Prosecutors and Ombudsman Institutions, 2009.

<sup>7</sup>Nurfita A T, Sri Endah Wahyuningsih and Arpangi. *The Police Role in Investigating the Crime of Child Murder as a Result of Infidelity Relationships*. Law Development Journal ISSN : 2747-2604 Volume 3 Issue 1, March 2021, (86 – 92).

boundaries unclear will cause problems, especially if it is associated with the principles of criminal law, namely the principle of legal certainty and human rights. Based on the descriptions above, it can be stated that the problem of police policy, namely police discretion in the legal accountability system, has attracted the attention of the author to further research and write about it, both in terms of carrying out the duties and functions of the police.

Police discretion has become the authority and responsibility of the police. In the Police Act No. 2 of 2002 Article 18 has been mentioned in one article regarding one form of legal authority in the form of police discretion, where the police are authorized to take other responsible actions. The Police as an institution have exercised discretion, this means that the police institution can work professionally as a protector of the community. The same thing was conveyed in the Regulation of the Head of the Indonesian National Police Number 1 of 2009 concerning the Use of Force in Police Actions that the implementation of police discretion is needed if the police consider it important to do so, for example if in traffic on the highway the traffic police observes an extraordinary traffic jam. , then the police can take action by making way for motorized vehicles even though the position of the light is still in the red position and stops again at the next red position, thus the congestion condition can be resolved. This is an example that the discretion of the police provides the principle of benefit to the community.

The government in its goal of realizing good governance has an obligation to provide services to the community (public service). With this "public service" function, it means that the government does not only implement the legislation itself. Therefore, the government has the right to create concrete legal rules that are intended to realize the objectives of the legislation. Furthermore, the increasingly active involvement of the law in issues related to social change, in fact, raises problems that direct the conscious and active use of law as a means to participate in compiling the new life order. This can be seen in terms of regulation by law, both from the aspect of legitimacy, as well as aspects of the effectiveness of its application.

In essence, there is freedom of action for state police officers to carry out their functions dynamically in order to resolve important and urgent issues, while there are no rules for that, but it must be remembered that freedom of action for state police officers is not freedom in the broadest sense and without boundaries, but are bound by certain limits permitted by state law. In the exercise of discretion, it is necessary to set a tolerance limit so that uncontrolled authority does not occur. The tolerance limit of this discretion is to give the state police the freedom or flexibility to act on their own initiative, to solve urgent problems for which there are no rules for that, but may not cause harm to the community.

The purpose of this study is to analyze the police discretionary policy in handling minor crimes (*Tipiring*) not based on the value of justice, analyze the constraints of police discretionary policies in handling minor crimes (*Tipiring*) at this time, and analyze police discretionary policies in handling criminal acts (*Tipiring*) in the future.

## 2. Research Methods

The approach method used in this study uses a sociological juridical method, namely in addition to using legal principles and principles in reviewing, viewing, and analyzing problems, as they are,<sup>8</sup> which in this case relates to the police discretionary policy in handling minor crimes (*Tipiring*) not yet based on the value of justice. The specifications in this study are analytical descriptive. Descriptive research is a research method that is intended to systematically and accurately describe the facts and characteristics of the research field.

Sources of data used in this study are primary, secondary, and tertiary data sources. Primary data sources are objects that are observed directly in the field and interviewed informants. Primary legal materials consist of: Act No. 2 of 2002 concerning the Indonesian National Police. Tertiary legal materials consist of dictionaries, encyclopedias.

The data collection method used to obtain data that has a relationship with the object of research is interviews with resource persons and document review, while the data analysis method used is qualitative data analysis in this study including data reduction, data presentation and conclusions/verification.

### **3. Results and Discussion**

#### **3.1. Police Discretionary Policy in Handling Minor Crimes (*Tipiring*) That Are Not Based on Justice Values**

The police discretionary policy is the legitimacy of the use of discretionary authority by the state police of the Republic of Indonesia. Thus, all parties are protected, both the duty of the police and the community. The legal basis for the exercise of the discretionary authority includes:

##### *3.1.1. 1945 Constitution of the Republic of Indonesia*

In connection with the duties of the police and the authority of the police, there are indeed 2 (two) things that cannot be separated because the nature of the assignment really requires authority. And within the authority given to the police, there is also the authority to act alone or to determine for themselves. The authority in question is what is then referred to as Police Discretion. Departing from the above thought, if the provisions of the 1945 Constitution are considered, then the discretionary authority of the police is indirectly closely related to the preamble, body and explanation.

In the Preamble to the 1945 Constitution, it is stated that:

"Forming an Indonesian state government that protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice."

Based on the main idea of protecting the entire Indonesian nation, Article 27 of the 1945 Constitution provides equal status in law and government to every citizen. And the position of the police as law enforcers is obliged to protect citizens or the community and create security and order for the community. While the

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<sup>8</sup>Soerjono Soekanto, 2010, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta, p. 10.

main idea is to participate in carrying out order for the community. While the main idea of participating in carrying out world order is the obligation of citizens to always obey the norms in the agreed order of life so as to create a climate of public order.

### *3.1.2. Act No. 2 of 2002 concerning the Indonesian National Police.*

In relation to the discretionary authority of the police, this cannot be separated from the main task of the police. Because the main task of the police, which, when described, has a very broad meaning, requires powers. The breadth of understanding of the functions and duties of the police can be seen from the consideration of the emergence of Act No. 2 of 2002 which states that the maintenance of domestic security is through efforts to carry out police functions which include maintaining security and public order, law enforcement, protection, protection and service to the community carried out by the National Police of the Republic of Indonesia as a state instrument assisted by the community by upholding human rights.

### *3.1.3. Decree of the People's Correctional Council 2000*

In relation to the police or the Indonesian National Police as an instrument of the state, which previously was one of the components of the Indonesian Armed Forces (ABRI) tasked with creating defense, security and public order in the nation and state, is now one of the demands for reform (formerly ABRI). In addition, as a result of the merger of the police and other components of the TNI (Army, Navy and Air Force), it is felt that there is confusion and overlap between the roles and functions between the two, namely the Indonesian National Police and the Indonesian National Armed Forces, where the TNI is the national defense force and the Indonesian National Armed Forces, the police as a force of security and order. Therefore, based on the consideration of the Decree of the MPR RI Number VI/MPR/2000 which among other things states that:

"Socio-political roles in the dual function of the Armed Forces of the Republic of Indonesia lead to deviations in the roles and functions of the Indonesian National Army and the Indonesian National Police which results in the underdevelopment of the foundations of democracy in the life of the nation, state and society."

### *3.1.4. Unwritten law*

The legal basis by using unwritten law is actually also constitutional or in other words the unwritten law is also constitutional. This is as explained in the General Elucidation of the 1945 Constitution which reads "Unwritten basic laws are basic rules that arise and are maintained in the practice of state administration." The police as state administration officials, in carrying out their duties and solving legal and community problems are often based on unwritten laws. In this case, the habits that have existed for a long time can be a guideline or reference for the police to make decisions. Habits based on logic,

Based on the description above, it can be concluded that discretion is not an authority, but police actions that must be accounted for based on applicable laws and norms, police discretion is very vulnerable to irregularities and abuse so it is necessary to provide limits and supervision, so it can be said that it is not fair

### **3.2. Constraints to the Police's Discretionary Policy in Handling Minor Crimes (Tipiring) Currently**

In the process of handling minor crimes, it is not easy to solve, of course there are obstacles faced by the police in solving these cases. The obstacles faced are internal constraints and external constraints.

- 1) Internal constraints; The internal constraints are as follows: a. Weak coordination and cooperation between the Police and related parties and agencies related to handling minor crimes; b. Lack of personnel; c. Investigator Skills Limitations; d. The slowness of the police to the crime scene, less nimble in responding to reports from the public related to minor crimes.
- 2) External Constraints; The external constraints are as follows: a. Lack of awareness from the public when they see a case at a crime scene, the community does not immediately report to the police, thus hampering the handling of minor crimes; b. Lack of witnesses to be questioned in cases of minor crimes, so that the police find it difficult to collect evidence and facts that occur in the field; c. the slow handling of minor crimes due to non-fulfillment of summons given to the complainant, reported and witnesses so that the process of handling cases of minor crimes takes quite a long time.

### **3.3. Police Discretionary Policy in Handling Minor Crimes in the Future**

The authority given to members of the National Police in implementing discretion, needs to be given a form, clear criteria because these forms and criteria are not contained in the Criminal Procedure Code (KUHAP), which only exist in the form of restrictions that are used as a measure in using discretion, namely based on explanations. in Article 5 paragraph (1) letter a number 4 of the Criminal Procedure Code (KUHAP) and Article 16 paragraph 2 of Act No. 2 of 2002 concerning the National Police it is stated that what is meant by "other actions" are actions of investigators for the benefit of investigation as follows:

- Not against a rule of law,
- In line with legal obligations that require an official action,
- The action must be appropriate and reasonable and included in the environment of his office, on appropriate considerations based on compelling circumstances, respecting human rights.

Justice is one of the most widely discussed legal goals throughout the history of legal philosophy, the purpose of law is not only justice, but also legal certainty and benefit.<sup>9</sup>With the existence of a legal certainty, this is intended so that there are no doubts in acting for law enforcement officers and to prevent arbitrary actions from the authorities, as an implementation of the guarantee of equal standing before the law (equality before the law). Universally, the concept of the principle of equality before the law has been accepted and believed to be true in almost all laws in the world. In this principle, everyone has the same position

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<sup>9</sup>Prof. Darji Darmodiharjo, S.H. and Shidarta, S.H., M.Hum, *Pokok-pokok Filsafat Hukum Apa dan Bagaimana Filsafat Hukum Indonesia*, Jakarta, PT Ikrar Mandiriabadi, 1995, p.115.

before the law and government, and is obliged to uphold the law and government without exception.

Law enforcement according to Soekanto,<sup>10</sup> The law enforcement process always involves a number of interrelated elements/factors, namely:

- The legal factor itself;
- Factors of law enforcement officers;
- Factors of facilities or facilities that support law enforcement;
- Community factors;
- Cultural factors.

This limitation in applying this discretion is necessary because Article 1 paragraph 1 of the Criminal Code is not justified in interpreting the law analogically, the main reason why the analogical method of interpreting the law is prohibited from being used in criminal law, is to create legal uncertainty for the community that should not happen.<sup>11</sup>

The authority given by law to the National Police to exercise discretion in carrying out their duties raises doubts for members of the National Police in carrying out actions outside the applicable regulations. In the author's opinion, this happens because there are no clear forms and criteria for the discretion referred to in the Criminal Procedure Code (KUHAP), so that Polri personnel in an effort to implement the discretion are still doubtful and always think "whether the actions they take are in accordance with and is justified or not by his superiors and the community, on the other hand whether the actions taken will endanger his career and future".

#### 4. Closing

The conclusion in this study is that discretion is a police action that must be accounted for based on applicable laws and norms, police discretion is very vulnerable to irregularities and abuse so it needs to be given limits and supervision, so it can be said that it is not fair. Constraints on police discretionary policy in handling minor crimes consist of internal constraints and external constraints on the part of the police. The discretionary authority in handling minor crimes (*Tipiring*), that the discretionary authority is regulated in Article 18 of Act No. 2 of 2002 concerning the Indonesian National Police. The ideal powers of the Police's discretion in handling minor crimes (*Tipiring*) are: a) Not against a rule of law. b) In line with legal obligations that require an official action to be taken. The action must be appropriate and reasonable and included in the environment of his office, on appropriate considerations based on compelling circumstances, respecting human rights.

The suggestion in this study is that police discretion should be regulated more clearly in positive law other than Act No. 2 of 2002 and the Criminal Procedure Code, so that the principles of "Legal Certainty" and "Respect for Human Rights" are carried out properly. Efforts are needed to socialize the Police

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<sup>10</sup> Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, (Rajawali, Jakarta: 1986), p.5.

<sup>11</sup> P.A.F. Lamintang, 1990, *Dasar-Dasar Hukum Pidana Indonesia*, Sinar baru Bandung, p. 71.

Discretion to the public so that the community itself can assess whether or not the discretion taken is appropriate, so that there is community involvement in supporting the discretionary actions taken by Police officers and not taking these actions lightly, even increasing public trust in the law and its enforcement officers. For the police to further improve their performance and professionalism in serving the community, it is necessary to increase human resources, for example by increasing education and training for members.

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