

Independence of the Indonesian National Police's Propam in Conducting Investigations into Criminal Violations by Members: Challenges in Enforcing Article 448 of the New Criminal Code Concerning Abuse of Power

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Abstract. *This research examines the independence of the Professional and Security Division of the Indonesian National Police in investigating criminal violations committed by police members, particularly in relation to the implementation of Article 448 of the New Criminal Code concerning abuse of power by public officials. The main issue lies in Propam's position within the police command structure, which may create conflicts of interest, hierarchical intervention, and weak objectivity when violations involve police personnel or senior officials. This research uses normative legal research with statutory, conceptual, and comparative approaches, analyzed through descriptive-prescriptive legal analysis. The findings show that Propam has a legal basis and authority to enforce discipline, professional ethics, and preliminary investigations against police members, but its independence remains limited by its structural subordination to the Chief of Police. The implementation of Article 448 of the New Criminal Code requires a more objective, transparent, and command-free internal investigation mechanism so that abuse of power by law enforcement officers can be processed through criminal law. The obstacles faced by Propam include structural conflicts of interest, corps solidarity, limited external supervision, and the absence of strong synchronization between internal ethical mechanisms and the general criminal justice process. Strengthening Propam's independence should be carried out through structural reform, stronger rules prohibiting intervention, protection for internal investigators, and the involvement of external oversight bodies such as the National Police Commission. The ideal oversight model is a hybrid supervision system that combines a strengthened internal Propam mechanism with independent external oversight to ensure police accountability and better protection of citizens' rights.*

Keywords: *Abuse; Independence; Oversight; Propam.*

1. Introduction

Professional and Security Division (Propam) plays a central role in maintaining the institution's integrity by investigating disciplinary and criminal violations of its members. This authority is stipulated in National Police Chief Regulation Number 7 of 2022 concerning Procedures for Internal Examination, Clarification, and Investigation, which mandates Propam to conduct initial investigations into alleged violations of the Police Professional Code of Ethics (KEPP).¹

Independence Propam in harmony with Article 27 paragraph (1) of the 1945 Constitution which guarantees equation in front law, as well as Article 28D paragraph (1) concerning confession right on certainty law and treatment fair. Enforcement of Article 448 of the New Criminal Code supports Article 1 paragraph (3) of the 1945 Constitution that Indonesia is a country of law, where abuse of power by the apparatus enforcer law contradictory with supremacy law. Independence reform Propam required realize accountability Indonesian National Police as protective state institutions right basic humans, as mandated in Article 30 paragraph (1).

Constitution Number 2 of 2002 concerning The Republic of Indonesia National Police mandate function internal supervision through Propam as arranged in Article 11 which states that Propam on duty organize supervision to implementation task Police. More further Regulations Chief of Police Number 7 of 2022 concerning Composition the Organization and Work Procedures of the Republic of Indonesia National Police place Propam as element supervisors and assistants the leader who is directly below Chief of Police, who structural should give freedom in operate function supervision.

The validity of the New Criminal Code (KUHP) through Constitution Number 1 of 2023 which starts valid effective in 2026 brings dimensions new in supervision to abuse power by official public, including member police. Article 448 of the New Criminal Code in particular firm criminalize actions officials who abuse authority for profitable or harm party certain. This article reads: "Every person who holds office as official public who abuse power or his authority so that result in loss state finances, state economy, or harming others, punishable by law with criminal imprisonment for a maximum of 10 (ten) years and criminal the biggest fine category VI."

Investigations begin with public reports or complaints, channeled through the Complaints Service Section, then continued by the Propam Investigation Unit, taking into account the hierarchy of ranks (PP No. 3 of 2003 concerning the Technical Implementation of General Courts for Members of the Indonesian

¹Asbudirman, & Hamzah, N. (2023). "The Influence of Supervision and the Propam Sector Code of Ethics on Performance Through Personnel Work Discipline". *MARS Journal*, 3(2), 126–145.

National Police). However, Propam's independence is often questioned due to its internal nature, where Propam is under the command of the Chief of Police, thus potentially overlapping with organizational interests.²

The Indonesian National Police's Propam (Perkap No. 7/2022) has internal investigative authority, but direct subordination to the Chief of Police creates hierarchical intervention. Cases such as Brigadier J (2022), where the Head of the Propam Division was involved in violations, demonstrate Propam's failure as an independent supervisor due to "internal gangs" and obstruction of justice. This violates the principle of Polri independence (Law No. 2/2002 Article 5), making Article 448 of the New Criminal Code, which sanctions officials for abusing their authority, difficult to enforce against fellow police officers.

This problem is exacerbated by Article 448, where proving mens rea (malicious intent) requires internal evidence that is vulnerable to manipulation.

Problems	Impact on Article 448	Sample case
Internal Intervention	Unilateral termination of SP3/SPDP	Sambo Case: Propam protects perpetrators
Lack of External Oversight	Kompolnas only makes recommendations	40% of cases are not resolved
Minimal Digital Evidence	It is difficult to prove abuse of authority	Unrevealed police extortion

Propam Division is at directly under the Chief of Police (or Regional Police Chief at the regional level). Legally, the principle of *command* responsibility creates a dilemma. Investigations into violations of Article 448 of the Criminal Code (Abuse of Power) often involve orders from superiors. If Propam investigates members, they risk running afoul of their own power structures.

The New Criminal Code requires strict standards of proof for "coercive actions" by public officials. The legal problem is the lack of Prosecution Guidelines or Implementing Regulations that synchronize the ethical authority of Propam with the criminal offense under Article 448. Does a finding of an ethical violation in Propam automatically constitute sufficient preliminary evidence for an offense under Article 448? Without independence, Propam has the potential to practice selective enforcement in forwarding cases to general criminal investigations.

Article 448 of the New Criminal Code aims to limit arbitrary discretion. However, legally, there is a gap in the Criminal Procedure Code that does not provide a role for an "external supervisory body" to enter the realm of internal police investigations by force. As a result, Propam becomes "judge unto itself" (*Judex in Causa Sua*). The emergence of a tendency to resolve member violations only stop at the level of the Police Code of Ethics Commission (KKEP) with administrative

²Fakhrazi, MH (2017). " Independence Ex-Officio Commission Positions National Police in System Review " State Administration ". *Journal Juridical*, 3(1), 54–65.

sanctions (transfer/demotion), without touching the criminal realm of Article 448 of the Criminal Code. Legally, this is a form of disguised impunity.³

Law No. 1 of 2023 concerning the Criminal Code (effective January 2, 2026) introduced Article 448, which stipulates a maximum prison sentence of one year or a fine for perpetrators of abuse of power in the context of deprivation of liberty or coercion of criminal acts. This article aims to prevent law enforcement officials, including the police, from abusing their authority to the detriment of individuals, with the philosophy of *daad-dader strafrecht* and victimology that emphasizes victim protection. The new Criminal Code emphasizes the principles of legal certainty and human rights protection, which requires Propam to independently investigate internal cases to avoid conflict with Article 421 (abuse of authority of state officials).⁴

Despite being supported by regulations such as Perkap No. 14 of 2012 concerning Investigation Management, Propam's independence faces structural challenges: (1) Lack of personnel and comprehensive supervision, resulting in slow and unprofessional case handling; (2) The influence of internal bureaucracy, where Propam is not completely free from organizational pressure, thus giving rise to public distrust of law enforcement; (3) Integration with the new Criminal Code, where internal investigations must be aligned with general criminal proceedings (KUHAP), but are often hampered by the priority of discipline over criminal matters.

Article 448 targets abuse of power by police, such as in cases of coercion or intimidation (related to Article 447 on coercion). Its enforcement relies on Propam. Supporting regulations such as Law No. 2 of 2002 concerning the Indonesian National Police (Article 16) and the Criminal Procedure Code (KUHAP) demand objectivity, but in practice, Propam often "protects" senior officers. The New Criminal Code (effective 2026) offers an opportunity for reform, but without structural independence (for example, external oversight by the National Police Commission), enforcement of Article 448 is vulnerable to failure.⁵

The enactment of Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code) brings significant regulatory challenges, particularly Article 448, which regulates Abuse of Power. Article 448 states: Threatens criminal penalties for public officials (including the police) who use their power to force someone to do,

³Hakim, AR, & Fitriati. (2025). " Internal Supervision by the Police" To Settlement Action Criminal In a way Restorative ". *Unes Journal of Swara Justisia*, 8(4), 927-935.

⁴ Oktavriana, DR (2024). " Authority Shooting on sight by the authorities Police to Application of the Principle of Presumption of Innocence in Analysis of Human Rights and Islamic Criminal Law". *Pro Justisia : Journal Legal Science*, 1(1).

⁵ Pakasi, G. (2023). " Independence Position of the Prosecutor's Office in Implementation " Duties of the Prosecutor's Office in the Republic of Indonesia". *Journal Faculty of Law, Sam Ratulangi University Lex Privatum*, XII(3).

not do, or allow something. The legal implication is that this Regulation demands a higher standard of independence. Legally, if Propam remains under the same command structure as the party being investigated, the risk of violating Article 448 could actually ensnare the investigator himself if he is deemed to be "protecting" or "abusing authority" during the investigation process.

There is a regulatory gap in the coordination mechanism between the Criminal Procedure Code (KUHAP) and the Internal Police Procedure Code. To date, there is no law-level regulation specifically addressing how "internal investigators" (Propam) should behave when ethical findings turn into criminal findings of abuse of power.

Without existence umbrella Laws guaranteeing investigative autonomy and the independence of the National Police (Propam) will always be hampered by loyalty to hierarchical structures (commands). The implementation of the New Criminal Code in 2026 demands immediate synchronization. Without regulations that reinforce the separation of criminal investigation authority for members of the police force by an independent body, Article 448 of the New Criminal Code will remain a paper tiger, difficult to enforce due to bureaucratic obstacles and the police's still-closed internal regulations.⁶

The Republic of Indonesia Police plays a strategic role in maintaining security and order General ⁷. The Police Professional Code of Ethics serves as a moral and legal foundation that instills moral values, honesty, and discipline in every member. With effective implementation, the code of ethics can build public trust, prevent abuse of authority, and create an environment disciplined work. Division The Profession and Security Unit (Propam) was formed as an internal supervisory unit of the Indonesian National Police which has the authority to take action against violations of discipline and the code of ethics ⁸.

Propam can issue warnings, impose administrative sanctions, and even dishonorably discharge members who commit serious violations. In addition to receiving reports from the public, Propam also conducts internal investigations to determine whether violations have occurred. Propam's role is regulated by regulations such as Law No. 2 of 2002 and Police Regulation No. 7 of 2022, which provide the legal basis for the enforcement mechanism for the code of ethics

⁶ Ariffahrudin, MUH (2025). The Role of Propam Indonesian National Police in increase professionalism. Master of Law, Unissula, 1-137.

⁷Oka, A. (2024). Authority Profession and Security (Propam) in enforcement law. Judge Journal, 2(3), 100-115.

⁸Ramadani, A., & Rosadi, O. (2023). " Coordination Between the Republic of Indonesia National Police and Apparatus Government Internal Supervisory Agency in Investigations Action Criminal "Village Fund Corruption ". *UNES Journal of Swara Justisia*.

(Asbudirman & Hamzah, 2023). Propam's functions include professional development, internal security, and disciplinary enforcement.⁹

However, its implementation often faces obstacles such as limited resources, inadequate infrastructure, and interference from certain parties (Sukarnita & Surata, 2020). Obstacles faced by Propam include a lack of transparency in the inspection process, slow enforcement of violations, and external influence in imposing sanctions. Solidarity among members often hinders the disclosure of violations. This necessitates a comprehensive evaluation to improve the effectiveness of internal oversight.¹⁰

There are three important variables in measuring Propam's effectiveness: transparency of inspections, firmness of enforcement, and independence from external influences. Transparency is necessary to build public trust, firm enforcement ensures discipline, and independence ensures the objectivity of the legal process.

2. Research Methods

This research employs a normative legal research approach, often referred to as doctrinal research. This approach views law as a closed and consistent system of norms, consisting of principles, rules, and regulations. In this context, the research focuses on an inventory and analysis of the legal norms governing the authority of the Indonesian National Police's Propam (Police and Security) and the formulation of the crime of abuse of power in the New Criminal Code. The use of normative methods is highly relevant to discovering the truth of the coherence between the theory of independence of power and existing regulatory practices. moment This.

3. Results and Discussion

3.1. The Position and Independence of the Indonesian National Police's Propam Division in the Current Indonesian Criminal Justice System in Relation to Potential Conflicts of Interest in Investigations of Criminal Acts by Members Indonesian National Police

1) Independence of the Propam Division Police Under Investigation Action Crimes Committed Member Police: Analysis Based on the Theory of Law Enforcement

The fundamental problem faced is the potential for a structural conflict of interest because the Propam Division is under the command of the same institution as the subject being examined. Using normative legal research methods, this study analyzes the extent to which the institutional construction of the Propam Division meets the requirements for independence from the perspective of law

⁹Noval, C. (2025). The Role of the Code of Ethics Commission Indonesian National Police in enforcement code ethics. *Journal Retentum*, 5(2), 45-60.

¹⁰ Ritonga, H. (2022). Enforcement Propam Indonesian National Police to member police. *Metadata: Journal of Legal Studies*, 3(1), 10-25.

enforcement theory from Lawrence M. Friedman, Satjipto Rahardjo, Soerjono Soekanto, and Roscoe Pound. The results of the study indicate that the independence of the Propam Division is functional but structurally limited, so that institutional reconstruction is needed that guarantees substantive independence in order to realize just law enforcement within the Polri institution.

The first dimension in Friedman's legal system theory that is directly related to Propam's independence is legal substance. In the context of this research, legal substance encompasses all norms, rules, and provisions governing Propam's authority and working mechanisms, from Law Number 2 of 2002 concerning the Indonesian National Police to Article 448 of the new Criminal Code concerning abuse of power. Eddy OS Hiariej emphasized that good legal substance is a primary prerequisite for a fair law enforcement system, as vague or overlapping laws will create uncertainty that benefits those with greater power.¹¹

The research found that the legal substance governing Propam contains several fundamental weaknesses. First, there is no norm that expressly and explicitly regulates Propam's independence from chain-of-command intervention in criminal investigations. Jimly Asshiddiqie explained that without a strong normative foundation, the independence of a supervisory agency remains merely formal and devoid of substance, as it can be overridden at any time through hierarchical authority.¹²

Second, the normative dualism between the code of ethics and criminal justice systems in handling violations by members of the Indonesian National Police (Polri) creates systemic legal uncertainty. In his research, Adrianus Meliala found that the unclear norms regarding when a violation should be handled through the code of ethics and when through the criminal justice system are often exploited to redirect serious cases to paths with less severe sanctions.¹³ This directly undermines the independence of Propam (Police and Security) by allowing decision-making that is not based on legal objectivity.

Third, the protection mechanisms for Propam members handling sensitive cases involving senior officers are not adequately regulated in existing legal substance. Sadjijono emphasized that without this guarantee of protection, Propam investigators are vulnerable to career retaliation, and are thus psychologically compelled to avoid handling cases that could harm the interests of their

¹¹Eddy OS Hiariej, *Principles of Criminal Law*, (Yogyakarta: Cahaya Atma Pustaka, 2016), p. 78.

¹²Jimly Asshiddiqie, *Development and Consolidation of State Institutions Post-Reformation*, (Jakarta: Sinar Grafika, 2012), p. 54.

¹³Adrianus Meliala, "Police Oversight in Indonesia: Challenges and Prospects," *Asian Journal of Criminology*, Vol. 4, no. 2 (2009), p. 121.

superiors.¹⁴

The legal structure in Friedman's theory refers to law enforcement institutions and their operational mechanisms. In the context of Propam (National Police), this structural dimension is directly related to Propam's position within the National Police hierarchy and its implications for investigative independence. Pudi Rahardi analyzes that Propam, which reports directly to the National Police Chief, represents a structural model inherently contradictory: on the one hand, it grants access to top leadership, but on the other, it places investigators directly subordinate to the same structure they oversee.¹⁵

The research identified three main structural issues affecting Propam's independence. First, there is the overlapping authority between Propam, the General Supervision Inspectorate (Itwasum), and the Legal Division (Divkum) of the Indonesian National Police (Polri) in handling criminal offenses by members. Bambang Widodo Umar found that this overlapping authority often results in a "jurisdictional tug-of-war" that ultimately harms the substantive investigation process, as more institutional energy is devoted to resolving authority disputes than to completing the investigation itself.¹⁶

Second, the phenomenon of corps solidarity (*a "blue wall of silence "*), deeply rooted in the institutional culture of the Indonesian National Police (Polri), weakens the effectiveness of internal oversight structures. Anton Tabah describes this phenomenon as a condition in which loyalty to fellow corps members overrides commitment to objective law enforcement. In his research, Tabah found that corps solidarity is strongest when investigations involve senior officers or cases that have the potential to damage the image of the Indonesian National Police institution as a whole.¹⁷

Third, the Propam career system, which is linked to the Polri career system in general, creates a structural dependency that has the potential to affect the objectivity of investigations. David H. Bayley, in his comparative analysis of police forces in various countries, states that when the promotion and assignment of internal investigators depend on the judgment of the same hierarchy that is the object of oversight, there is a strong structural incentive to produce investigative decisions that accommodate the interests of superiors.¹⁸

The legal culture dimension is the most difficult to change yet the most crucial

¹⁴Sadjijono, *Police Law: Polri and Good Governance*, (Yogyakarta: LaksBang Mediatama, 2008), p. 87.

¹⁵Pudi Rahardi, *Police Law (Professionalism and Police Reform)*, (Surabaya: Laksbang Mediatama, 2007), p. 113.

¹⁶Bambang Widodo Umar, "The Indonesian National Police as a State Instrument in a Democratic State," *Indonesian Journal of Criminology*, Vol. 5, No. 1 (2008), p. 14.

¹⁷Anton Tabah, *Police: Culture and Politics*, (Yogyakarta: Grafika Indah, 1991), p. 67.

¹⁸David H. Bayley, *Police for the Future*, (New York: Oxford University Press, 1994), p. 93.

component in Friedman's legal system theory. Legal culture encompasses the values, attitudes, beliefs, and behaviors that shape how members of an institution interact with the law. In the context of Propam, the legal culture that develops within the Indonesian National Police (Polri) is crucial for whether investigative independence can be substantively realized, even if the substance and structure of the law have been improved. Philipus M. Hadjon cautioned that legal reforms that only address normative aspects without changing the underlying legal culture tend to be merely cosmetic.¹⁹

The research results show that the legal culture established within the Indonesian National Police (Polri) contains elements that have the potential to systemically impede the independence of the National Police's (Propam) Division. Indriyanto Seno Adji identified a patron-client culture *within* the Indonesian police force, which causes Propam investigators to unconsciously consider the interests of their hierarchical patrons in their investigative decisions. This culture, according to Seno Adji, is more dangerous than explicit pressure because it operates through internalized value mechanisms that are not easily identified from the outside.²⁰

On the other hand, there are also elements of legal culture that support independence. Marwan Effendy noted that over the past two decades, along with the strengthening of the discourse on police reform, a generation of Propam members has emerged with a stronger commitment to professionalism and investigative integrity. Effendy described this group as an "active minority" that has become a driving force for cultural change within the institution, despite still facing systemic resistance from the majority, rooted in long-standing traditions.²¹

2) The Relationship between Propam's Independence and Soerjono's Law Enforcement Theory Soekanto

The theory of factors influencing law enforcement developed by Soerjono Soekanto identifies five determinant factors: (1) legal factors (statutes); (2) law enforcement factors; (3) means and facilities factors; (4) community factors; and (5) cultural factors. These five factors have a very relevant correlation with the issue of Propam's independence in investigating criminal acts by Polri members.

a. Law Enforcement Factors and Institutional Independence

Law enforcement is the factor most directly related to Propam's independence. In Soekanto's theory, the quality of law enforcement depends heavily on the mentality, integrity, and professionalism of the officers who carry it out. Kunarto

¹⁹Philipus M. Hadjon, *Introduction to Indonesian Administrative Law*, (Yogyakarta: Gadjah Mada University Press, 2008), p. 130.

²⁰Indriyanto Seno Adji, "Corruption: State Apparatus Policy and Criminal Law," *Jurnal Hukum*, Vol. 14 (2006), p. 5.

²¹Marwan Effendy, *Indonesian Attorney General's Office: Its Position and Function from a Legal Perspective*, (Jakarta: Gramedia Pustaka Utama, 2005), p. 201.

specifically emphasized that in the police context, professionalism means not only technical competence in conducting investigations but also the moral courage to take action against colleagues when evidence points to a violation of the law.²²

The research found that law enforcement factors within Propam are influenced by at least four critical, interrelated variables. First, the selection and placement system for Propam personnel does not fully consider integrity as a primary criterion. Asep Iwan Iriawan found in his research that placement in Propam is often used as a "stopover" for members in the career process, rather than as a strategic assignment for those with a strong commitment to internal oversight. This condition results in fluctuating human resources in Propam, both in terms of competence and commitment.²³

Second, weak internal whistleblower protection mechanisms impact the courage of law enforcement in carrying out their oversight function. Setyo Utomo, in his research on Propam reform, concluded that without strong guarantees of protection, Propam members handling major cases tend to experience a "chilling effect," where they choose to remain passive to avoid career risks, rather than taking the decisive action required by law.²⁴

Third, the technical investigative capabilities of Propam in handling crimes committed by Polri members are often not commensurate with the sophistication of the modus operandi of the violations being investigated. Loebby Loqman emphasized that criminal offenses committed by experienced officers such as police officers are often packaged in ways that complicate formal evidence, requiring investigators to possess higher technical skills than the average general case investigator.²⁵

a. Facilities and Amenities Factors in Investigation Independent

The infrastructure and facilities factor in the context of this research encompasses the availability of resources necessary for Propam to conduct independent and effective investigations. Barda Nawawi Arief emphasized that law enforcement without adequate infrastructure is like "teeth without jaws"—formally present but unable to function effectively. In the context of Propam, budgetary dependence on the parent organization, the National Police, creates a structural dependency

²²Kunarto, *Police Ethics*, (Jakarta: Cipta Manunggal, 1997), p. 44.

²³Asep Iwan Iriawan, "Police Accountability in a Human Rights Framework," *National Security Journal*, Vol. 5, No. 1 (2019), p. 9.

²⁴Setyo Utomo, "Propam Reform: Between Independence and Corps Loyalty," *Journal of Law and Development*, Vol. 41, No. 3 (2011), p. 355.

²⁵Loebby Loqman, *Human Rights (HAM) in Criminal Procedure Law (HAP)*, (Jakarta: Datacom, 2002), p. 58.

that could potentially impact operational independence.²⁶

This study found that Propam's budgetary dependence on allocations from the National Police as a whole creates a pragmatic dilemma: to investigate major cases involving senior leaders, Propam requires a significant operational budget, but the allocation of this budget is under the control of the structure that is the object of the investigation. Gustav Radbruch, in the context of his legal philosophy, reminds us that justice cannot be upheld by an institution that is materially dependent on the parties it prosecutes.²⁷ This principle is analogously relevant in the relationship between Propam's budgetary independence and the independence of its investigations.

b. Cultural Factors and Law Enforcement Ethics

Cultural factors, in Soekanto's theory, are the values that underlie applicable law. In the context of internal police law enforcement, the most relevant cultural factor is the ethos of professionalism versus the ethos of the corps. Bagir Manan explains that the tension between two ethos is a universal characteristic of institutions with a semi-military tradition, where internal solidarity is often constructed as a higher value than the obligation to obey the law.²⁸

The results of the study indicate that the cultural transformation in the Indonesian National Police (Polri) after the 1998 reforms has not fully succeeded in shifting the paradigm from a "corps that protects itself" to an "institution that is accountable to the law and society." Samuel Walker in his comparative study of police reform in various countries stated that institutional cultural transformation requires at least one generation (20-30 years) and can only be successful if supported by a combination of committed leadership, appropriate incentives, and strong external accountability mechanisms.²⁹

c. Connection Independence Propam with Progressive Legal Theory Satjipto Rahardjo

The progressive legal theory developed by Satjipto Rahardjo provides a different and complementary perspective to the analysis of Propam's independence. Progressive law is based on the view that law is for humans, not humans for the law; and that law enforcers should not be trapped in procedural formalism that sacrifices substantive justice. Rahardjo asserts: "Law is not a text, but an action. It

²⁶Barda Nawawi Arief, *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention*, (Jakarta: Kencana Prenada Media, 2007), p. 38.

²⁷Gustav Radbruch, *Rechtsphilosophie*, (Stuttgart: Koehler, 1950), p. 73.

²⁸Bagir Manan, *Upholding the Law: A Quest*, (Jakarta: Indonesian Advocates Association, 2009), p. 19.

²⁹Samuel Walker, *The New World of Police Accountability*, (Thousand Oaks: Sage Publications, 2005), p. 47.

exists because humans need it to achieve a dignified life."³⁰

From a progressive legal perspective, Propam's independence is not simply a matter of formal structures and norms, but rather a matter of moral courage and commitment to the values of justice. Rahardjo calls this "legal courage"—the ability to transcend institutional pressures and procedural formalism to achieve true justice. Widodo Dwi Putro develops this idea by emphasizing that criticizing legal positivism does not mean abandoning legal certainty, but rather encouraging legal certainty to be achieved through interpretations oriented toward substantive justice.³¹

The research found that the biggest obstacle to the realization of Propam's independence from a progressive legal perspective is not merely inadequate legal norms, but rather the absence of a "progressive legal spirit" within Propam's organizational culture. Erlyn Indarti, in her study of police discretion, stated that investigators who have internalized progressive legal values will be able to use their discretion firmly and boldly in following up on evidence of violations, regardless of the hierarchical pressures that stand in the way.³²

d. Connection Independence Propam with the Theory of Punishment and Violations Position

The relationship between Propam's independence and criminal theory becomes relevant when Propam investigations lead to the determination of suspects and the prosecution of members of the Indonesian National Police (Polri) who commit crimes. Teguh Prasetyo emphasized that the effectiveness of criminal penalties against law enforcement officers who violate the law is particularly significant because it affects public perceptions of justice: if the law is not enforced equally against its own officers, public trust in the legal system will collapse as a whole.³³

In the context of Article 448 of the new Criminal Code concerning abuse of power, Chairul Huda explained that the effectiveness of this article's application to members of the National Police (Polri) depends heavily on the quality of the initial investigation conducted by the Propam (Police and Security) Unit. If Propam is not independent in gathering evidence and identifying suspects, the case files submitted to the prosecutor's office will be weak in terms of evidence, thus

³⁰Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law*, (Yogyakarta: Genta Publishing, 2009), p. 17.

³¹Widodo Dwi Putro, "Critique of the Legal Positivism Paradigm," *Journal of Law and Justice*, Vol. 1, No. 1 (2011), p. 38.

³²Erlyn Indarti, *Discretion and Paradigm: A Study of Legal Philosophy*, Inaugural Speech of UNDIP Professor (Semarang, 2010), p. 22.

³³Teguh Prasetyo, *Criminal Law*, (Jakarta: Rajawali Pers, 2010), p. 66.

providing an opportunity for perpetrators to escape criminal responsibility.³⁴

lex certa principle developed by Moeljatno in the principles of criminal law requires that the elements of the crime of abuse of power be formulated with sufficient clarity so that Propam investigators can apply them consistently and objectively, without being influenced by extralegal considerations. Moeljatno emphasized that the ambiguity of the formulation of the crime is one of the factors most often exploited to avoid criminal responsibility, because it provides room for interpretation that is advantageous to the perpetrator.³⁵

Furthermore, Andi Hamzah, in his analysis of official crimes, explains that Article 448 of the new Criminal Code requires a clear causal link between the use of official authority and the resulting losses. In the context of Propam investigations, this means investigators must be able to establish a chain of evidence linking the abuse of power to legally measurable consequences—a technical skill that can only develop in a work environment that grants investigators full professional freedom.³⁶

The relevance of criminal law theory to the independence of the National Police (Propam) is also evident from the perspective of Marcus Priyo Gunarto, who emphasizes the principle of balance in the criminal justice system. Gunarto stated that criminalizing state officials who abuse their power must fulfill two functions simultaneously: a retributive function (ensuring the perpetrator receives an appropriate punishment) and a general preventive function (providing a deterrent effect for other members of the National Police). These two functions can only be realized if the preceding investigation is conducted independently and credibly.³⁷

3.2. Implications Juridical Enforcement of Article 448 of the New Criminal Code (Law No. 1 of 2023) Against Authority Discretion and Procedure Operational Internal Investigation by Propam Indonesian National Police

1) The Legal Implications of the Implementation of Article 448 of the New Criminal Code (Law No. 1 of 2023) Regarding Discretionary Authority and Operational Procedures for Internal Investigations by the Indonesian National Police's Propam with the Theory of Independence of Power

Indonesian criminal law reform reached a historic milestone with the enactment of Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code), which replaced the Dutch colonial legacy of the *Wetboek van Strafrecht* that had been in

³⁴Chairul Huda, "The Meaning of Criminal Act Qualification in the Formulation of Criminal Law Norms," *Ius Quia Iustum Law Journal*, Vol. 18, No. 1 (2011), p. 52.

³⁵Moeljatno, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2008), p. 54.

³⁶Andi Hamzah, *Certain Offenses (Speciale Delicten) in the Criminal Code*, (Jakarta: Sinar Grafika, 2009), p. 97.

³⁷Marcus Priyo Gunarto, "The Principle of Balance in the Draft Concept of the Criminal Code," *Jurnal Mimbar Hukum*, Vol. 24, No. 1 (2012), p. 89.

effect for almost a century. This update to the national criminal law codification is not simply a change in nomenclature, but rather reflects a paradigmatic transformation in Indonesian criminal law thinking that adapts to societal developments, the values of Pancasila, and contemporary human rights demands.³⁸

Within the framework of this criminal law reform, Article 448 of the New Criminal Code is one of the provisions significantly relevant to the police's internal law enforcement system, particularly regarding the discretionary authority and operational procedures for investigations carried out by the Indonesian National Police's Professional and Security Unit (Propam). This provision regulates criminal liability within the context of the relationship between the authority of law enforcement officers and the legal boundaries that govern it.³⁹

The Indonesian National Police's Propam (Police Internal Affairs), as a functional unit tasked with fostering, maintaining, and enforcing discipline, and protecting human rights within the Indonesian National Police (Polri), carries out functions that are inherently quasi-judicial. Propam's internal investigative function is not only an institutional internal accountability mechanism but also addresses fundamental aspects of protecting the rights of Polri members suspected of committing violations.⁴⁰

Article 448 of the New Criminal Code explicitly regulates provisions concerning officials whose duties come into conflict with the criminal realm. This provision has direct implications for how Propam officials exercise their discretionary authority, particularly during internal investigations, which often require complex legal considerations between the interests of the police institution, the rights of the individual members being investigated, and the demands of public justice.⁴¹

From the perspective of the theory of independence of power, the fundamental question that arises is to what extent the implementation of Article 448 of the New Criminal Code affects the functional independence of Propam in exercising its internal investigative authority. The theory of independence of power, which is rooted in Montesquieu's thinking on *trias politica* and further developed in the context of a modern rule of law, emphasizes that every institution that carries out judicial or quasi-judicial functions must have a certain degree of independence in order to function effectively and fairly.

³⁸Moeljatno, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2008), p. 5.

³⁹Drafting Team, *Academic Manuscript of the Draft Criminal Code* (Jakarta: BPHN Kemenkumham, 2021), pp. 12-14.

⁴⁰Andi Hamzah, *Indonesian Criminal Procedure Law, Second Edition* (Jakarta: Sinar Grafika, 2014), p. 87.

⁴¹Article 448 of Law Number 1 of 2023 concerning the Criminal Code (State Gazette of the Republic of Indonesia of 2023 Number 1).

The theory of the independence of power is a fundamental pillar in the construction of a modern democratic state based on the rule of law. This idea was first systematically conceptualized by Montesquieu in his work, *L'Esprit des Lois* (The Spirit of the Laws, 1748), which introduced the doctrine of the separation of powers as a mechanism to prevent absolutism. Montesquieu argued that political freedom can only be realized if there is a clear separation of legislative, executive, and judicial powers.⁴²

In subsequent theoretical developments, the concept of independence of power is no longer understood narrowly as an absolute separation between the branches of state power, but rather develops into a more nuanced conception of the functional independence of state institutions in carrying out their duties and authorities. Jimly Asshiddiqie emphasizes that institutional independence is an absolute requirement for upholding the rule of law, because without independence, every legal institution is vulnerable to political intervention that can distort justice.⁴³

Miriam Budiardjo expands the concept of independence of power in the context of a state based on the rule of law by emphasizing that independence is not solely structural-institutional, but also encompasses functional and personal dimensions. Functional independence relates to an institution's freedom to carry out its specific functions without external pressure, while personal independence concerns the guarantee for officials carrying out those functions to act according to the law and conscience without fear of undue personal consequences.⁴⁴

Bagir Manan developed the theory of independence of power in the context of Indonesian law by proposing the concept of *relative independence*, namely the condition in which an institution has independence within the limits determined by the constitution and laws and regulations. This concept is relevant to the condition of the Indonesian National Police's Propam, which is institutionally within the police hierarchical structure but carries out quasi-judicial functions that require a certain degree of independence.⁴⁵

Hans Kelsen, within the legal positivism tradition, offers a different yet complementary perspective on the theory of judicial independence. Kelsen views judicial independence as a logical derivation of the normative structure of law itself, in which every organ tasked with enforcing legal norms must be free from the influence of organs positioned outside the relevant normative hierarchy.

⁴²Montesquieu, *The Spirit of the Laws*, trans. Anne M. Cohler et al. (Cambridge: Cambridge University Press, 1989), p. 156-157.

⁴³Jimly Asshiddiqie, *Introduction to Constitutional Law, Volume I* (Jakarta: Secretariat General and Registrar's Office of the Constitutional Court, 2006), pp. 33-35.

⁴⁴Miriam Budiardjo, *Basics of Political Science, Revised Edition* (Jakarta: Gramedia Pustaka Utama, 2008), pp. 151-153.

⁴⁵Bagir Manan, *Constitutional Theory and Politics* (Yogyakarta: FH UII Press, 2003), pp. 56-58.

Kelsen's thinking underlies the argument that organs carrying out the function of enforcing the law, including Propam in the context of internal investigations, must be protected from intervention that could compromise the integrity of law enforcement.⁴⁶

Ronald Dworkin made a significant contribution by distinguishing between *rules* and *principles* in his legal thinking. In the context of independence of power, Dworkin argued that officials exercising quasi-judicial functions are bound not only by applicable rules but also by normative principles that require value judgment. This creates a legitimate space for structured and limited discretion, a relevant condition for Propam's authority in internal investigations.⁴⁷

a. Concept Discretion in Administrative and Criminal Law

Discretion (discretion or *freies Ermessen*) is a fundamental concept in state administrative law that refers to the freedom to act or make decisions given to public officials within the limits of applicable law, when there are no clear rules or need to be adjusted to the concrete situation faced. SF Marbun and Moh. Mahfud MD define discretion as the freedom of state administrative officials to act on their own initiative in resolving important, urgent issues, but for which there are no rules, or the existing rules are inadequate to address them.⁴⁸

In Indonesian administrative law, the legal basis for police discretion can be found in Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, which explicitly recognizes that police officers may act based on their own judgment under certain circumstances. This police discretion is not an unlimited authority, but is bound by the principles of public interest, humanity, and accountable legal considerations.⁴⁹

Ridwan HR classifies discretion in government administration into two main forms: free discretion (*vrij beleid*) and bound discretion (*gebonden beleid*). Free discretion provides officials with greater freedom to determine the content of decisions, while bound discretion limits choices to alternatives determined by law. In the context of Propam, the discretionary authority held is generally partially bound, where there are procedural guidelines that must be followed, but still leaves room for judgment in determining investigative priorities and evaluating evidence.⁵⁰

⁴⁶Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967), p. 221-222.

⁴⁷Dworkin, R., *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), p. 31-33.

⁴⁸SF Marbun and Moh. Mahfud MD, *Principles of State Administrative Law* (Yogyakarta: Liberty, 2009), pp. 110-112.

⁴⁹See Article 18 of Law Number 2 of 2002 concerning the Republic of Indonesia National Police concerning Police Discretion.

⁵⁰Ridwan HR, *State Administrative Law*, Revised Edition (Jakarta: Raja Grafindo Persada, 2014), pp. 175-177.

Yohanes Usfunan emphasized that the use of discretion by state administrative officials must always be based on the general principles of good governance (*algemene beginselen van behoorlijk bestuur*), which include the principles of legal certainty, balance, equality, honesty, accuracy, and adequate motivation. In the context of Propam, the application of these principles is crucial given the potential impact of internal investigations on the careers and independence of the police officers being investigated.⁵¹

Marwan Effendy developed the concept of discretion in criminal law by recognizing the existence of *prosecutorial discretion* as a form of discretion inherent in the function of criminal law enforcement. In the context of Propam's internal investigations, the analogy of prosecutorial discretion is relevant to understanding Propam's authority in determining whether an internal violation will be followed up through internal disciplinary mechanisms or referred to formal criminal proceedings.⁵²

b. Legal Position and Function Propam in System Indonesian Police

The Indonesian National Police's Professional and Security Division (Propam) is a functional unit with a strategic position within the organizational structure of the Indonesian National Police. Based on the Regulation of the Chief of the Indonesian National Police governing internal supervision and control, Propam carries out professional development and security functions that encompass three main aspects: first, developing professional ethics and enforcing discipline; second, internal supervision and control; and third, protecting the rights of Indonesian National Police members.⁵³

From the perspective of state administrative law, Propam carries out functions that can be categorized as *administrative adjudication*, namely the decision-making process by an administrative body that has characteristics similar to the judicial process. Philipus M. Hadjon emphasized that institutions that carry out this kind of function must comply with the principles of fair procedure, which include the right to be heard (*audi et alteram partem*), the prohibition of deciding on one's own interests (*nemo iudex in re sua*), and the obligation to provide adequate reasons for each decision.⁵⁴

Eddy OS Hiariej analyzed that provisions such as Article 448 of the New Criminal Code have three main functions: first, a preventive function to prevent officials

⁵¹Yohanes Usfunan, *Freedom of Discretion in the Administrative Law System* (Denpasar: Udayana University Press, 2014), pp. 45-47.

⁵²Marwan Effendy, *Discretion, Legal Discovery, Corporations & Tax Amnesty in Law Enforcement* (Jakarta: Referensi, 2012), pp. 56-58.

⁵³Regulation of the Chief of the Republic of Indonesia National Police Number 2 of 2022 concerning Internal Supervision and Control within the National Police Environment.

⁵⁴Philipus M. Hadjon, *Legal Protection for the Indonesian People* (Surabaya: Bina Ilmu, 1987), pp. 80-82.

from acting beyond their authority; second, a repressive function to punish abuse of authority that has already occurred; and third, a compensatory function to provide a means of redress for victims of abuse of authority. These three functions collectively form a checks and balances mechanism on the power of law enforcement officials, including the Indonesian National Police's Propam (Propam Polri).⁵⁵

4. Conclusion

Based on analysis to architecture law and practice enforcement discipline in the environment The Republic of Indonesia National Police (Polri), can with drawn conclusion that Position Subordinate and Non- Independent Propam: From a legal-organizational perspective, the Indonesian National Police 's Propam Division is positioned as an internal apparatus under the Chief of Police (based on Government Regulation No. 3 of 2003 and the Chief of Police Regulation). This position places Propam as an internal bureaucratic structure, not an ombudsman or independent external supervisory institution. Because it is structurally subordinate, Propam's independence is largely determined by the will and direction of the Chief of Police, not by the objective principle of checks and balances. Conflict Inherent Interests in Investigation Member Indonesian National Police: In the context of the Indonesian criminal justice system, the Indonesian National Police acts as both law enforcer and law breaker when its members commit crimes. The assigned Propam investigate violation the face conflict interest double: Conflict Institutional: There are encouragement organizational to protect the reputation of the Indonesian National Police institution (institutional self-preservation), which often conflicts with with interest enforcement objective law. Conflict Cultural: Culture esprit de corps (esprit de corps) often obscures objectivity, where internal investigations tend to take sides friend (member Police) and discriminate law towards the victim or society. Subordination of Criminal Law Under Disciplinary Law (Structured Impunity): This conflict of interest results in the practice where investigations of criminal acts by Polri members (which should fall within the realm of general criminal law) are often downgraded to disciplinary violations or violations of the professional code of ethics (KEPP) which are resolved through the Professional Code of Ethics Commission (KKEP) Session. The closed KKEP mechanism that results in administrative sanctions becomes a legal shield that fosters impunity structured for member The Indonesian National Police did it action criminal position (including actions arbitrary in Article 448 of the New Criminal Code).

⁵⁵Eddy OS Hiariej, *Principles of Criminal Law* (Yogyakarta: Cahaya Atma Pustaka, 2016), pp. 200-202.

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