

CRITICAL ANALYSIS OF CRIMINAL MEASURES IN THE INDONESIAN NATIONAL POLICE

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ABSTRACT

As explained in Law No. 2 of 2002, The National Police of the Indonesian Republic is authorized to handle various public complaints and reports. However, performance problems still occur in the implementation, one of which is visible from the high number of public complaints to the Ombudsman. The Ombudsman notes 1,042 public complaints during 2017 were addressed to the Police, most of which were about protracted delays. This number has made them the most publicly complained law enforcement institution for their performance, which, as the public expressed, was considered to be less satisfying. The research, therefore, aims to identify what cause these problems and what solutions should be taken. The research adopts the juridical-empirical approach with an emphasis on people's behavior towards the law. Three main problems are found to have hampered the Police, i.e. substantial (regulation), structural (police investigator) and social (community) problems. Substantially, there are no regulations that specify deadlines for handling cases and the obligation to provide both Report Receipts (STTL) and Notice of the Progress on Investigation Results (SP2HP) to those who file reports or complaints. Structurally, the problem lies in the absence of obligation for every investigator or incumbent to have a law education background. Meanwhile, from the social perspective, many people do not understand the technicalities of the Police in resolving cases and this results in less social control towards Police performance. Therefore a new design is needed. First, there should be stipulations on the deadlines for handling crimes and investigators obligations to provide both Report Receipts and Notice of the Progress on Investigation Results. Second, improvements are needed in the quality of investigators, both through regulatory stipulations on the recruitment process where law education backgrounds become obligatory and on the upgrades to field investigators. Third, stakeholders should hold regular educations to the public on the Police procedures of cases settlement to create social awareness to keep the investigations on the right track. With these in effect, the Constitutional guarantee to all citizens for the rights of legal certainty and protection can be implemented.

Key words: Police; Law Enforcement; Crimes; Police Investigators

INTRODUCTION

Philosophically, the guarantee for legal certainty and protection without discrimination is a Human Right that has been formulated in the 1945 Constitution of the Republic of Indonesia. Since the Constitution is the Highest Law in the Republic, the State, as one among many Countries that live national and state life on the legal basis, is obliged to respect, protect and fulfill the Constitutional Rights of its citizens, including that of the guarantee for certainty and protection of the law without discrimination.

Not only is such a guarantee intended to protect the Indonesians from the harmful acts by a group of people to the general interests; It is also meant to protect the citizens from the detrimentalities by the Government. The idea of assurance for legal certainty and protection for the people, according to Hadjon (1987), derives from the recognition and protection of human rights; As the history in the West told us, concepts of recognition and protection of human rights are intended for restrictions and placement of responsibilities on both the people and the Government."¹

In line with Hadjon, Setiono (2004) in his thesis argues that guarantee of legal certainty and protection is interpreted also as actions or efforts to protect the public from arbitrary acts by the authorities (i.e. the Government) which are not in accordance with the law, as well as to realize order and peace so as to enable people to enjoy their dignity as human beings.² On the other hand, Rahardjo (2003) claims that legal protection is an effort to protect individuals' interests by bequeathing individuals with human rights to act within their interests.³

Guarantee for legal certainty and protection is part of human rights stipulated in the 1945 Constitution of the Republic of Indonesia.⁴ Also, the Constitution specifies the citizens' human rights in the political, economic, social, cultural, educational and religious fields.⁵

Following its function, the National Police of the Republic of Indonesia is one of the law enforcement institutions which by Law No. 2 of 2002 is bestowed with the duty and authority to maintain security and public order, uphold the law and provide protection, care, and service to the People.⁶ In light of these above, one can assume the Police to be an institution that is required to provide guarantees for legal protection and certainty for the People.

¹ Hadjon, P.M. 1987, *Legal Protection for The People in Indonesia (A Study on The Principles and The Courts Proceedings in General Judicature and The Formation of State Administrative Judicature)*, Surabaya: PT. Bina Ilmu, p.38.

² Setiono, 2004, *Rule of Law (Law Supremacy)* (Unpublished Master's Thesis), Universitas Sebelas Maret, Surakarta, Indonesia, p.3.

³ Rahardjo, S. 2003, *The Other Side of Law in Indonesia*, Jakarta: Kompas, p.121

⁴ Guarantee for legal certainty and protection is stipulated in Article 28 Point D Verse 1 of The 1945 Constitution, regulating that citizens possess the Rights of Legal Recognition, Guarantee, Certainty and Protection in Justice and Equality before the Law.

⁵ Protection to this Human Rights is specified in CHAPTER X of The 1945 Constitution, in Article 28A to 28J.

⁶ <https://humas.polri.go.id/tugas-fungsi-dan-kewenangan-polri/> accessed on date 15/07/2019 at 13.11 West Indonesian Time

In this research, ‘legal protection by the Police’ is defined as the Police’s efforts in authoritative basis to create security and legal order in society; This relates to their duty in minimizing the number of crimes that compromise citizens’ constitutional rights among themselves. Whereas ‘legal certainty by the Police’ refers to the Police’s efforts in handling cases that suspiciously violate citizens constitutional rights, in such manner that both the perpetrators and the victims get legal certainties without delay regarding their status as individuals who have problems with the Law.

In the Republic of Indonesia, each act of violation and seizure of the constitutional rights of the citizens is arguably a criminal act, and the handling has been handed over to, and stipulated to be the duty of, the Police as the law enforcement institution to handle crimes first-hand. Handlings of crimes by the Police has been specified in the Regulation of the Chief of Indonesian National Police Number 14 of 2012 concerning Management of Criminal Investigations ("Perkapolri 14/2012"). The regulation explains in detail what stages the police should follow when appointed by Law as an investigator handling a criminal case in society.

However, in carrying out these tasks of legal protection and certainty, the Police are still experiencing obstacles that in return result in the community losses and their dissatisfactions with the Police Institution in dealing with criminal matters that afflict a citizen. This is proven by the number of public complaints to the Ombudsman of the Republic for Police, wherein 2017 reached 1,042 - rendering it to be the first, most complained law enforcement agency. The complaints have varied, ranging from discrimination, protracted delays, abuse of authority, irregularities in procedures, to illegal levies. Amongst all, protracted delays became the highest submitted to the Ombudsman during the 2017⁷.

On a similar note, the first quarter of 2018 still indicated the Police to be the most widely reported institution to the Ombudsman, in which 212 public reports of various materials were addressed to the Police.⁸ On this basis, it is necessary to have a research that examines the Police’s problems of handling criminal acts and to seek solutions, in the importance of securing the Police’s productivity as the first-level law enforcement institutions whose obligation is to guarantee legal protection and certainty for the People of Indonesia.

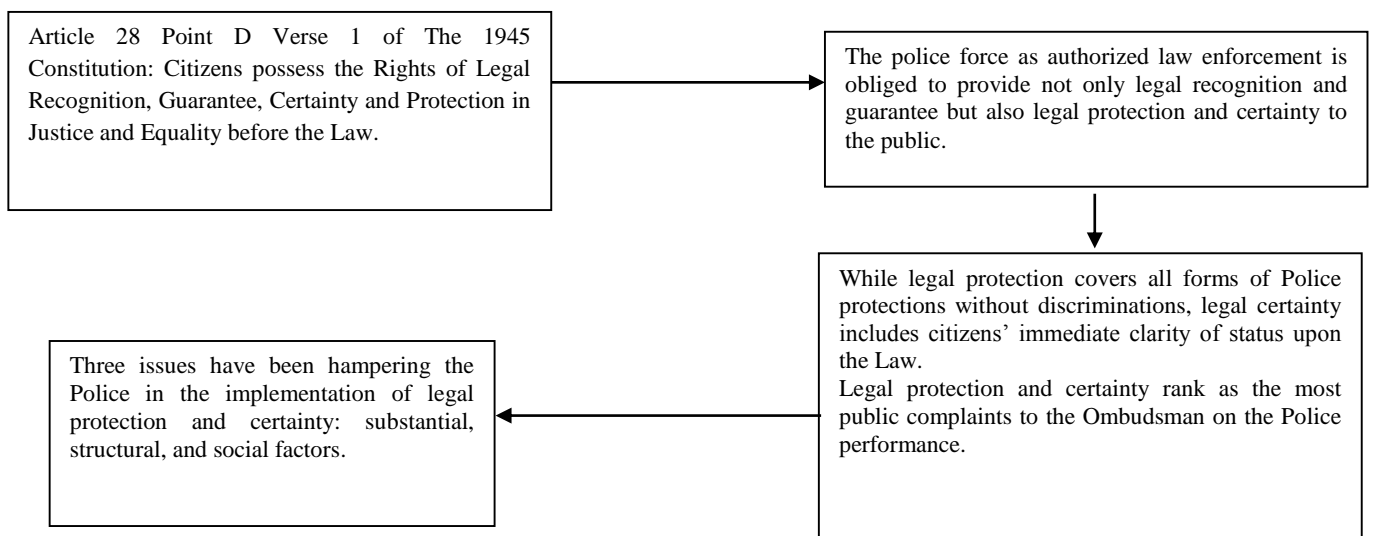
PROBLEM STATEMENTS

The backgrounds above narrow down the research problems into two points:

1. What have caused protracted delays in case settlements in the Police so that people’s rights to legal certainty and protection are not implemented?
2. What are the solutions to the above problem?

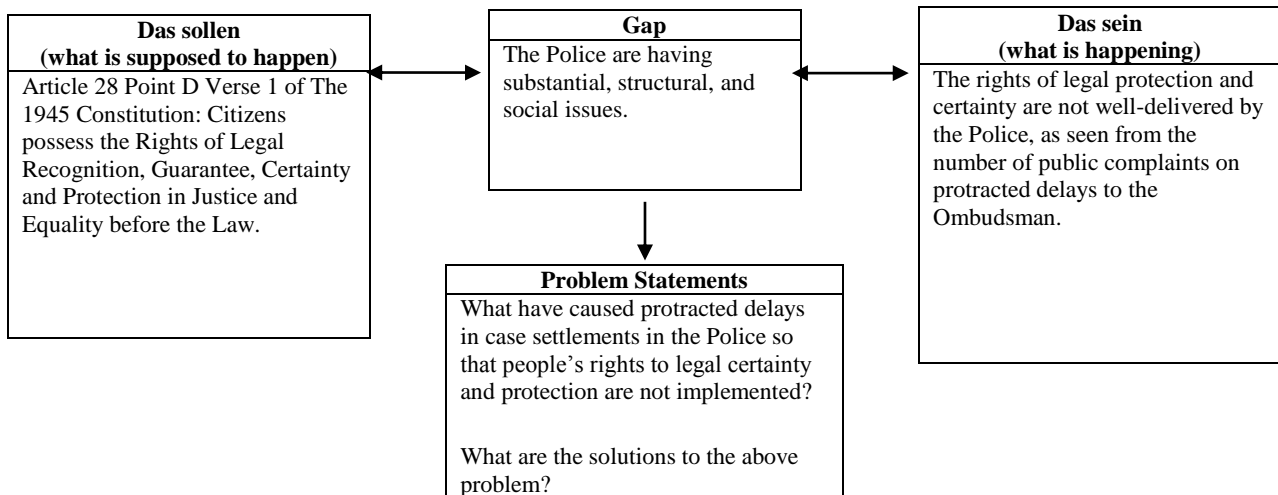
LOGICAL FRAMEWORK

The logic in this research should look like below:



⁷ Annual Report of the Ombudsman of the Republic of Indonesia of 2017
⁸ 1st Quarter Report of the Ombudsman of the Republic of Indonesia of 2018

The log frame implies a gap between the *das sollen* (what is supposed to happen) and the *das sein* (what is happening) in the Police criminal handlings concerning citizens' rights of legal protection and certainty.



LITERATURE REVIEW

The Police

By definition of The Great Indonesian Dictionary (or KBBI), The Police is a Governmental Body whose duty is to maintain public order and thus is authorized to arrest violators of the Law.⁹ With the main functions of law enforcement and public service, the Indonesian National Police is obliged to prevent crimes and protect the people.¹⁰

Under Article 6 of Act Number 2 of 2002, the Indonesian National Police is authorized to:

- a. capture, arrest, search and confiscate;
- b. restrict people from leaving or entering a crime scene during an investigation;
- c. take and bring people to an investigation;
- d. stop suspected people to question and check for identification;
- e. check and confiscate documents;
- f. bring people as suspects or witnesses;
- g. invite people whose expertises are needed in investigations;
- h. terminate investigations;
- i. handover files of investigations to prosecutors;
- j. put criminal suspects on the alert list as direct proposals to the authorized immigration officers in case of immediate emergencies;
- k. assist and direct, as well as take assistances and directions from, Civil Servants Investigators in compiling investigation files to be handed over to prosecutors;
- l. take other actions as demanded and legalized by the Law.

Crimes

In principle, the Indonesian law-maker (in this case The Indonesian President along with the Indonesian House of Representatives in joint approvals) has not formulated a definition of the word "*strafbaar feit*", therefore many have attempted to make free definitions of the term.¹¹

One of the thoughts on the definition of criminal acts/*strafbaar feit* has been given by Simons as cited in Chazawi (2002), who stated *Strafbaar feit* as "a deliberate violation to the Law by a person who can be held responsible for his actions, and therefore is stated as punishable".¹²

⁹ Purwodarminto, W.J.S., 1986. The General Indonesian Dictionary, p. 763, Jakarta: Balai Pustaka.

¹⁰ Mulyadi, M., 2009, *The Police in Criminal Justice System*, p.40, Medan: USU Press.

¹¹ Sofyan, A. and Azisa, N., 2016, *Criminal Law: A Lesson Book*, p.96, Makasar: Pustaka Pena Press.

¹² Chazawi, A., 2002, *Lessons of Criminal Law Section 1*, 1st Ed., p.72 Jakarta: PT. RajaGrafindo Persada.

However, the formulation of *strafbaar feit* definition needs to consider many other things. Mudzakkir et.al. (2008) pointed out the general formulation of a criminal act should at least include requirements as follows:¹³

1. The existence of the legal subjects as the target of the norm (*addressaat norm*);
2. The clarity of the condemned act (*strafbaar*), either a commission or omission that has caused the loss of the victim; and
3. The existence of the criminal penalty (*strafmaat*), as a means to put the Law in effect and subdue the people to the Law.

Besides, a subject is convicted as guilty of a crime when at least proven based on these five elements of a crime:¹⁴

- **A criminal act should be proven to have the element of “conduct”.**

The crimes concerned need to fall into the category of the crimes formulated by the Law, stipulated within the Articles and must have the characteristics and natures as abstractly mentioned;

- **A criminal act should be proven to have the element of “unlawfulness”, either formally or materially or both.**

An unlawful nature in the formal definition is the one against the Law. On the other hand, in the material definition it is not only against the Law but also against the social justice values;

- **A criminal act should be proven to have the element of “intent” or “responsibility”.**

This means that the subject should think and feel like normal people and can decide over circumstances or is free to make his own will over the action;

- **A criminal act should be proven to have the element of “causation”.**

This means that there should be causative evidence that link between the act and the end result or the harm - either by will, deliberation or carelessness.

- **To be proven otherwise, a criminal act should have the element of “exemptions”.**

A supposedly illegal act can become legal under one of these circumstances: a) an *overmacht*, where someone is forced to do the act; (b) a *noodtoestand*, where someone is in emergency to do the act; (c) a *noodwear*, where someone does the act as a self-defense; (d) a *teruitvoering van een wettelijk voorschrift*, where someone does the act as an implementation of an Act or Regulation; (e) an *ambtelijk bevel* where someone does the act under authorized, direct, orders.

METHOD

The phrase ‘research method’ consists of two words: ‘method’ and ‘research’. A ‘method’ is a range of principles and procedures for solving problems; while a ‘research’ is a process of a careful, diligent and thorough examination of phenomena and problems, which aims to increase human knowledge.¹⁵ Conclusively, a research method is a series of techniques, processes or research activities that are based on assumptions, ideological or philosophical views, questions and issues to cope with.

The approach method used in this study is the juridical-empirical, which examines the Law from an external perspective focusing the object of research on the social attitudes and behaviors towards the Law.¹⁶ This study attempts to analyze the implementation of the Law No. 2 of 2002 concerning the Police’s handling of criminal acts, following the Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia which mandates the guarantee of legal certainty and protection in Indonesian society.

This research is based on primary data, i.e. data obtained directly from the field, and secondary data, i.e. data that already exists in the form of primary legal materials (related regulations) and secondary legal materials, i.e. sources such as books, magazines, scientific journals, and others. The data obtained is then analyzed and explained qualitatively.

The data collection uses both the library and field approaches. Experts’ opinions and relevant materials from selected literature are carefully quoted as theoretical supports. Meanwhile, the field data is derived from direct observations, documentations and unstructured interviews with relevant parties to support findings.

In assuming the validity of qualitative research, one can always rely on the elongation of observations, scrutiny improvements, triangulations, peer discussions, negative cases analysis, and member checking.¹⁷ However, the triangulation technique is used in this research, where the data finding is re-consulted back to the informants, the peer researchers, and the experts.

Reliability tests have also been performed, in which the research processes are periodically checked, starting from the problem statement, data validity tests, data analysis, conclusion, and re-examination to the conclusion by the researcher.

¹³ Mudzakkir et.al., 2008, National Law Development Plannings in Criminal Law and Criminalization System (The Politics of Law and Criminalization), Publication of The Department of Law and Human Rights, National Law Development Agency, Jakarta: National Law Development Agency.

¹⁴ Munthe, J. and Pumomo, P.P.S., *Criminalization of Crimes under Alcoholic Influences in Regency Levels*, quoted from <http://e-journal.uajy.ac.id/5980/1/JURNAL%20HK10030.pdf> accessed on date 14/08/2019 at 18.14 West Indonesian Time.

¹⁵ Soekanto, S. 2007, *Introduction to Legal Research*, p. 6, Jakarta: UI Press

¹⁶ Diantha, I.M.P., 2016, *The Methodology of Normative Legal Research in the Justification of Legal Theories*, p.12, Jakarta: Prenadamedia Grup.

¹⁷ <http://repo.iain-tulungagung.ac.id/4184/4/BAB%20III.pdf> accessed on date 14/08/2019

RESULTS AND DISCUSSIONS

1. Factors hampering case-handling in the Police.

A. Problems of Legal Substance.

The legal substance highlights the issues of prevailing legal/regulatory aspects. In this case, the author observes the regulations governing the processes and technicalities in the implementation of handling criminal cases in the Police, such that hamper criminal cases handling. The rule in question is the Regulation of the Chief of the Indonesian National Police Number 14 of 2012 concerning Management of Criminal Investigations ("Perkapolri 14/2012"). Several problems are found to hinder the process of crimes-handling in the Police, i.e.:

- **The absence of time-limits for the Police in handling crimes.**

Once registered in the Police, the public reports must be dealt with quickly as a manifestation of the guarantee to the public exercising their rights for obtaining legal certainty regarding the cases that have happened to them. Handling reports is part of efforts to provide public services and needs to be implemented promptly. Regulation of Chief of Indonesian National Police No. 14 of 2011 letters C and E states that the Police must provide services quickly, accurately and accountably. Unfortunately, the Regulation does not specify the minimum and the maximum time-limits for the Police's handling criminal cases. As a result, a large number of public complaints to the Ombudsman emerged for protracted-delays of Police performance.

So far, rules regarding the time-limits for the Police's handling of criminal cases have been based inadequately on classifications of the public reports/complaints, in accordance with the Regulation of Chief of Indonesian National Police Number 14 of 2012 concerning Management of Criminal Investigations ("Perkapolri 14/2012") **which only states that** the time to settle an investigation into a crime is based on the weight/difficulty of the case at hand. The criteria for the levels of difficulty are as follows:

A. **Easy cases**, by criteria of:

1. Sufficient witnesses;
2. Sufficient evidence;
3. Known or arrested suspects; dan
4. Relatively-quick processes handling.

b. **Middle cases**, by criteria of:

1. Enough witnesses;
2. Available evidence leading to suspects involvements;
3. Known identities and whereabouts of suspects that lead to easy captures;
4. Suspects are not involved in organized crimes;
5. Suspects are not mentally ill; and
6. Experts' testimonies are not necessary but within easy reach.

c. **Difficult cases**, by criteria of:

1. Witnesses are not eye-witnesses;
2. Suspects are either unknown, mentally-ill, or having important positions in institutions or organizations;
3. Suspects are protected by certain organizations or part of organized crimes;
4. No direct evidence to the cases;
5. Expert witnesses are necessary to solve the cases;
6. Special equipment is necessary to solve the cases;
7. The crimes involve many crime scenes; and
8. The investigations take more time.

d. **Very difficult cases**, by criteria of:

1. No direct witnesses;
2. Witnesses' whereabouts are unknown;
3. Witnesses or Suspects have left the Country;
4. Crime scenes are in other/several Countries;
5. Suspects have been away to Countries without Extradition Treaties;
6. Evidence is out of the Country that renders confiscation impossible;
7. Suspects are either unknown, ill or having important positions in institutions or organizations; and
8. The investigations take a relatively long time.

The indecisiveness regarding the time of crimes-handling in this regulation has left the time-frames subject to investigators. This has been made worse when the investigators themselves have been regarded incompetent, as will be described later in this writing, which eventually leads to hampered criminal case handlings.

- **Abolition of the obligation of Police to provide Report Receipts**

Another issue of a legal substance that in turn contributes to slowing the Police's pace in examining criminal cases amidst the ever-incoming public reports is the regulatory transformation: from the Police's being obliged to provide Report Receipts (STTL) to becoming non-mandatory. Previously regulated in the Regulation of the Chief of Police Number 12 of 2009, the obligation to give Report Receipts was then abolished as amended by Regulation of the Chief of Police Number 14 of 2012, in which no such Receipts are stipulated to be given to victims. Not regulating the provision of Report Receipt will cause problems on behalf of the public/victims. In such cases where reports are not followed up by the police, people do not have a solid basis for legal efforts, such as filing complaints to Provosts and Public Complaints Service for undeveloped reports of crimes.

- **Abolition of the obligation of investigators to provide Notice of Progress on Investigation Results.**

A Notice of Progress on Investigation Results is a form of report supposedly given by an investigator to the public/victim on the progress of the reported case. It is part of victims' right of gaining information on the extent of how far the Police has developed their cases. Provision of Notice of Progress on Investigations Results is previously regulated in the Regulation of the Chief of Indonesian National Police Number 12 of 2009, in which investigators are required to provide periodical Notices at least once a month whether the public/victims requested or not. Abolition to this requirement is issued in Regulation of Chief of Indonesian National Police Number 14 of 2012, where the Provision of Notification is only conditional upon requests by the community/victims requests. The problem arises since not all people/victims are informed of the existence of the Notice, and prolonged abandonment may corrupt people's monitoring capacity to such cases.

B. Problems of Legal Structure.

In the articulation of problems on the legal structure, we must see how it closely relates to the Police Human Resources (HR) responsibility in building the quality of their investigators. In principle, as being used in handling law enforcement issues, educational background in law is a must-have item for an investigator. Unfortunately, not every Indonesian police investigators possesses it. This is supported evidently in that law education is not required for the police to work as an investigator. The requirement to be an investigator was regulated in Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code and amended later by Government Regulation Number 58 of 2010 ("PP 58/2010").

In Article 2A Verse 1 in this Regulation, it is stipulated that to be promoted as an investigator officer of the Indonesian National Police, one must fulfill the requirement as follows:

1. To have ranked at least Second Police Inspector and hold at least a bachelor or an equal degree;¹⁸
2. To have worked in investigations for at least 2 (two) years;
3. To have followed and graduated from developmental special training of Criminal Investigation Agent;
4. To be physically and mentally healthy as proven by a Physician's Certificate of Good Health; and
5. To have high moral abilities and integrities.

There in the Article, it is visible that an investigator incumbent is not obliged to possess a background of law education. The Article only states the requirement of "a Bachelor or equal Degree" without specifying it to be of law education.

The incumbents' freedom for not having legal educational backgrounds is reconfirmed in Article 10 of the Regulation of Chief of Indonesian National Police Number 1 of 2012 ("Perkapolri 1/2012") on the Recruitment and Selection of Indonesian National Police Investigators, which requires an investigator incumbent:

1. To have ranked at least Second Police Inspector;
2. To have held an accredited undergraduate degree, at least a Bachelor Degree (S1) and preferably of Law;
3. To have an interest in the field of investigation, stated in a Letter of Interest;
4. To be computer literate as evidenced by a Certificates from Chief of Operational Unit / Chief of Official Unit or Course Institutions;
5. To have received a recommendation from the relevant Operating Unit to take part in the selection accompanied by Performance Reports;
6. To be physically and mentally healthy as evidenced by a Certificate of Good Health from the National Police doctor; and
7. To not have problems involving crimes/legal violations as proven by a Certificate of Research Result (SKHP).

The word "*preferably of Law*" in **Perkapolri 1/2012** states the incumbent is not required to hold a Degree of Law. Therefore, it is justified to conclude that the National Police Investigators' understandings on the matter of law are questionable. Nevertheless, being not fully educated of the Law is a serious problem for an investigator when trying to handle crimes in the Police level.

¹⁸ Even in a situation where a Second Inspector with a bachelor's degree or equivalent is not available in an operational unit, the Chief of the Indonesian National Police or a selected Indonesian National Police official can appoint another Second Inspector as an investigator.

C. Social Problems

This lies mainly on the public's being unaware of the legal matters of Investigative procedures and mechanism by the Police in crimes-handling. People's awareness can form a strong social control over case-handlings as a form of monitoring and evaluation to the Police Investigative Performance so that in turn it can lead the course of case settlement in a properly swift manner.

2. Solutions

The best solution to all of the above problems is a redesigning in the matter of legal substance, legal structure, and social knowledge. Offered below is a concept containing a list of redesign?

- Specify the time-limits or expirations of criminal cases handling in the Police, to guarantee rights of legal protection and certainty of the victims or their representatives about the cases they face.
- Re-compel investigators to provide Report Receipts when accepting reports. This must be legally confirmed within a Regulation, to prove that people still have their rights for evidence and legality when exercising legal efforts for non-followed-up cases by the Police to the Provosts and Public Complaints Services.
- Re-compel investigators to provide Notice of Progress on Investigations Results in periodical manner regardless of requests.
- Oblige an investigator incumbent to possess an educational background in law. This should be regulated in a Government Regulation that will be confirmed with the Regulation of Chief of Indonesian National Police, in the hope of increasing the quality of the National Police investigators when dealing with crime-handling.
- Inform the public on the mechanism and technicalities of criminal case settlement in the Police, to build the public capacity of social control to monitor and evaluate investigative processes to lead to properly swift case settlement.

SUMMARY

1. Conclusions

It is fair to conclude that guarantee for legal protection and certainty in Indonesia is not yet well implemented, visibly from substandard crime-handling showing retardation tendency in the Police level. The reasons for this tardiness and insignificant performance relate substantially to hampering regulation, structurally to the Police HR quality, and socially to People's poor knowledge on case settlement mechanisms in the Police level that tends to render social controls over investigators conducts impotent.

2. Recommendations

The author recommends a redesign that(in which) covers the matter of legal substance, structure, and culture in the way that optimizes Police report handlings in the course of guaranteeing the rights of legal protection and certainty of the community.

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