

## CONCEPT OF DISCRETION OF POLICE'S RULE AS LAW ENFORCEMENT OFFICERS IN DEMOCRATIC POLICING

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### ABSTRACT

*The application of discretion is a policy from an office which in essence allows public officials (including the police) to carry out policies that violate the law, with three conditions, namely in the public interest, within the limits of their authority, and not violating the General Principles of Good Governance (AUPB in Bahasa). The aims of this research are: to know the synchronization of discretion in the role of the police as law enforcement officers, to know the legal system for implementing legal discretion by the police as law enforcement officers in democratic policing, to know the concept of police discretion as law enforcement officers in the future in policing democratic one. The results of the analysis obtained are: the concept of police discretion as law enforcement officers in the future in democratic policing is marked by reforms from within the police themselves, namely: through structural aspects, instrumental aspects, and cultural aspects. The existing laws and regulations in regulating the performance of the Indonesian National Police, especially in the discussion of discretion, are adequate, and there is no overlap between one law and another.*

Keywords: Discretion, Police, Democratic.

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### INTRODUCTION

The National Police of the Republic of Indonesia is one of the state institutions tasked with maintaining public security and order, protecting, nurturing, serving the community, and enforcing the law. In developing its institution, the police must comply with the national development plan consisting of the vision, mission, Basic Development Strategy, Policies and Targets as well as Programs and Activities.

The police reform process has shown results in structural and instrumental aspects that have strengthened the position and composition of the police in the constitutional system of the Republic of Indonesia, as well as the emergence of a new paradigm as civil police (Civilian Police): revamping the education curriculum, socializing the values of Tribrata, Catur Prasetya, and the Code of Professional Ethics to realize the identity of the police as protectors, protectors, and servants of the community, although there are still behavioral attitudes of police officers that do not fully reflect their identity as protectors, protectors, and servants public.

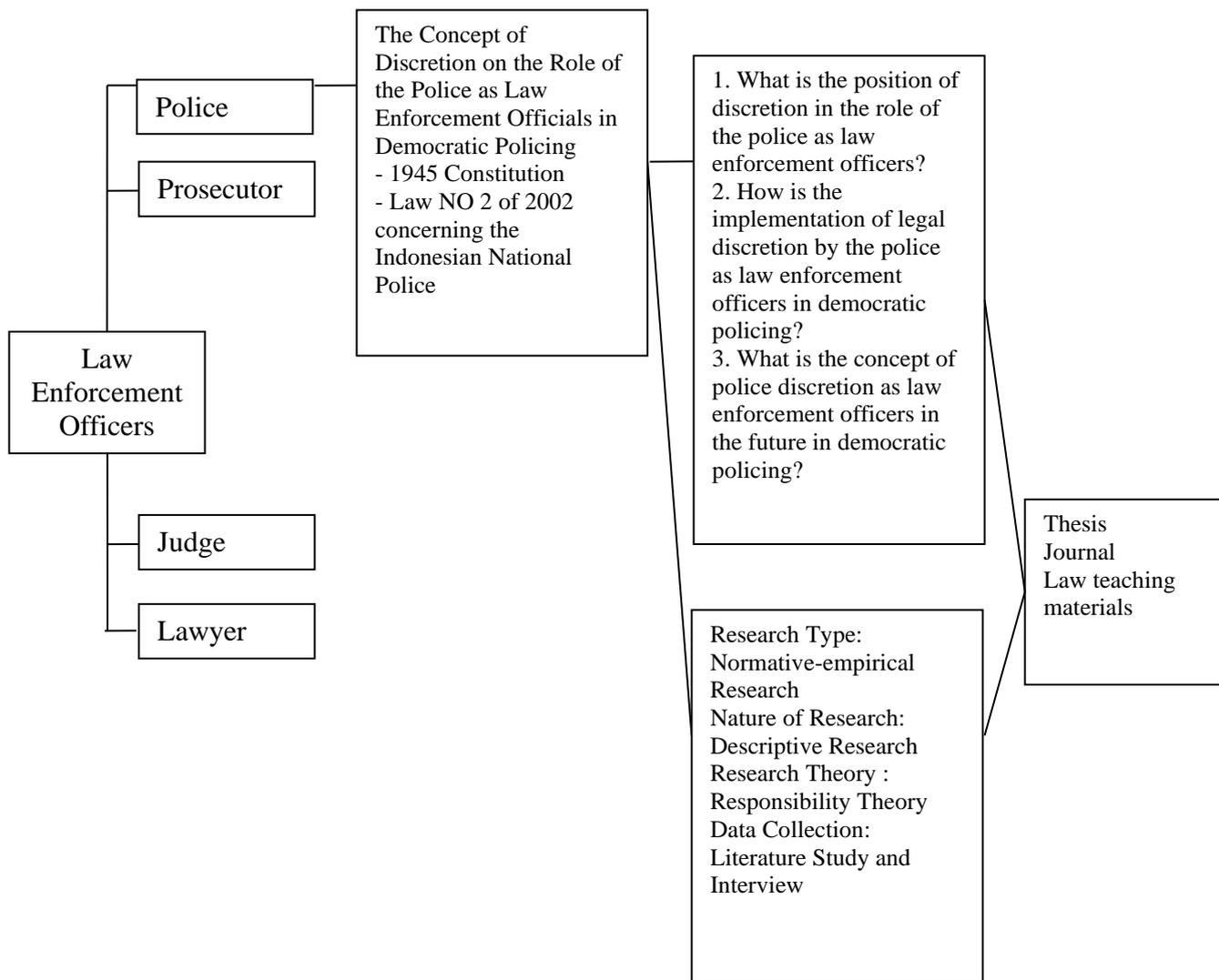
The discretionary authority granted to the Police institution cannot be separated from the universal nature of the Police as law enforcers. Every great authority will run well if it is carried out following correct and professional procedures. But many law enforcers also take advantage of their authority to seek personal gain or abuse their authority which can be used as one of the methods or modes by investigators in implementing criminal law enforcement, namely primarily in carrying out investigations and investigations.

Within the scope of the police profession in the Indonesian National Police (POLRI) institution, the concept of Police Discretion is standardized in Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, which reads: "(1) In the public interest, officers of the Indonesian National Police in carrying out - Carry out duties and authorities can act according to their judgment. (2) The implementation of the provisions as referred to in paragraph (1) can only be carried out in necessary circumstances by taking into account the laws and regulations, as well as the Professional Code of Ethics of the State Police of the Republic of Indonesia."

### RESEARCH METHOD

This type of research is normative-empirical research. Where this research focuses on library research coupled with field research, this research is sourced from library learning as the point material with materials from field research as supporting materials. The nature of the research used is descriptive research, namely research based on written regulations/facts that occur in the field.

The data obtained from this study were processed and analyzed descriptively qualitatively. Where all the data obtained, analyzed in its entirety so as to bring up a systematic and factual picture. After being analyzed the author draws conclusions that will ultimately result in preventive and repressive actions against the problems that have been raised.



## RESULT

Kelsen's theory of hierarchical Norma was later developed by his student Nawiasky in his book *Allgemeine Rechtslehre*. Nawiasky emphasized that the system of legal norms in any country is always multi-layered and tiered. The norms below apply, are sourced, and based on a higher norm, until a higher norm is called the basic norm. Nawiasky then gave a new idea about the Norma system, namely the existence of Norma grouping. According to Nawiasky, the grouping of norms in a country consists of four major groups, namely; the first group, Staatfundamentalnorm, or state fundamental norms. The second group, Staatgrundgesetz (basic rules/principles of the state). The third group, Formell Gesetz (Act). The fourth group, Verordnung & Autonome Satzung (implementing rules & autonomous rules). Whereas in carrying out its authority in enforcing the law, the Police must be responsible so as not to violate the norms of life that exist in society. For example, in the task of exercising discretion in resolving cases that exist in the community, the police must still have a responsibility even though the exercise of discretion based on laws and regulations is their authority. Based on Kelsen's theory that there is no authority without accountability.

Based on the results of an interview at the Percut Sei Tuan Police, discretion according to Janpiter Napitupulu is "the authority mandated by law to the Indonesian National Police to make decisions or take other actions in urgent circumstances for the sake of the law by observing religious norms, politeness, morality and upholding human rights in creating national security and justice". Synchronization of discretion in the role of the police as law enforcement officers is Article 18 of Law no. 2 of 2002 concerning the Police, Article 48 and Article 49 of the Criminal Code (KUHP), Article 5 and Article 109 of the Criminal Procedure Code (KUHAP) Perkap No. 1 of 2009 and Protap No. 1 of 2010, stating that the police can take discretionary actions "in the interest of the public". UU no. 2 of 2002 concerning the Police, the Criminal Code (KUHP), Perkap No. 1 of 2009, and Protap No. 1 of 2010, the focus of police discretion is almost the same, namely regarding actions or actions. Meanwhile, in the Criminal Procedure Code (KUHAP), the focus of police discretion is the judicial process or mechanism.

No.	Basic Police Discretionary Authority	Conclusion
1.	BOOK OF CRIMINAL LAW	What is emphasized in the Criminal Code is in accordance with the provisions in Articles 48 and 49 that the police may exercise discretion on the grounds of compulsion and for self-defense or others.
2.	BOOK OF CRIMINAL PROCEDURE LAW	What is emphasized in the Criminal Procedure Code is in accordance with the provisions in Article 109 paragraph 2 that investigators may terminate an investigation on the grounds that there is insufficient evidence, it is not a crime and the investigation is terminated for the sake of law. And in article 5 allows investigators to take other actions in accordance with applicable rules.
3.	Law NO. 2 of 2002 concerning the Police	What is emphasized in the Police Act is in accordance with Article 18 that the police may take actions according to their own judges "In the Public Interest"
4.	REGULATION of the Chief of Police of the Republic of Indonesia NO. 1 of 2009 concerning the use of force in police actions	In this regulation, the police are allowed to take discretionary actions on the grounds of preventing crime, preventing criminals from escaping, protecting themselves and their honor from criminal acts and protecting the honor of decency.
5.	FIXED PROCEDURE No. 1 of 2010 concerning the Countermeasures of Anarchy	Under this procedure, the police are allowed to take discretionary actions to defend themselves or their families against imminent threats or serious injury, to prevent criminals from escaping, to prevent the commission of very serious crimes. When less extreme means are not sufficient to achieve goals.
6.	Standard Operating Procedure (SOP)	In this Standard Operating Procedure, the police are allowed to take discretionary actions in the case of high-level disturbances to public order, such as mass riots, organized crime, firearms, bombs and others.

The legal system for implementing legal discretion by the police as law enforcement officers in democratic policing is Law No. 13 of 1961 concerning the Basic Provisions of the Police, Law No. 20 of 1982 concerning the Basic Provisions of Defense and Security, Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia, Law no. 8 of 1981 concerning the Criminal Procedure Code, the 1945 Constitution of the Republic of Indonesia, and Jurisprudence. Discretionary arrangements are the legal basis for police discretion. The use of discretionary authority is legal and justified by law, both written law and unwritten law. Thus, all parties are protected, both officers and the community. Japiter Napitupulu in an interview stated "there is a need for reforms from within the National Police, namely structural aspects, instrumental aspects, and cultural aspects. According to his observations that the effectiveness of the discretion can help resolve the turmoil that occurs in society with peace without a trial in court, then save the cost of investigations whose origins are from the state budget".

The concept of police discretion as law enforcement officers in the future in democratic policing is marked by reforms from within the police themselves, namely through structural aspects, instrumental aspects, and cultural aspects. Even though there are differences in the term democratic policing discretion by experts, the government, and the police in carrying out police duties, since the issuance of Police Decree No. Community, namely the style of policing or the way of acting by the police that is proactively carried out by the police to members of the community (community) to jointly face and overcome various social problems that occur, especially those related to security and public order issues. Discretion has 3 foundations, namely philosophically, discretion as a decision based on intelligence and conscience, and wisdom that can be appreciated. Sociologically, the existence and function of the police in society are the demands of the needs in the community concerned for the existence of police services. Juridically, the basis for police discretion is contained in Article 18 of Law no. 2 of 2002 concerning the Police, the implementation of which is only in very necessary circumstances with due observance of the laws and regulations as well as the Code of Ethics of the State Police of the Republic of Indonesia.

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