

**IDEAL POLICY MODEL FOR MINIMIZING THE PRACTICE OF NONLEGITIMATED  
DISCRETION AND MALADMINISTRATION IN THE CRIMINAL LAW ENFORCEMENT  
BY POLICE IN THE PROVINCE OF EAST NUSA  
TENGGARA, INDONESIA**

Rudepel Petrus Leo,  
Hartiwiningsih,  
Mohammad Jamin

**ABSTRACT**

*The legal principle of Equality Before the Law has not been properly implemented in governance, especially law enforcement in Indonesia. There are still many discretionary practices of non-legitimization and maladministration (irregularities and violations) by police officers in performing their duties. The problem of this research is: What is the ideal policy model that can overcome or minimize discretionary practices of nonlegitimization and maladministration? Primary data was obtained by interviewing 20 research subjects in East Nusa Tenggara Regional Police Region. The results of this study are as follows. The ideal policy model that can minimize the discretionary practice of non-legitimization and maladministration is: First, revitalize (increase) the supervision of police discretion by: (1) Preventive efforts ie independent variables are reduced through the policy of the Chief of Police of the Republic of Indonesia. (2) Curative efforts of unprofessional police officers are strictly reprimanded as therapeutic and given the opportunity to continue their professional education. Secondly, the repressive effort of revitalizing oversight by the National Police Commission, or other institutions, by giving authority to impose firm punishment so as to frighten or discourage discretionary actors from non-legitimization and maladministration. Third, the revitalization of the application of punishment expressly by the police officers so as to cause the fear or deterrent effect of discriminator of non-legitimization and maladministration. Fourth, the establishment of the Regional Police Commission in all provinces so that the service is easily accessible to the public. Fifth, involving the Regional Police Commission, mass media and social organization to supervise when indicated discretionary practice of non-legitimization and maladministration so as to force the police to carry out investigations and investigations in accordance with applicable law.*

**Keywords:** Equality before the law, public trust, nonlegitimated discretion, maladministration.

**A. Introduction**

Law enforcement in reality in Indonesia, until now still found discrimination in Settlement of legal cases (Sochmawardiah, 2013: 1). Discrimination is one form of discretion. Erlyn Indarti divides two kinds of discretion: legitimate and nonlegitimate discretion. Unauthorized discretion is a discretion that is not permitted or prohibited by law (Indarti, 2000). Furthermore, according to Soenaryati Hartono, maladministration is an unnatural behavior (including postponement of service delivery), disrespectful and indifferent to the problems that befall a person caused by abuse of power, including the arbitrary use of power or the power used for non-Fair, unfair, intimidating or discriminatory, and inappropriate, based wholly or partly on the provisions of law or facts unreasonable, or based on unreasonable, unjust, oppressive and discriminatory measures (Soenaryati Hartono, 2003: 6). Some examples of police maladministration are (1) counterfeiting and conspiracy, (2) handling of disputes or not handling, (3) abuse of authority or exaggeration, (4) clearly taking sides, (5) receiving rewards (money, gifts, KKN), (6) embezzlement of evidence or control without rights (National Ombudsman Commission cited Philipus M. Hadjon and Tatiek Sri Djatmiati, 2004). Discrimination as a form of non-legitimacy and maladministration discrimination is sensitive in Indonesia, and has the potential to cause conflicts and mass riots such as the SARA riots of May 1998, cases in Sambas, West Kalimantan in 1998-1999, as well as cases in Sampit, Central Kalimantan in 2001, and in other areas.

Many cases of serious criminal offenses (such as murder, severe maltreatment, robbery) taking place in East Nusa Tenggara are very slowly handled. Example: a sadistic murder case in Kefamenanu, North Timor Tengah Regency, on June 6, 2008, with victim Paulus Usnaat (40s). The murder became very interesting because the crime scene was in the detention room of the Nunpene Sector Police, where it should provide protection and security for a detainee. In addition, the mastermind of the suspect/ perpetrator is a public figure, namely a member of the Regional House of Representatives of the District of North Central Timor. This case belongs to premeditated murder threatened with death penalty, or life imprisonment or temporary imprisonment of at least 20 years (Article 340 of the Criminal Code), and involves some or many parties (Articles 55 and 56 of the Criminal Code). The settlement was 'drowned' for 7 years, and it was only completed until five replacements of the East Nusa Tenggara Regional Police Chief had occurred. In fact, the correction of the investigation report has been back and forth 20 times from the police-prosecutors. The case was only resolved and proceeded to the district court in June 2015, when Brigjen.Pol. Drs. Endang Sunjaya, S.H., M.H. Became the Chief of East Nusa Tenggara (Timor Express Newspaper, June 23, 2015). The practice of non-legitimated discretion and maladministration by police officers is contrary to the principle of non-discrimination, equality before the law, equality under justice, whereas Article 27 of the 1945 Constitution asserts that all persons are equal before the law and government.

The discretion of non-legitimization and maladministration or variation of treatment by police officers is suspected to have a

very dangerous effect, which further reduces the public's trust in the law, which is basically the level of public trust in the law is very low (Adi Sulistiyono, 2006; and Harkristuti Harkrisnowo, 2003: 28). Therefore, the discretion of non-legitimization and maladministration by police officers is a very important and urgent thing to be scientifically studied in order to be properly handled, or at least, the amount can be minimized. The problem that became the focus of this study is how the ideal policy model that can overcome or minimize the practice of discretion of nonlegitimation and maladministration by police officers?

### **B. Research Methods**

Primary data was obtained by interviewing 20 research subjects, consisting of criminals, victims of crime, police who knew about the practice of discretionary discrimination and maladministration, prosecutors, legal counsel, village officials, community leaders, families, neighbors of victims or perpetrators at the Place of Genesis Case, In the working area of the East Nusa Tenggara Regional Police.

### **C. Research Results**

The results of the data collection in this study were 94 cases that were restricted to serious crimes, namely ordinary murder, premeditated murder, abortion, murder and disposal of children, rape, fornication of minors, severe maltreatment, robbery, custody, theft with a denunciation, a traffic accident that caused another person to die. The study also found cases of child abduction and youth/youth committed an international organization to take the organs of the victims. Cases classified as serious crimes are not properly processed in accordance with applicable criminal procedural law, by police officers. For example, obstructed, deflected, obscured, covered up, left without clarity, until removed. Cases of minor or very mild crimes are also proposed to be juxtaposed with the settlement of cases of serious crimes, which, according to the feelings and legal awareness of the community, these minor or very minor crimes do not need to be processed by law but are simply settled out of court. However, in reality, the law proceeded to the court.

### **D. Discussion**

Some attempts that can be made to serve as a model that minimizes discretionary discrimination practices and maladministration by police officers are:

#### **1. Revitalization of Police Discretion Control**

The authority of police discretion is very broad and vulnerable to abuse of authority. Therefore, it is important to ensure that through supervision, the exercise of the discretion does not deviate from the intent and purpose of the discretionary authority. According to Sadjijono, the term "supervision" is known in the science of management and administrative science, namely as one element in the management activities. The term supervision in Indonesia is derived from the term "control" (2010: 151-152). According to George R. Terry, "control" is "... to determine what is accomplished, evaluate it, and apply corrective measures, if needed to ensure results in keeping with the plan" (in Muchsan, 1992: 37). Henry Fayol points out, "Control is the study of whether everything is done according to the plan, the commandments and the established principles" (in Irfan Facruddin, 2004: 89). Thus, supervision in the task of the police is an activity undertaken in order that the duties and authorities are carried out in accordance with applicable laws and regulations and in accordance with the objectives of the duties and authorities granted.

According to M. Faal, the supervision of the police discretion can be done in several ways: supervision by: (1) Self members of the police themselves, (2) Vertical ie their supervisors, direct supervisor or not, (3) Horizontal, ie the side institutions such as prosecutors or courts, And (4) Broad society (Faal, 1991). The latest developments on police oversight are (5) Supervision by the National Police Commission (Kopolnas) pursuant to Law Number 2 Year 2002 concerning the Police of the Republic of Indonesia. According to the researchers, the supervision of police officers in carrying out their duties has not been done maximally by competent police officers. This triggered a lot of discretionary practices of non-legitimization and maladministration by police officers.

#### **2. The National Police Commission ("Kopolnas") Need to be Authorized to Take**

##### **Action and Provide Strict Punishment**

Article 37 of Law Number 2 Year 2002 on the Indonesian National Police says that the National Police Commission (Kopolnas) has the following powers:

- (1) collecting and analyzing data as a source of advice to the President related to budget, human resources development and provision of facilities/Police infrastructure.
- (2) Kopolnas provide advice and consideration in connection with the effort to realize the Police professional and independent.
- (3) Receive public suggestions and complaints about the performance of the Police and convey to the President. Explanation of the Law of the Indonesian National Police states that the complaints from the community include abuse of authority, allegations of corruption, poor service, discriminatory treatment, to the use of discretion, namely taking action in the opinion and confidence of the wrong officers themselves.

According to the authors, the authority of Kopolnas "Accepting the public's suggestions and complaints about the performance of the police and conveying to the President" will not mean anything. Community reports and receipt of reports or complaints by Kopolnas will be ignored by the police perpetrators of non-legitimated and maladministration discretion, or "barking dogs, caravans pass." Clearly prohibited acts and there are institutions authorized to crack down legally such as processing legal irregularities and misconduct. The use of power by the police, but still continues, especially in the absence of authorized institutions to take firm action against the law. In other words, the police who perpetrated various irregularities and

abuses of duties and authorities, even many of the actual attitudes and actions that constitute a serious crime as set forth in these cases of research, will continue to do so by taking refuge under the discretionary authority of the police institution. These policemen carry out various irregularities and abuses of duties and authority, even classified as serious crimes, this does so with no fear and fear of the threat of punishment to be imposed or directed against him, because the threat of punishment does not exist. It is said that there is "no threat of punishment" to such police in the sense that no "outsiders" know and usually know "people or parties within" or fellow police, neither the same or the same or superior of the police that. It should be pointed out here that there is a kind of 'culture' in the police corps called "corps loyalty," or "corps solidarity," or "corps cohesion." This is of course also done by the corps

### **3. Revitalizing the Application of Punishment by Firm or by Punishment Police Officer**

According to Mohammad Kemal Dermawan and Mohammad Irvan Oli'i (2015: 1), with the establishment of an act as a crime or a violation of law, the consequence is a reaction from the community. A formal reaction to a crime is a reaction given to the offender for his or her actions, namely violating the criminal law, by the parties authorized or the force of law to carry out the reaction. Often, to facilitate the image of the authority in responding (formally) it is the state in this case is the government, which in turn delegates its duties to an authorized law enforcement agency. Official government-appointed agencies to deal with the problem of reacting to crime are referred to as the Criminal Justice System. The criminal justice system, therefore, is a system contained in society to combat crime. The criminal justice system as a crime-controlling system has the following objectives:

1. Prevent people from becoming victims of crime;
2. Resolve the case of the crime so that the public is satisfied that justice has been established and the guilty is convicted; and
3. Ensure that those who have committed crimes do not repeat the crime.

Criminal law enforcement is a process that takes place if there is a violation of the rules of criminal law. The law enforcement process, if we look at it, is actually a set of management actions, or an administration, so often referred to as the administration of criminal justice. We understand that in an administrative mechanism there are managers and actions that can not be separated from the responsibilities of the managers. In accordance with the criminal law enforcement terminology, the administrative officers of criminal justice are known as law enforcement officials in the administration of criminal justice. Law enforcement officials are police, prosecutors, judges and correctional officers. Overall, in an integralistic view, the administration of criminal justice is known as the criminal justice system.

Questions about why, how, and when we should punish criminals are easy to ask, but are difficult to answer. Many philosophers and sociologists have tried to answer this question so that the emergence of various theories of punishment.

People always punish those who oppose the established value system. However, responses to criminals have been influenced by theories of criminal behavior that arise at different times. The history of full punishment in the form of harsh punishment given to perpetrators such as caning, stoning, shelter, and others. However, in this world, most of such punishments are now almost obsolete.

Mohammad Kemal Dermawan and Mohammad Irvan Oli'i concluded that punishment is the process of presenting a response after a law violation occurs. Punishment serves as a threat by providing unwanted stimuli, or even being hated. Thus, it will reduce the possibility of behavior occurring again (Generous and Oli'i, 2015: 1-6). The imposition of punishment expressly by the ranks of the leadership or the police officer with the authority will cause fear and fear of the police 'naughty' against the threat of punishment/sanction. Experiencing undesirable things like severe punishment is an effective punishment for making detective criminals and not repeating their actions.

### **4. Establishment of Regional Police Commission in All Provinces**

It is intended to improve the service to the community, ie the community is easy to reach the Regional Police Commission (Kompolda) when it sees indications of discretionary practices of nonlegitimacy and maladministration. The formation of Kompolda in all of these provinces is the answer to the reality that has been faced by the community that is very difficult to access or obtain services or legal protection by the National Police Commission because there is only one in all Indonesia and is in Jakarta as the state capital.

The previous descriptions suggest that the confidence of the peda community of law enforcement officers is already very low. Such a low level of trust, if added with the difficulty of accessing justice because there is only one National Police Commission in Indonesia and only in Jakarta, will facilitate the public apathy. This very low level of trust will turn into apathy or no longer concerned with law enforcement issues. If so, then all the government's efforts to raise awareness of community law through various work programs. This becomes a 'time bomb' that will explode at any time, when an event or event that causes or triggers occurs. People will choose to do vigilante or street courts that can cause terrible things such as mass riots that have occurred in all parts of Indonesia around the end of the New Order period (May 1998) and events of conflict between other groups.

Such bad impacts can be prevented by establishing a Regional Police Commission (Kompolda) in all provinces in Indonesia so that the community can easily reach them in the event of discretionary practices of nonlegitimacy and maladministration as well as various other maladministration actions by the police.

### 5. Involve the Regional Police Commission, Mass Media and Social Organization in Supervision

When there is an indication of discretionary practices of nonlegitimacy and maladministration by police officers in the settlement of criminal cases, immediately report and involve: (1) the Regional Police Commission, (2) the mass media and (3) the social organization in the supervision. These three elements are reliably effective in guarding or supervising the stages of handling criminal cases by police officers, which is evident in many cases. The involvement of these three elements caused police officers, unwillingly, to carry out investigations to investigations in accordance with applicable criminal procedural law.

Many experiences indicate that criminal cases indicated discretionary discrimination and maladministration by police officers, when they involve mass media or social organizations, will immediately stop the practice of non-legitimization discretion and maladministration. The settlement of cases, from investigation to judge's verdict, will immediately proceed according to applicable criminal procedure law. "Inappropriateness" handling is immediately "right." When the mass media or social organization begins to monitor and monitor the criminal process of handling criminal cases, the police do not dare to discourage nonlegitimacy and maladministration of these criminal cases.

A description of the criminal law enforcement process that minimizes discretionary discrimination practices and maladministration by the police apparatus is visualized in Figure 1.

### E. Conclusion

The ideal policy model as an effort to overcome or minimize the discretionary practice of nonlegitimacy and maladministration by police officers is: The ideal policy model that can minimize discretionary discrimination and maladministration practices are: *First*, revitalize police surveillance by: (1) Preventive measures is the independent variables are reduced through the policy of the Chief of Police of the Republic of Indonesia. (2) Curative efforts of unprofessional police officers are strictly reprimanded as therapeutic and given the opportunity to continue their professional education. *Secondly*, the repressive effort of revitalizing oversight by the National Police Commission, or other institutions, by giving authority to impose firm punishment so as to frighten or discourage discretionary actors from non-legitimization and maladministration. *Third*, the revitalization of the application of punishment expressly by the police officers so as to cause the fear or deterrent effect of discriminator of non-legitimization and maladministration. *Fourth*, the establishment of the Regional Police Commission in all provinces so that the service is easily accessible to the public. *Fifth*, involving the Regional Police Commission, mass media and social organization to supervise when indicated discretionary practice of non-legitimization and maladministration so as to force the police to carry out investigations and investigations in accordance with applicable law.

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Rudepel Petrus Leo,  
S3 Faculty of Law, Sebelas Maret University,  
Surakarta, Indonesia

Hartiwiningsih, S.H., M.Hum.,

Mohammad Jamin S.H., M.Hum.