



POLICE DISCRETION: THE ROLE OF THE POLICE FOR THE NATIONAL SECURITY PERSPECTIVE RESTORATIVE JUSTICE

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ABSTRACT :

The purpose of this study is to analyze How is the understanding and regulation of police discretion in laws and contribution to the implementation of ADR in order to uphold *Restorative Justice*?. The research method used is normative juridical with a legislative approach, a conceptual approach, and a case study.

The results of the study show that Understanding and regulating the discretion of the police in laws and its contribution to the implementation of ADR in order to uphold *Restorative Justice* in the discretionary authority in the implementation of the duties and functions of the Police in Indonesia is carried out based on justice and usefulness in the implementation with the aim of realizing justice, usefulness and legal certainty. Police discretion is part of the alternative to non-litigation dispute resolution in the role of the police to national security associated with Constitutional law. The application of police discretion in resolving disputes over the use of natural resources and its contribution to the implementation of ADR in order to uphold *Restorative Justice*. Police discretion in Indonesia is juridically regulated in Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, especially in Article 18 paragraph (1) which stipulates that for the public interest police officers in carrying out their duties and authorities can act according to their own actions and can only be done in circumstances that are very necessary by paying attention to laws and regulations, as well as the Police Code of Ethics.

Keywords: Police, Discretion, Security, National, Restorative Justice

INTRODUCTION :

Background

The relationship between the state and natural resources as stated in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution according to the Constitutional Court (MK) is reduced to five functions, namely: regulation (*regelendaad*), management (*beheersdaad*), policy (*regulation*), management action (*bestuursdaad*), and supervision (*toezichthoudensdaad*). The meaning of "Aglemene or *generale preventie*, which is prevention aimed at the general public, so that the nature of prevention is general, and *bijzondere or speciale preventie*, which is prevention aimed at the criminals themselves (special prevention).¹

Thus, conflicts arise not only between individuals, but with corporations, even with the state. This is where personal conflicts develop into *intrastate* conflicts and then develop into global conflicts. Many researchers focus on finding answers to the phenomenon that is developing today, namely how internal conflicts within a country can expand into global conflicts.

Therefore, the National Police is required to continue to develop to be more professional and closer to the community. The position of the National Police in state organizations has a dominant influence in the implementation of the police in a proportionate and professional manner which is a condition for supporting the realization of good governance.²

The National Police as the bearer of the mandate of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia has a very strategic position in maintaining the continuity of national development. Likewise, in resolving conflicts regarding natural resources, the National Police has an important role in it as law enforcement officers and security forces where conflicts occur.

One alternative form of dispute resolution outside the court is *Alternative Dispute Resolution* or *Apropriate Dispute Resolution*). *Alternative Dispute Resolution* (ADR) is generally used in civil cases, not criminal cases. In the development of law in Indonesia, based on the applicable legislation, although in principle criminal cases cannot be resolved outside the court, in certain cases it is possible to resolve criminal cases outside the court. The practice of

¹ Koeswadji, *Environmental Criminal Law*, Citra Aditya: Bandung, 1993, p.12.

² Sadjijono, 2008, *Police, Police and Good Governance Legal Series*, Laksbang Mediatama, Surabaya, p. 22.

resolving criminal cases outside the court so far has no formal legal basis, so there are often cases where there has been an informal settlement of peace (even through customary law mechanisms), but it is still processed to the court in accordance with applicable law.³

The authority to take action given to the National Police can generally be divided into 2 (two), namely: general authorities that are based on actions taken by the police with the principles of Legality and *Plichtmatigheid* which are partly preventive and the second is a special authority as the authority to carry out duties as a tool of the law enforcement state, especially for the purpose of investigation and investigation, where most of them are repressive.⁴ However, in the end, the effectiveness of the existence of discretion also depends on the consistency of law enforcement to enforce the rule so that it can be properly organized and complied with.

Problem Formulation

1. How is the understanding and regulation of police discretion in laws?
2. How is the application of police discretion to the implementation of ADR in order to uphold *Restorative Justice*?

Theoretical Framework :

1. Good Governance Theory

Governance is defined as the mechanism, practice and procedure of government and citizens managing resources and solving public problems. In the concept of *governance*, the government is only one of the actors and is not always the decisive actor. The implications of the government's role as a development and service and infrastructure provider will shift to encourage the creation of an environment that is able to facilitate other parties in the community. *Governance* greater demands on citizens, including to monitor the accountability of the government itself.⁵

2. Hierarchy Theory of Legal Norms

According to Hans Kelsen, legal norms are rules, patterns or standards that need to be followed. Then it is further explained that the functions of legal norms, are:⁶ Command, Forbid, Control, Enable, and Save. In specializing in the discussion or discussion of legal rules or norms, it is necessary to understand the theory more deeply "*Stufenbau*" from Hans Kelsen. According to Hans Kelsen, the legal system of a country, is a hierarchical system of legal methods that in its very simple form.⁷

3. Dispute Resolution Theory

Dean G Pruitt and Jeffrey Z. Rubin put forward a theory of dispute resolution. There are 5 (five), namely: First, *contending* (competition), which is trying to apply a solution that is preferred by one party over the other. Second *yielding* (yielding), that is, lowering one's own aspirations and being willing to accept the shortcomings of what is actually desired. Third *Problem Solving* (problem solving), namely looking for satisfactory alternatives from both parties. Fourth *with drawing* (withdrawing), that is, choosing to leave the dispute situation, both physically and psychologically. Fifth *in action* (silent), that is, doing nothing.⁸

4. Environmental Law Theory

In environmental law, it consists of two elements, namely the legal understanding and the environmental understanding. Environmental law is divided into two parts, namely classical environmental law and modern environmental law. Classical environmental law is oriented to environmental use or use oriented while modern environmental law is oriented to the environment.⁹

5. Restorative Justice Theory

The restorative justice *theory* is one of the theories in law to close the loopholes of weaknesses in the resolution of conventional criminal cases, which is a repressive approach as implemented in the Criminal Justice System. The weakness of the repressive approach as a settlement of criminal cases is that it is oriented towards retaliation in the form of punishment and imprisonment of the perpetrator, but even though the perpetrator has served his sentence, the victim does not feel pacy.¹⁰

Research Methodology :

The research in this dissertation is included in the type of non-doctrinal research, where the approach method used is empirical juridical. Empirical research is research conducted by researching primary data, namely data obtained directly from the public. This empirical thinking is also called sociological thinking. The empirical juridical approach examines how normative provisions actually manifest in society.¹¹ This sociological approach

³ Priyo Santoso, "Police Discretion Through Penal Mediation (Case Study at the Galur Police Station, Kulonprogo), *Journal of Law Enforcement and Justice*, Vol.1 No.2, 2020, p. 96.

⁴ *Ibid.*

⁵ Sumarto Hetifa Sj, *Innovation, Participation and Good Governance*, (Bandung: Yayasan Obor Indonesia, 2003), pp. 1-2.

⁶ Yuliantri, *Principles of Forming Good Laws and Regulations*, (Jakarta: PT. King Grafindo, 2010), p. 21

⁷ Purnadi Purbacaraka, *Regarding the Rule of Law* (Bandung: Opset Alumni, 1979), p. 41

⁸ Dean G Pruitt & Z. Rubin, *Social Conflict*, (Yogyakarta: PustakaSiswa, 2004), pp. 4-6.

⁹ Munadjat Danusaputro, *Environmental Law Book 11*, (Bandung: Binacit National Publisher, 1985), p. 201.

¹⁰ Mansyur Kartayasa, "Restorative Justice and Its Prospects in Legislation Policy" paper presented at the National Seminar, The Role of Judges in Improving Professionalism. Towards Great Research, Organized by IKAHI in the context of the 59th Anniversary of IKAHI, April 25, 2012, pp. 1-2.

¹¹ Noor Muhammad Aziz, Legal Research and Assessment of Urgency Establishment of Legislation, *Journal: Rechtsvinding*, Vol 1 No 1, 2012, pp. 17-32

identifies and conceptualizes law as a real and functional social phenomenon in a real-life system.¹² In this study, the application of police discretion in overcoming conflicts in the use of natural resources is studied.

This data collection method is by *library research* or commonly called literature study, this method is carried out to obtain secondary data both in the form of primary legal materials and secondary legal materials. After being inventoried, a review is carried out to make the essence of each regulation concerned. Data is collected by studying literature sources in the form of literature books, laws and regulations, and collecting existing data in the form of data that is directly related to the research being conducted.¹³

RESEARCH RESULTS :

Understanding and Regulating Police Discretion in Laws

Law and society are like two sides of a coin that cannot be separated from each other. The enactment of law is indeed in a social order called society by the Romans called *ubi societas ibi ius* which illustrates how close the relationship between law and society is.¹⁴ The duty of the police as an investigator in the criminal justice system places him at the forefront, so that the police are required to be able to select or sort out which cases are appropriate to be submitted to court or not based on laws and regulations.¹⁵

Law enforcement is conceptual, so the essence and meaning of law enforcement lies in the activity of harmonizing the relationship of values described in the principles that are stable and embodied and the attitude of action as a series of elaboration of values in the final stage, to create, maintain, and maintain peace in life.¹⁶

There are ways to enforce the law against the environment, namely:

1. Through Administrative Legal Instruments, the resolution of state administrative disputes is carried out by the agency that issued the decision or another agency or the superior agency of the one who issued the decision. In other words, administrative efforts are dispute resolution by and within government agencies, not by judicial institutions.¹⁷
2. Through Civil Law Instruments, there are two ways that can be taken to resolve environmental disputes. First, dispute resolution through a dispute resolution mechanism outside the court. Second, dispute resolution through the courts.

Enforcement of dispute resolution using administrative legal instruments In the administrative legal instruments, there are 2 supervisions, namely preventive and repressive supervision. Preventive supervision is carried out to control environmental impacts, and prevent pollution or environmental damage, while repressive supervision is supervision carried out to restore the state to its original state, rescue and control the violation. This repressive supervision is carried out after a pollution or environmental damage occurs. By coercing the government to end the occurrence of violations.

In this case, the Discretionary Regulation of the Police in the Laws and Regulations is through the Law (UU) on the Conservation of Biological Natural Resources and Their Ecosystems with Criminal Sanctions According to the Provisions of Law No. 5 of 1990. In Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems, criminal sanctions are regulated in Article 19 paragraphs (1) and 21. Article 19 paragraph (1) Everyone is prohibited from carrying out activities that may result in changes to the integrity of the nature reserve area.¹⁸ Article 33 paragraph (1) Everyone is prohibited from carrying out activities that may result in changes to the integrity of the core zone of the national park; and paragraph (3) Everyone is prohibited from carrying out activities that are not in accordance with the functions of the utilization zone and other zones and national parks, forest parks, and tourist parks.

The police are given the authority or discretion by our criminal law to carry out a whole series of processes against anyone involved in a crime. The¹⁹ authority of the police is not to influence the course of the criminal process, but to strengthen the law enforcement process.²⁰ In Indonesia itself, the authority of the police in general has been regulated in Law Number 2 of 2002 concerning the Police. Meanwhile, in the process of criminal law enforcement, it is regulated separately through Law Number 8 of 1981 concerning the Criminal Procedure Law, or commonly referred to as the Criminal Procedure Code (KUHP). As for when it is associated with the authority of the police in handling conflicts, it has been specifically regulated in the Law on the Handling of Social Conflicts, along with the internal regulations of the National Police, namely PROTAP POLRI Number 1/X/2010 concerning Anarchy Countermeasures.

The role of the police in this crisis stage is very vital. Investigation skills and the speed and accuracy of decision-making are indispensable in dealing with riots in times of conflict. In the body of the police, there are several elements at once that help carry out the role of the police in carrying out their duties to maintain order, namely Samapta/Brimob, Criminal Investigation and Intelligence. In this stage, referring to the 2010 PROTAP on the Use of

¹² Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: Universitas Indonesia Press Press, 1986, p. 51.

¹³ Ediwarman, 2010, *Monograph, Legal Research Methodology*, Postgraduate Program, University of Muhammadiyah North Sumatra, Medan, p. 24 reviews

¹⁴ Mochtar Kusumaadja, *Concepts in Development*, (Bandung: Alumni, 2006), p. 6.

¹⁵ Satjipto Rahardjo, *Dissecting Progressive Law*, (Jakarta: Kompas, 2006), p. 65

¹⁶ Soerjono Soekanto, *Factors Affecting Law Enforcement*, (Jakarta: PT. Raja Grafindo Persada, 2007), p. 5.

¹⁷ Ridwan, *Three Dimensions of Administrative Law and Administrative Predilan*, Print 1, FH UII Press, 2009, p. 167.

¹⁸ Explanation of Article 19 paragraph (1) of Law No. 5 of 1990. What is meant by changes to the integrity of nature reserves is destroying the integrity and ecosystem, hunting animals in the area, and including non-native species.

¹⁹ Joseph, H. Tieger, *Police Discretion and Discriminatory Enforcement*, Duke Law Journal Vo. 1971:717, (United States: Duke University School of Law), p. 718.

²⁰ Joseph, Goldstein, *Police Discretion No To Invoke The Criminal Process: Low Visibility Decisions In The Administration Of Justice*, Yale Law Journal Vol. 69 No. 4, March 1960 (New Haven: Yale Law School), p. 543

Force in Police Actions, the police can take a repressive stance if necessary with the note of avoiding human rights violations. If critical conditions continue to escalate, the police can ask for the help of the Indonesian National Army (TNI) to ask for additional strength.²¹

The Application of Police Discretion in Dispute Resolution to the Implementation of ADR in the Context of Upholding Restorative Justice

The National Police in this case must carry out its role as ordered in Law No. 2 of 2002, of course, inseparable from the discussion of the duties and authorities of the National Police. Juridically, the duties and authorities of the National Police have been regulated in the constitution and various products of laws and regulations.

Such a juridical direction about the role of the National Police is then further elaborated in the Police Law, especially in Article 5, Articles 13 and 14. From the juridical directive, it appears that police institutions in Indonesia not only fight as part of law enforcement patterned in the criminal justice system (SPP), but further than that also play a role as an institution to maintain public security and order, as well as protectors, protectors and servants of the community.

Characteristics of the role played by the police institution. It turns out to be much broader in carrying out social control for the community, both pre-emptive, preventive and repressive. When the police institution becomes part of the criminal justice system, its actions must also be able to be returned to the context of the larger system.

Police discretion must be applied in the implementation of Police duties As mandated in article 13 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia, the duty of the National Police is to maintain public security and order, enforce the law and provide protection, protection and service to the community.

Therefore, in practice, the application of discretion by the Police wants the Prosecutor to depend on the subjectivity of the person concerned. If the law enforcer in question lives up to moral or ethical values as a police officer or prosecutor, then the application of discretion will give birth to a sense of justice and peace in society. On the other hand, if the Police do not adhere to moral and ethical values, then the application of discretion will give birth to arbitrariness. The substance of the Police's duties to maintain security and order comes from the Police's obligation to ensure public security. The main duties of the National Police are related to law enforcement derived from the provisions of laws and regulations that contain the duties of the National Police in relation to criminal justice.²²

The legal basis for the application of discretion can be described as follows. The criminal justice system, which is embraced by the Criminal Procedure Code and the special criminal procedure law rules, is an integrated criminal justice *system* that is based on the principle of functional differentiation, namely distinguishing between the functions and authorities of each component of law enforcement based on its agency. The integrated criminal justice system puts all law enforcement officials in an equal position based on their functions and authority.²³

Police discretion can indirectly be used in the application of the mediation process in handling cases between the two parties, namely the perpetrator and the victim of a criminal act to solve good legal problems and to achieve justice and usefulness which is part of the legal objectives. So that in this case the police can become heroes for their nation, by making the right choices in carrying out their duties and authority as a police profession.²⁴

Given this, the benefit of discretion from the Police is to make the implementation of policies based on professionalism in working from the Police which is required to work optimally in providing a servant, coaching and protection to the wider community in general and enforcing the law in particular from the Police more effectively and efficiently.²⁵

Police discretion is one of the "non-penal" channels used in the settlement of crimes committed by the National Police, in this case food crimes. Related to this, basically in the law enforcement system in Indonesia, especially at the police level, it has been known and possible to carry out *discretionary* actions as a form or effort to accommodate the legal values that live in the society. Discretion is defined as an action outside the rule of law carried out by police officers for the public interest, humanity, justice and education.²⁶

The legal basis by the National Police as law enforcers in carrying out investigations and investigations by using Police Discretion is Article 7 paragraph (1) letter j of the Criminal Code jo Article 16 paragraph (1) letter l Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. The Police in enforcing criminal law have discretionary authority as stated in Article 18 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia (hereinafter referred to as the Police Law) which states that "(1) In the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment; (2) The implementation of the provisions as intended in paragraph (1) can only be carried out in circumstances that are very necessary by paying attention to the laws and regulations, as well as the Code of Professional Ethics of the National Police of the Republic of Indonesia".²⁷

The formulation of the authority of the National Police of the Republic of Indonesia in Article 18 paragraph (1) of Law Number 2 of 2002 is an authority derived from the principle of general police obligation (*plichtmatigheids beginsel*), which is a principle that gives authority to police officials to *act or not act according to their own assessment*, in the context of the general obligation to maintain, maintain order and ensure public security.²⁸ Actions that

²¹ Law Number on Police, Law No. 2 of 2002, LN Number 2 of 2002, TLN Number 4168, Ps. 41 number 1.

²² Pudi, R. *Police Law: Professionalism and Police Reform*. Surabaya: Laksbang Mediatama, 2007.

²³ Ruslan Renggong, *Criminal Procedure Law (Understanding the Protection of Human Rights in the Detention Process in Indonesia)*, Kencana, Jakarta, 2014, p. 164

²⁴ Satjipto Raharjo, *Building Civil Police, Legal, Social, and Community Perspectives*, PT Kompas Media Nusantara, Jakarta, 2007, p. 262

²⁵ M. Faal, *Screening of Criminal Cases by the Police (Police Discretion)*, Pranya Paramita, Jakarta, 1991, pp. 15-16.

²⁶ The National Police of the Republic of Indonesia Riau Region, "The Development of Law Enforcement in Indonesia", was presented at a national seminar with the theme Synergy of Police Institutions, Prosecutor's Office and Ombudsman, 2009.

²⁷ Priyo Santoso, "Police Discretion Through Penal Mediation (Case Study at the Galur Police Station, Kulonprogo)", *Journal of Law Enforcement and Justice*, Vol.1 No.2, 2020, p. 98

²⁸ Joko Rudiantoro, "Police Discretion in Overcoming Anarchy in Society", *IUS Journal of Law and Justice Studies*, Vol II No.6, 2014, p. 490.

can be taken by members of the National Police of the Republic of Indonesia who in their actions must consider the benefits and risks of their actions and are really in the public interest.

The entrance to the enforcement of penal mediation is through discretion as the authority of the National Police. The legal basis of discretion for the officers of the National Police of the Republic of Indonesia (Polri) in carrying out their duties can be seen in Law Number 02 of 2002 concerning the National Police of the Republic of Indonesia in Article 15 paragraph (2) letter k, it is stated that the National Police of the Republic of Indonesia in accordance with other laws and regulations is authorized to carry out other authorities that are included in the scope of police duties.

The problems faced by the police in overcoming kamtibmas are not measurable and unlimited.²⁹ It is possible that the conditions of the demonstration were initially peaceful, without riots and could be controlled. However, the peaceful atmosphere in a short period of time can drastically change into a tense condition (*contingency*). Such a situation can be caused by demonstrators who were initially peaceful to drastically turn into anarchists, such as throwing stones or other objects at houses, offices or strategic places.

Police discretion as referred to in Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, especially in Article 18 paragraph (1) which stipulates that for the public interest police officers in carrying out their duties and authorities can act according to their own actions and can only be done in circumstances that are very necessary by paying attention to laws and regulations, as well as the Police Code of Ethics.

Discretion is defined as the freedom to make decisions in every situation faced.³⁰ Discretion is always associated with decision-making, power or authority exercised by a person towards the problem at hand. Police discretion can be interpreted as a discretion based on the power to take an action based on his or her own considerations and beliefs. Discretionary authority is a power or authority that is exercised based on the law on the basis of its considerations and beliefs and emphasizes moral considerations of balance within the legal framework. Even so, the discretion is carried out not apart from the provisions of the law, but the discretion is still carried out within the framework of the law.³¹

The police as discretionary actors, namely acting as if they are not based on the applicable positive law, if examined further, it is actually an action that can uphold the purpose of the law itself, namely welfare, comfort, and order. In its duties, the work of the police must not only be seen in relation to the administration of the law but more broadly. This means that it is not only a work of legal quality, but all affairs in the life of the community, as the main duty of the police which includes various kinds of maintenance and prevention activities such as maintaining order and security, safety of people, objects, and the community, as explained in Article 2 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. Furthermore, Article 15 c of Law Number 2 of 2002 emphasizes that preventing and overcoming the growth of community diseases.

Based on the above view, the action of the police who forgive or in scientific terms exercises discretionary authority on the consideration that the public interest is not disturbed. In Article 18 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, it is emphasized that for the benefit of the general public, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities can act according to their own judgment. These considerations in the public interest are among the various alternatives that the police member believes.

According to M. Faal, the wise steps taken by the police are usually with the following considerations;

- a) The use of local customary law is felt to be more effective in dealing with applicable positive laws.
- b) Local law can be felt by the parties between the perpetrators, victims and the community.
- c) The wisdom pursued has more benefits than simply using the existing positive law.
- d) Of their own accord.
- e) It is not contrary to the public interest.³²

With the considerations that must be made by police members in considering the discretion that they will make, then at least objective and responsible considerations will affect the assessment of the police members. Faal added that from the perspective of the officer's assessment, the officer will measure or consider the criminal act: *First*, to what extent the law is violated, whether it is severe, ordinary, moderate, or light. *Second*, how is the policy of institutions, leaders or superiors, whether written or not (criminal politics), towards crimes or violations of the law. *Third*, until the attitudes or respect of the violator of the law towards the officer are secured, if the suspect is unsympathetic, resistive, and stubborn, then this attitude will affect the officer in determining the granting of discretionary authority. *Fourth*, that the police as the enforcer of the kamtibmas will always think about something or in terms of security considerations. Potential that threatens security will affect the determination of whether to grant discretion or not, security and order risks will always be taken into account in every situation, whether it is the safety of himself, others or the community.³³

The Restorative justice approach focuses on the needs of both victims and perpetrators. In addition, the Restorative Justice approach helps the perpetrators of crimes to avoid other crimes in the future. It is based on a theory of justice that considers crimes and offenses, in principle, offenses against individuals or society and not against the state.

In the Indonesian concept, it is interpreted that Restorative Justice itself means a fair settlement involving the perpetrator, victim, family and other parties involved in a criminal act and jointly seeking a settlement of the crime and its implications by emphasizing restoration to the original state.

To realize justice for victims and perpetrators, it is good when law enforcers think and act progressively, namely not applying the rules textually, but need to break through the rules (*rule breaking*) because in the end the law is not a text for the sake of achieving the justice desired by the community.³⁴

Progressive law departs from the basic assumption that the law is for man, not the other way around. Law is not an absolute and final institution, but as a moral, conscientious institution and therefore is highly determined by its ability to serve human beings. Law is an institution that aims to lead humans to a just, prosperous life and make humans happy.³⁵

²⁹Satjipto Raharjo, 2007, *Building the Civil Police*, Jakarta: Kompas, p. 48

³⁰J.C.T Simorangkir, et al, loc. Cit, p. 45

³¹Djoko Prakoso, National Police as an investigator in law enforcement, (Jakarta: PT. Bina Aksara, 1987), p.182.

³²M. Faal, Op.cit, p. 74.

³³Ibid, p. 104.

³⁴Apung Herlina, "Restorative Justice," *Indonesian Journal of Criminology* 3, no. 3 (2004): 4244.

³⁵Satjipto Rahardjo, *Dissecting the Progressive Law* (Kompas Book Publisher, 2006).

Humanity and justice are the goals of everything in our legal life. So the phrase "law for man" also means "law for justice". This means, that humanity and justice are above the law. The point is the emphasis on just law enforcement in Indonesia, namely the creation of community welfare or what is often called a "just and prosperous society".³⁶

The National Police of the Republic of Indonesia or the National Police is a state tool that has the duties and main tasks of maintaining public security and order, enforcing the law and providing protection, protection and services to the community, which is contained in Law No. 02 of 2002 concerning the National Police of the Republic of Indonesia so that the National Police is responsible for pursuing, preventing and eliminating every symptom that may arise and develop in the community.

The duty of the National Police in maintaining public security and order is to try to maintain and maintain the condition of the community free from fear and worry, so that there is a sense of certainty and assurance from all interests, and free from violations of legal norms. The efforts used are through preventive and repressive efforts. Tasks in the preventive field are carried out with the concept and pattern of coaching in the form of providing protection, protection and services to the community so that the community feels safe. Preventive measures are efforts to prevent the meeting of intentions and opportunities to commit evil so that crime and criminality do not occur.³⁷ Based on Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia Article 13 regarding the main duties of the National Police, namely: 1) Maintaining public security and order; 2) Enforce the law, and 3) Provide protection, protection and services to the community.

Based on the duties and authority of the police, they are obliged to enforce the law for the sake of creating security and order in society itself. Professional actions (behavior) that reflect the ability or competence of members to be responsible, effective, efficient, disciplined and future-oriented in overcoming developments (internal security) and implemented with the police code of ethics. The National Police, which is currently able to adapt to the development of people's lives, must be able to adapt to the development of people's lives by changing the paradigm that focuses on a reactive and conventional approach (violence) to a proactive approach and receive public support by prioritizing partnerships.³⁸

CONCLUSION :

The results of the study show that :

- a) The understanding and regulation of the discretion of the Police in the Laws its contribution to the implementation of ADR in order to uphold *Restorative Justice* in the discretionary authority in the implementation of the duties and functions of the Police in Indonesia is carried out based on justice and usefulness in the implementation with the aim of realizing justice, usefulness and legal certainty. Police discretion is part of the alternative to non-litigation dispute resolution in the role of the police to national security associated with Constitutional law.
- b) The application of police discretion in resolving disputes over the use of natural resources and its contribution to the implementation of ADR in order to uphold *Restorative Justice*. Police discretion in Indonesia is juridically regulated in Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, especially in Article 18 paragraph (1) which stipulates that for the public interest police officers in carrying out their duties and authorities can act according to their own actions and can only be done in circumstances that are very necessary by paying attention to laws and regulations, as well as the Police Code of Ethics.

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³⁶ *Ibid*

³⁷ Suwarni, 2009, *Police Behavior*, Nusa Media, Bandung, p. 73.

³⁸ Suwarni, 2009, *Police Behavior*, Nusa Media, Bandung, p. 75.

13. Explanation of Article 19 paragraph (1) of Law No. 5 of 1990. What is meant by changes to the integrity of nature reserves is destroying the integrity and ecosystem, hunting animals in the area, and including non-native species.
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