



Police Description In The Investigation of Criminal Narcotics (study at the north Sumatera National Narcotics Agency)

Ahmad Anugrah Lubis¹, Syafruddin Kalo², Madiasa Ablisar³ and Sunarmi⁴

^{1,2,3,4}Fakultas Hukum Universitas Sumatera Utara,
Jl. Dr. T. Mansur No. 9 street, Padang Bulan, Kec. Medan Baru, Medan City, North Sumatra 20222

Email: agunglubis026@gmail.com

Abstract

Discretion is interpreted as "freedom and / or authority in making decisions to take actions that are considered appropriate or in accordance with the situations and conditions faced wisely and with due regard to all possible considerations and options. This research is a type of empirical normative legal research and the nature of the research used is descriptive analytical. The data used are primary data and secondary data. The discretion of the police against narcotics crime at the investigation level is regulated in Article 18 paragraph (1) and Article 16 paragraph (1) letter 1 and paragraph (2) of the Police Law. The discretionary power of the police cannot be separated from several factors, namely internal and external factors. The legal consequences of discretionary actions by investigators of narcotics crimes are resolved through general courts.

Keywords: Discretion; Police; Narcotics Crime.

A. Introduction

The problem of narcotics abuse is not only a problem that needs attention for the Indonesian state, but also for the international community. Entering the 20th century, international attention to the problem of narcotics is increasing, one can see through the Single Convention on Narcotic Drugs in 1961.¹ This problem is very important considering that drugs (narcotics) are substances that can damage physically and mentally concerned, if the user is without a doctor's prescription. Narcotics abuse is the use of narcotics outside medical indications, without a doctor's instructions or prescription, and its use is pathological (causes abnormalities) and causes obstacles in all activities and causes dependence².

The National Police of the Republic of Indonesia (hereinafter referred to as Polri) as law enforcement officers in general, especially investigators must enforce the law and maintain public order. In carrying out their duties, they often exercise discretion, because the essence of law enforcement is a process of adjusting real values, norms and patterns of behavior, which aims to create security and order. Therefore, the main task of law enforcers is to achieve justice.³

Polri is faced with many challenges, in addition to being able to be a good law enforcement apparatus, Polri must also be good at being a community partner in terms of services, especially for people who are looking for justice, this is in accordance with

¹ Kusno Adi. *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak*, UMM Press, Malang, 2009, hlm. 30.

² Mardani, *Penyalahgunaan Narkotika Dalam Perspektif Hukum Islam dan Hukum Pidana Nasional*, Raja Grafindo, Persada, Jakarta, 2008, hlm. 2.

³ Agung Tri Utomo Suntaka. Diskresi Tugas Kepolisian Dalam Penanggulangan Tindak Pidana Narkotika Menurut Undang-Undang Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia. *Jurnal Lex Crimen* Vol. VI/No. 10/Des/2017, hlm 55.

Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD 1945). So that in carrying out its functions and roles throughout the territory of the Republic of Indonesia it can run effectively and efficiently, the territory of the Republic of Indonesia is divided into jurisdictions according to the interests of carrying out the duties of the Police, as determined in government regulations, the area of the police is divided into stages starting from the usual central level referred to as the National Police Headquarters whose working area covers the entire territory of the Republic of Indonesia led by a National Police Chief who is responsible to the President, then the area at the provincial level is called the Regional Police (Polda) led by a Regional Police Chief (Kapolda) who is responsible to the Chief of Police of the Republic of Indonesia (Kapolri), at the Regency level it is called the Resort Police (Polres) which is led by a Resort Police Chief (Kapolres) who is responsible to the Kapolda, and at the District level there are The Sector Police (Polsek) with the leadership of a Sector Police Chief (Kapolsek) who is responsible to the Kapolres, and at the village or kelurahan level there is a police post led by a police brigadier or as needed according to the situation and conditions of the area.⁴

The prevention of crimes against narcotics crimes has been carried out by the police through the Directorate of Drug Research, which has the duties and functions of investigators and investigators dealing with drug crimes, thus law enforcement carried out by the Directorate of Drug Research is expected to be a deterrent factor against the spread of trafficking. illicit and the circulation of new types of narcotics. However, in reality, the statutory provisions regulating the narcotics issue have been drafted and enforced, however crimes related to narcotics cannot yet be mitigated. In many recent cases, many dealers and dealers were caught and received heavy sanctions, but other actors seem to ignore them and are even more likely to expand their area of operation.⁵

Combating narcotics crime, apart from the police, BNN also has special authority in eradicating narcotics crime, which has been regulated in the Narcotics Law. The Narcotics Law provides a large portion of the BNN. One of the BNN's powers is to prevent and eradicate the abuse and distribution of narcotics and narcotics products. In addition, BNN can use the community by monitoring, directing and increasing their capacity to prevent narcotics abuse by empowering community members. In terms of eradicating narcotics, BNN is given the authority to carry out investigations and investigations into abuse, circulation of narcotics, and narcotics precursors along with the authority possessed by investigators and investigators such as arrests for 3 x 24 hours and can be extended 3 x 24 hours plus wiretapping.

Discretion is defined as "freedom and / or authority in making decisions to take actions that are considered appropriate or in accordance with the situations and conditions faced wisely and with due regard to all possible considerations and options. Discretion is defined as the freedom to make decisions in every situation faced according to one's own opinion. Discretion as a policy of state officials from central to regional which essentially allows public officials to carry out a policy that violates the law, with three conditions. Crime prevention policies or efforts, namely discretion, are

⁴ Son Haji, Implementasi Kewenangan Diskresi Kepolisian Dalam Penanganan Tindak Pidana Di Polres Demak Jawa Tengah, *Jurnal Hukum Khaira Ummah*, Vol. 13. No. 1 Maret 2018, hlm 54.

⁵ O.C. Kaligis & Associates. *Narkoba dan Peradilannya di Indonesia, Reformasi Hukum Pidana Melalui Perundangan dan Peradilan*. Alumni. Bandung, 2002, hlm. 260.

essentially an integral part of social policies aimed at social protection and social welfare.⁶

The discretion given to members of the police cannot be used at any time, as in Article 18 paragraph (2) of the Police Law it is stated that "Implementation of the provisions referred to in paragraph (1) can only be carried out in a very necessary situation by taking into account the laws and regulations, as well as the professional code of ethics of the Indonesian National Police.

B. Literature Review

1. Theoretical Framework

The theory used in this research is the theory of the criminal justice system and the theory of progressive law.

a) Criminal justice system

The criminal justice system is one of the theories related to efforts to control crime through cooperation and coordination between institutions which are assigned the task of this by law. The main components of the criminal justice system are responsible for their respective functions can be described in terms of; investigative function (under the authority of the police), prosecutorial function (the authority of the prosecutor), judicial function (the authority of the Supreme Court / court), correctional function (authority of prisons / Ministry of Law and Human Rights), and legal aid function (authority of advocates).⁷ It is also stated that the criminal justice system is a system in a society to tackle crimes.⁸

According to Muladi, the criminal justice system has a structure or subsystem that should work coherently, coordinatively and integratively to be efficient and effective. This subsystem is in the form of police, prosecutors, courts, legal advisors and corrective agencies, both institutional and non-institutional in nature.⁹ According to Mardjono Reksodiputro, the purpose of the criminal justice system is:

- 1) Prevent society from becoming objects / victims.
- 2) Resolve crimes that occur so that the public is satisfied that justice has been served and the guilty are convicted.
- 3) Make sure that those who have committed crimes do not repeat their crimes again.¹⁰

The provisions of Article 5 and Article 7 of Law no. 8 of 1981 states that: "Every qualified police officer investigates and investigates in the context of carrying out duties in the field of criminal justice because their obligations are authorized by law". Considering that the authority of the police to carry out police actions cannot be regulated in detail, in the provisions of Article 5 paragraph (1) point 4 and Article 7 paragraph (1) letter j it is stated that "the police are authorized because of their obligation to take other actions according to responsible law.

⁶ Son Haji., *Op.Cit.*, hlm 54-55.

⁷ Indriyanto Seno Adji. *Arah Sisiem Peradilan Pidana*, Kantor Pengacara & Konsultan Hukum, Prof. Oemar Seno A.dji & Rekan, 2005, hlm. 116

⁸ Romli Atmasasmita, *Sistem Peradilan Pidana(Criminal Justice System) Perspektif Eksistensialisme dan Abolisionalisme*, Bina Cipta, Jakarta, 1996, Hlm. 15.

⁹ Muladi, *Demokrasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*, Media Press, hlm, 18.

¹⁰ Romli Atmasasmita, *Op.Cit.*, hlm 14.

The purpose of other actions here is the action of the investigator or investigator for the purpose of investigation or investigation provided that it does not conflict with legal obligations that require an occupational action, that action must be appropriate and reasonable and included in the environment of his position and with proper consideration based on compelling circumstances and respect human rights. Thus, this other action, such as the action of an investigator in the form of police discretion, may be taken by the investigator at the Police as long as it is still in the path determined by the law it self.

Discretion for Police Investigators as law enforcers is a factor of legal authority that is carried out responsibly by prioritizing moral considerations rather than abshak regulations. Discretion made by a Police Investigator is solely on the basis of consideration of the usefulness and functionality of actions in achieving greater goals in order to maintain the authority of the law it self.¹¹

2. Progressive legal theory

The theory of progressive law which was initiated by Satjipto Rahardjo started from his intellectual uneasiness regarding the protracted condition of law enforcement in this country without any complete legal settlement by holding the principle of justice which became the forerunner of legal certainty. This is also contributed by the process of legal education in the country, which has resulted in not moving from a positivistic-legalistic paradigm so that it affects the majority of intellectuals, intellectuals and legal scientists. This condition is suspected because law enforcement officials are not enlightened, most of them still use positivistic optics in examining and deciding legal cases. This is also contributed by the process legal education in the country that produces alumni using this positivistic-legal paradigm.¹²

Progressive law is a legal idea that seeks to fight for justice and benefit, rather than legal certainty. Several institutions that practice progressive law, such as the Constitutional Court under the leadership of Mahfud MD, the Ministry of Law and Human Rights by Denny Indrayana, even to the civil society movement with anti-corruption waves such as the Indonesian Corruption Watch (ICW), to structural legal aid, such as the Aid Foundation The law is like taking sides of a regulation with the poor, increasing the political participation of citizens in drafting a draft Law (RUU), and applying a deliberative democratic style (deliberation) in discussing the draft of legislation products, in short: the draft of the bill should be responsive, not repressive.¹³

The progressive legal approach is intended to overcome; tragedy, by paying more attention to social and justice issues. However, this approach itself can be accused of promoting a discourse for an interpretation of the law that is free from all ties, to the point of becoming 'kadi law'. Satjipto realized the danger. If we have not read the writings carefully, it is clear that this was not his goal. Satjipto realizes that the loss of balance between justice and certainty is due to the too rigid paradigm of 'legal autonomy' in Indonesia.¹⁴

Progressive law prioritizes the purpose and context rather than the text of the rules, so discretion has an important place in the administration of law. Thomas Aaron

¹¹ Chris Cunneen & Carolyn Hoyle, *Debating Restorative Justice*, Oxford-Portland Oregon: Hard Publishing, 2010, hlm. 70.

¹² Satjipto Rahardjo. *Membedah Hukum Progresif* Kompas, Jakarta, 2006, hlm 12.

¹³ Suteki, *Masa Depan Hukum Progresif*, Thafa Media, Yogyakarta, 2015, hlm 7.

¹⁴ Satjipto Rahardjo. *Hukum Progresif Urgensi Dan Kritik*, Epistema Institute, Jakarta, 2010, hlm 140.

defines discretion as: ... power authority conferred by law to action on the basis of judgment or conscience, and its use is more on idea of moral than law".¹⁵ In the context of discretion, law administrators are required to choose wisely how they should act. The authority over them by virtue of official rules is used as the basis for adopting a prudent way of approaching the reality of their duties based on a moral approach rather than formal stipulations. Weston stated "decision making has been termed the selection of the best, the most practical or satisfactory course of action."¹⁶

Discretion is exercised because it is felt that legal means are ineffective and limited in nature in achieving legal and social objectives.¹⁷ According to Doorn, The objectives formulated in the legal provisions are often so vague, that it gives the executor the opportunity to add / interpret himself in the context of the situation he is facing. Goals such as justice, certainty, conformity, for example, are so general that practitioners have the opportunity to develop interpretations of them. The presence of law actors who are wise, visionary, and creative is absolutely necessary to guide creative interpretations of such rules.¹⁸

The criminal law enforcement process which begins with investigations carried out by the National Police is not only based on the completion of the case file, but is based on scientific values. What was then applied in the investigation process through a series of processes called scientific investigation. The process referred to is not only limited to the use of various existing supporting technologies but also to the application of various developments in legal theories in searching for and finding legal evidence and facts.¹⁹

C. Research Methods

1. Type and Nature of Research

This research is a type of field research (field research), namely research conducted by searching for data through field surveys. Meanwhile, seen from the type of data information, this research is qualitative, namely research that cannot be tested with statistics.²⁰ The nature used in this research is descriptive research, which is a study that aims to provide a concrete picture or explanation of the state of the object or problem being studied without drawing general conclusions.

2. Approach the Problem

This research is empirical normative legal research. Empirical legal research is legal research on the application of normative legal provisions (codification, statute or contract) in action at any particular legal event that occurs in society.²¹

3. Research Data

Sources of data used in this study are primary data and secondary data, which can be defined as follows:

¹⁵ Thomas Aaron, *The Control of Police Discretion*, Springfield, Charles D. Thomas, 1960, hlm. 134.

¹⁶ Paul M. Weston, *Supervision in the Administration of Justice Police Corrections Course*, Springfield, Charles D. Thomas, 1965, hlm. 97.

¹⁷ Satjipto Rahardjo, *Masalah Penegakan Hukum*, Sinar Baru, Bandung, 1983, hlm. 79.

¹⁸ *Ibid.*

¹⁹ Hartono, *Penyidikan dan Penegakan hukum Pidana Melalui Pendekatan Hukum Progresif*, Sinar Grafika, Jakarta, 2010, hlm. 10.

²⁰ Ronny Kountur, *Metode Penelitian Untuk Penulisan Skripsi dan Tesis*, PPM, Jakarta, 2004, hlm. 105.

²¹ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Citra Aditya Bakti, Bandung, 2004, hlm 134.

- a) Primary Data. Primary data is data obtained directly in the form of statements and opinions from respondents and facts in the field through interviews with authorized and competent officials of the National Narcotics Agency of North Sumatra Province, namely Tuangku Harianja, as a BNN official. North Sumatra and Bastian Provinces, as the North Sumatra BNNP.
- b) Secondary data. Secondary data is data obtained by studying statutory regulations, legal books, and documents related to the issues discussed. Secondary data used in this study include:
 - 1) Primary legal material, namely data taken from the original source in the form of a law which has high authority which is binding in the administration of social life.²²
 - 2) Secondary legal materials Secondary legal materials are legal materials that provide information on primary legal materials and are obtained indirectly from the source or in other words collected by other parties, in the form of journal books. law, official documents, research reports and legal books.
 - 3) Tertiary legal materials Tertiary legal materials are legal materials that provide directions and explanations for primary and secondary legal materials, which are better known as references in the field of law, such as the Big Indonesian Dictionary of Literature and research results. Mass Media, opinions of scholars and legal experts, newspapers, websites, books, and scientific works of scholars.

4. Techniques and Data Collection Tools

In legal research, it must always be preceded by the use of document studies or library materials. Data collection techniques used in this research are:

a) Library research

Secondary data is needed through an inventory of laws and regulations as well as literature that is relevant to the problems studied. In this case, literature study is carried out by studying various sources such as laws and regulations, books, research journals, papers, magazines, and articles related to Police Discretion in Narcotics Crime Investigation.

b) Field studies (field research)

Data obtained through interviews. An open interview is a dialogue conducted by the interviewer to obtain information. Interviews are intended to collect data needed in research.

5. Data Analysis

Researchers will use the method of inductive analysis for this empirical research. In empirical legal research, researchers re-examine information obtained from respondents or informants and sources. In addition, researchers pay attention to the relationship between primary data and secondary data and between legal materials collected. Researchers do editing, with the intention that the completeness and validity of data and information is guaranteed.²³

D. Results and Discussion

1. Arrangement of Police Discretion Against Narcotics Crime at the Investigation Level

²² Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Group, Jakarta, 2010, hlm. 142.

²³ Salim HS. *Penerapan Teori Hukum pada penelitian Tesis dan disertasi*, Rajagrafindo, Jakarta, 2013, hlm. 26.

Polri is part of the function of the state government in the field of maintaining security and public order, law enforcement, protection, protection and services to the community. In order to carry out these functions, it is necessary to develop oneself always in line with the national development agenda which contains the vision, mission, main development strategies, policies and objectives as well as programs and activities. Thus, he is given a task which contains the authority and obligations that must be carried out. The duties or roles of the police universally include: (a) to serve to protect; (b) public servant (protection, protection and services); (c) maintain security & public order (maintain security and order); (d) law enforcement agency / officer (law enforcement / investigators); and (e) peacekeeping officials (peacemakers).²⁴

The police discretionary law regulation is the legitimacy of the use of discretionary powers by the Police. So that all parties are protected, both the police officers themselves and the community. The laws and regulations that form the basis of discretion by the police are:

a) The 1945 Constitution of the Republic of Indonesia

In the Preamble to the 1945 Constitution states that: "To form an Indonesian state government that protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare to educate the nation's life and participate in implementing world order based on independence, peace and social justice." Based on the main idea of protecting the entire Indonesian nation, Article 27 of the 1945 Constitution provides equal position in law and government in every citizen. And the position of the police as law enforcers is obliged to protect citizens or the community and create security and order for the community. Meanwhile, the main idea contributes to implementing order for the community.²⁵

b) Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP)

The provisions of Article 5 and Article 7 of the Criminal Procedure Code state that every qualified police official investigates and investigates in the context of carrying out duties in the field of criminal justice because their obligations are authorized by law. Considering that the authority of the police to carry out police actions cannot be regulated in detail, in the provisions of Article 5 paragraph (1) point 4 and Article 7 paragraph (1) letter j it is stated that "the police are authorized because of their obligation to take other actions according to responsible law.

c) Police Law

In relation to the discretionary powers of the police, this cannot be separated from the main duties of the police, because the main duties of the police, which, if described as having a very broad meaning, require powers. The breadth of understanding the functions and duties of the police can be identified from the basic considerations of emergence. The Police Law which states that maintaining domestic security through efforts to carry out police functions which include maintaining public security and order, law enforcement, protection, protection and services to the community is carried out by the Police as state apparatus assisted by the community with high regard for human rights .

²⁴ Nanan Sukarna. "Reformasi Kepolisian Negara RI: Taking The Heart and Mind". Makalah. Disampaikan pada Diskusi Publik ProPatria, Jakarta. 29 Januari 2008.

²⁵ Son Haji., *Op.Cit.*, hlm 56.

2. Basic Considerations for Investigators in Applying Police Discretion Against Narcotics Crime

The use of force in police actions is regulated in the Regulation of the Head of the National Police of the Republic of Indonesia Number 1 of 2009 concerning the Use of Force in Police actions. Article 2 paragraph (1) The purpose of this Regulation is to provide guidance for Polri members in implementing police actions that require the use of force, so as to avoid excessive or unaccountable use of force. Regarding the standard of behavior of Polri officers / members in Police actions as stipulated in the Regulation of the Head of the National Police of the Republic of Indonesia Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Carrying Out Duties of the State Police of the Republic of Indonesia, so that violent action by the Police at the time of arrest criminal terrorism, allowed if it fulfills the elements that already exist in the provisions of the laws and regulations.

The implementation of discretion must be carried out with clear considerations, which aim to avoid the emergence of negative judgments from the public that the application of police discretion is considered a game by the police to obtain material benefits from the parties in a case so that the application of police discretion is not seen as a manipulative tool by the authorities the police for personal gain, its application must be based on a strong legal basis. So that the application of police discretion is not seen as a means of manipulation by the police to obtain personal benefits for investigators.²⁶ So that its application must be based on a strong legal basis. This can be implemented by the Police through investigations with a special pattern, and this is another "action" from the investigator for the sake of discretion. It is carried out solely for the public interest, considering that this crime is very dangerous and has a trend of increasingly sophisticated modus operandi.

The situation or condition faced by the Police in carrying out its duties and powers in the context of enforcing criminal law, which requires the Police to be unable to escape from the authority to exercise discretion. The situation or conditions that require the Police to apply this discretion are due to several reasons, including:

- a) There is an option faced by officials to choose based on a rational and basic decision. However, each choice implies that there are indeed several alternatives where the antithesis of the discretion is a situation where the law provides an appropriate and correct solution to a case. Legal philosophers generally associate the existence of alternative options with difficulties in legal interpretation. This difficulty arises because of the nature of the language in which the law is expressed from the uncertainty (indeterminacy) of what is the goal of the legislator (the law makers). However, this is still widely debated by experts.
- b) The reason for the use of discretion is a non-concrete legal grammar problem. Positivism Hartian focuses a lot of his attention on semantic problems that cause uncertainty in law so that discretion is appropriate to be used as a solution to the problems faced by the authorized official.
- c) There is a gap or void (legal gap) a rule of law is seen as a source of discretion because the interpreter / interpreter must make a choice among alternatives. Legal gap problem often associated with semantic indetermination. According to this view, in terms of vagueness, legal propositions are neither true nor false (neither

²⁶ Hasil wawancara dengan Tuanku Harianja selaku pejabat badan narkotika Nasional Provinsi Sumatera Utara, 1 Maret 2019.

true nor false), legal gaps occur because there is legal uncertainty. However legal gaps can also arise in cases where there is no relevant semantic problem.

- d) Contradictions or inconsistencies incompatible legal effects are attached to the same factual conditions' (disproportionate legal effects are given to the same factual conditions). In this case, there are legal rules that govern different matters. Some writers say that unsolved normative contradictions occur when there is no one correct answer. However, this statement needs further consideration. A contradiction implies that there are incompatible legally valid answers. One must distinguish between conflicting norms and situations in which remains silence.

Because the discretion of the Police must be applied in carrying out the duties of the Police as mandated in Article 13 of the Police Law, the duty of the Police is to maintain security and public order, enforce the law and provide protection, protection and services to the community. Thus it can be said that all police officers always intersect with the community. Society is a collection of people interacting with each other. In general, these interactions are dynamic and not static. The community is always changing and will continue to change. In accordance with its authority, the Police can carry out Police efforts as regulated in the Law, namely investigation and investigation which includes summons, examinations, arrests, detention, searches and confiscation. However, as the nature of society is always changing and experiencing changes as mentioned above, sometimes police officers have to take action both in the context of investigation and investigation, but this has not been regulated in the law. Therefore, to maintain public order, in certain circumstances it is necessary for members of the National Police to take action according to their own judgment.

The police discretion has not been formulated and described in detail regarding the forms and types of actions that are included in the discretion, there are only limits or measures that are used as guidelines in making decisions to apply police discretion, the limitations in applying discretion are described in Article 16 paragraph 2 of the Law. the police stated that the actions of the investigator for the purpose of investigation with 5 (five) requirements are as follows:

- a) Not against a legal rule;
- b) In line with a legal obligation that requires an occupational action;
- c) The action must be appropriate and reasonable and included in the environment of his position;
- d) Due to proper consideration based on coercive circumstances;
- e) Respect for human rights.

The application of discretion can be started from the investigation stage in the form of screening cases conducted by the police. At the level of prosecution, the prosecutor has the authority to call on a case based on the principle of opportunity. At the judicial level, judges can give free sentences, conditional sentences, or fines, while at the correctional level it can take the form of reduced sentences or remissions.²⁷

For police officers, the exercise of discretionary powers is not a rational choice, because it may not comply with the prevailing policies. The exercise of discretionary powers is considered an illegal act and is identical with non-compliance with the direction of the leadership and the prevailing regulations. This assumption causes the police apparatus to feel unsure about ensuring the fulfillment of a sense of justice, both

²⁷ Hasil wawancara dengan Tuanku Harianja, selaku pejabat BNN Provinsi Sumatera Utara, Senin 8 April 2019.

for perpetrators, victims and society in general, if it is decided through the application of discretionary powers.

Discretion was exercised by a police officer, namely: (1) the police took action but the action was wrong; (2) for fear of being mistaken the police then become apathetic and do not act; (3) deliberately misusing their authority. Therefore a certain guideline is needed which can be used as a benchmark for the implementation of discretion which must be understood by every police officer.²⁸

3. Legal Consequences of Investigator Discretion on Narcotics Crime

Legal effect is a result caused by law on an act committed by a legal subject.²⁹ Legal consequences are a result of actions taken, to obtain the consequences expected by legal actors. The intended effect is a result regulated by law, while the action taken is a legal action, namely an action that is in accordance with the applicable law.³⁰ The consequence of the criminal law is that there is a reason to eradicate the crime. Reasons for the penalty for annulment are reasons that allow a person who has committed an act that has actually fulfilled the formulation of the offense, to not sentenced, and this is the authority granted by law to the judge.³¹

The increasing population of drug abusers makes the government need to take appropriate steps to reduce the number of abusers and save drug abusers. These efforts were followed up by the issuance of the Narcotics Law which mandates the prevention, protection and rescue of the Indonesian nation from narcotics abuse and guarantees the regulation of medical and social rehabilitation efforts for abusers and narcotics addicts.³²

Considering that the *modus operandi* and crime techniques are increasingly sophisticated, along with the development and progress of the times, the professionalism of the Police, especially investigators, is very much needed in carrying out their duties as law enforcers. If the Polri apparatus is not professional, then the law enforcement process will be lame, as a result, the security and public order will always be threatened as a result of the Polri apparatus not being professional in carrying out their duties. Apart from being the guardian of security and public order (order maintenance officer), the Polri duties are also as a law enforcement agency. Polri is the spearhead of the criminal justice system. In the hands of the Police, first, it is able to unravel the darkness of criminal cases.³³

Its function as a police law enforcement officer is obliged to understand the principles. Laws that are used as material for consideration in carrying out tasks, namely:

- a) The principle of legality, in carrying out its duties as a law enforcer, must comply with the law.
- b) Principles. Liability is the duty of the police in dealing with problems in society that are discretionary, because they have not been regulated in law.
- c) The Principle of Participation, In order to secure the community environment the police coordinate self-protection to realize the power of law in the community.

²⁸ Hasil wawancara dengan Tuanku Harianja, selaku pejabat BNN Provinsi Sumatera Utara, Senin 8 April 2019.

²⁹ Achmad Ali, *Menguak Tabir Hukum*. Ghalia Indonesia, Bogor, 2008, hlm. 192.

³⁰ Soeroso, *Pengantar Ilmu Hukum*, Sinar Grafika, Jakarta, 2013, hlm. 295.

³¹ M. Hamdan, *Alasan Penghapusan Pidana Teori Dan Studi Kasus*. Refika Aditama, Bandung, 2012, hlm. 27.

³² M. Arief Hakim, *Bahaya Narkoba- Alkohol: cara Islam Mencegah, Mengatasi Dan Melawan*, Nuansa, Bandung, 2004 hlm. 89

³³ Sadjijono, *Memahami Hukum Kepolisian*, LaksBang.Persindo, Yogyakarta, 2010, hlm.17.

- d) The principle of prevention always prioritizes preventive action rather than taking action against the community.
- e) Subsidiarity principle, performs the duties of other agencies so as not to cause bigger problems before they are handled by the institution in charge.³⁴

The practice of applying discretion by law enforcement officials is highly dependent on the subjectivity concerned. If law enforcement officers living up to moral and ethical values, then the application of discretion will create a sense of justice and tranquility in society. But if on the contrary, it will give birth to arbitrariness. Essentially discretion lies between law and morals so that law enforcement as a process is essentially the application of discretion which involves making decisions that are not strictly regulated by legal principles, but have an element of personal judgment.

The limits, elements and criteria of police discretion are not defined, so the use of police discretion is prone to acts of abuse of authority and arbitrary actions. Because the discretion of the police is used in order to carry out government functions and is very much determined by the behavior of each member of the police as a government apparatus, in taking actions and assessments it must be based on law and human rights, not against the general principles of good governance. and relies on good governance, so that the use of discretionary power cannot only use a power approach, but must consider human rights and the functions of the police inherent in the existence of the police institution.

Actions of abuse of authority or negligence in carrying out their duties, especially in doing compression, if they are detrimental to other parties or police officers because of one of their negligence, they must be held accountable and receive punishment in accordance with the legal system or norms that are violated This responsibility can be seen from several aspects, namely:

- a) Criminal Punishment. Every police officer who commits a criminal act is settled through the General Court, in accordance with the provisions in Article 29 paragraph (1) of the Police Law and Government Regulation Number 3 of 2002 concerning the Technical Implementation of General Courts for members of the National Police.
- b) Discipline Punishment. Every police officer who commits a disciplinary offense is tried in a disciplinary hearing, as stipulated in Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Polri Members. In the police there is no clear boundary between personal life and life at work, especially since the community's demand for the role of the police in all community activities is very large and knows no time. A police officer who is not on duty is still considered a police figure who is always ready to provide protection to the community, so the discipline here also regulates the life of a police officer as a person in public life.³⁵
- c) Professional Code of Ethics Violations of professional ethics are carried out through the National Police Code of Ethics Commission hearing, this is regulated in Article 35 paragraph (1) of Law Number 2 of 2002 and Decree of the Chief of Police No. Po. : Kep / 33 / VII / 2003 Concerning Procedures for Hearing the Code of Ethics of the Police. The police, in carrying out their wide range of duties and powers, must not

³⁴ *Ibid.*, hlm. 146-147.

³⁵ Hasil wawancara dengan Bastian, selaku BNNP Sumatera Utara, Senin 8 April 2019.

violate the Polri's professional code of ethics. This Polri professional code of ethics is a code of conduct and at the same time a moral guideline for police officers, as a remedy, which functions as a service guide, as well as a supervisor for each member to avoid reprehensible acts and abuse of authority, so the attitude and behavior of Polri members are morally bound by Polri code of professional ethics.³⁶

E. Conclusion

The discretion of the police against narcotics crime at the investigation level is regulated in Article 18 paragraph (1) and Article 16 paragraph (1) letter l and paragraph (2) of the Police Law, Article 7 paragraph (1) letter J of the Criminal Procedure Code. in Law Number 30 of 2014 concerning Government Administration, Chief of Police Regulation Number 14 of 2012 concerning Criminal Investigation Management, Regulation of the Criminal Investigation Agency No. 1, 2, 3, and 4 of 2014 concerning Standard Operating Procedures. Chief of Police Regulation No. 3 of 2015 concerning Community Policing, and Letter of the Chief of Police Police Number B / 3022 / XII / 2009 / SDEOPS dated 4 December 2009 concerning Case Handling through ADR. The basis for the investigators' consideration in applying police discretion to narcotics crime. The discretionary authority possessed by the police cannot be separated from the existence of several factors, namely internal and external factors, in internal factors there is a legal guarantee that regulates the use of discretionary authority in the settlement of criminal cases in accordance with applicable provisions and instructions from the leadership to seek greater discretion. first before the case continues to the next stage, for external factors there is support from the local community to use discretionary efforts in solving cases of narcotics abuse. The legal consequences of investigators' discretionary actions against narcotics crimes, the criminal punishment of every member of the police who commits a criminal act is settled through the General Court. Disciplinary punishment for every police officer who commits a disciplinary offense is tried in a disciplinary hearing, as regulated in Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Polri Members. Professional Code of Ethics Violations of professional ethics are carried out through the National Police Code of Ethics Commission hearing.

Reference

Book

- Adi, Kusno, Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak, UMM Press, Malang, 2009.
- Adji, Indriyanto Seno. Arah Sisiem Peradilan Pidana, Kantor Pengacara & Konsultan Hukum, Prof. Oemar Seno A.dji & Rekan, 2005.
- Ali, Achmad, Mengungkap Tabir Hukum. Ghalia Indonesia, Bogor, 2008.
- Aaron, Thomas, The Control of Police Discretion, Springfield, Charles D. Thomas, 1960.
- Atmasasmita, Romli, Sistem Peradilan Pidana(Criminal Justice System) Perspektif Eksistensialisme dan Abolisionalisme, Bina Cipta, Jakarta, 1996.
- Cunneen, Chris & Hoyle, Carolyn, Debating Restorative Justice, Oxford-Portland Oregon: Hard Publishing, 2010.

³⁶ Hasil wawancara dengan Bastian, selaku BNNP Sumatera Utara, , Senin 8 April 2019.

- Haji, Son, Implementasi Kewenangan Diskresi Kepolisian Dalam Penanganan Tindak Pidana Di Polres Hartono, Penyidikan dan Penegakan hukum Pidana Melalui Pendekatan Hukum Progresif, Sinar Grafika, Jakarta, 2010.
- Hakim, M. Arief, Bahaya Narkoba- Alkohol: cara Islam Mencegah, Mengatasi Dan Melawan, Nuansa, Bandung, 2004.
- Kaligis, O.C. & Associates. Narkoba dan Peradilannya di Indonesia, Reformasi Hukum Pidana Melalui Perundangan dan Peradilan. Alumni. Bandung, 2002.
- Kountur, Ronny, Metode Penelitian Untuk Penulisan Skripsi dan Tesis, PPM, Jakarta, 2004.
- M. Weston, Paul, Supervision in the Administration of Justice Police Corrections Cours, Springfield, Charles D. Thomas, 1965.
- M.Hamdan. Alasan Penghapusan Pidana Teori Dan Studi Kasus. Refika Aditama, Bandung, 2012.
- Mardani, Penyalahgunaan Narkoba Dalam Perspektif Hukum Islam dan Hukum Pidana Nasional, Raja Grafindo, Persada, Jakarta, 2008.
- Marzuki, Peter Mahmud, Penelitian Hukum, Kencana Prenada Group, Jakarta, 2010.
- Muladi, Demokrasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia, Media Press.
- Muhammad, Abdul kadir, Hukum dan Penelitian Hukum, Citra Aditya Bakti, Bandung, 2004.
- Rahardjo, Satjipto, Hukum Progresif Urgensi Dan Kritik, Epistema Institute, Jakarta, 2010.
- _____, Membedah Hukum Progresif Kompas, Jakarta, 2006.
- _____, Masalah Penegakan Hukum, Sinar Baru, Bandung, 1983.
- Sadjijono, Memahami Hukum Kepolisian, LaksBang.Persindo, Yogyakarta, 2010.
- Salim HS. Penerapan Teori Hukum pada penelitian Tesis dan disertasi, Rajagrafindo, Jakarta, 2013.
- Soeroso, Pengantar Ilmu Hukum, Sinar Grafika, Jakarta, 2013.
- Suteki, Masa Depan Hukum Progresif, Thafa Media, Yogyakarta, 2015.
- Wawancara dengan Bastian, selaku BNNP Sumatera Utara, Senin 8 April 2019.
- Wawancara dengan Tuanku Harianja selaku pejabat badan narkotika Nasional Provinsi Sumatera Utara, 1 Maret 2019.

Journals

- Suntaka, Agung Tri Utomo. Diskresi Tugas Kepolisian Dalam Penanggulangan Tindak Pidana Narkotika Menurut Undang-Undang Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia. Jurnal Lex Crimen Vol. VI/No. 10/Des/2017.
- Demak Jawa Tengah, Jurnal Hukum Khaira Ummah, Vol. 13. No. 1 Maret 2018.

Paper

- Sukarna, Nanan. "Reformasi Kepolisian Negara RI: Taking The Heart and Mind". Makalah. Disampaikan pada Diskusi Publik ProPatria, Jakarta. 29 Januari 2008.