



RESEARCH ARTICLE

Reconstruction of Police Discretion as Criminal Law Politics in Law Enforcement against Motorcycle Gang Criminal GroupsMardonna Lamtio^{1*}, Mompang L. Panggabean², Wiwik Sri Widiarty³, Maruara Siahaan⁴¹Christian University of Indonesia**ARTICLE INFO**

Received: Dec 24, 2024

Accepted: Feb 5, 2025

KeywordsPolice Discretion
Criminal Law Politics
Law Enforcement
Motorcycle Gang Crime***Corresponding Author:**

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ABSTRACT

Motorcycle gangs as a social phenomenon often create community unrest through criminal acts such as vandalism, theft, and persecution. The police as law enforcers are faced with the need to take quick and appropriate action even outside standard legal procedures. Police discretion is a very important tool in this context, but its application is often considered subjective, causing polemics related to accountability and transparency. This research aims to analyze the reconstruction of police discretion as criminal law politics in law enforcement against criminal groups of motorcycle gangs. This type of research is normative juridical research. This research method uses a statutory approach and conceptual approach. Legal materials are collected through inventory procedures and identification of laws and regulations, books and classification and systematization of legal materials in accordance with research problems. The data analysis that will be carried out is descriptive analysis. The results showed that the regulation of police discretionary authority in law enforcement against criminal groups of motorcycle gangs has been regulated in various laws and regulations, including the Law on the Indonesian National Police. However, the use of discretion requires limits to prevent deviations (negative discretion) that harm various parties. Therefore, reconstruction of discretion is needed, especially in Article 18 of Law No. 2 of 2002, by emphasizing that discretion may only be used in urgent situations that can disrupt public order, and must comply with applicable regulations and the police professional code of ethics.

INTRODUCTION

Indonesia is a state of law that is people's sovereignty or democratic, so it is very important to understand the presence and operation of law in society. The law does not start from the law itself, but the law starts from humans and humanity. Humanity becomes *primus* when humans want to give a position to the law in society. Humanity is the first to be present, followed by law and its attributes and problems. Humanity becomes the frame of every discussion related to law (Rahardjo, 2006).

However, in reality, along with the globalized world situation, the law is only used as a tool by the rulers to achieve their own interests and satisfaction and their groups, until the law ignores the most basic things such as people, humanity and justice. In this case, the law has become a commodity, not a trusted institution to protect humanity. The commodification of law is closely linked to the spirit of capitalism which aims to plunder the legal world and does not see the importance of the human dimension of law.

This can be seen from how the rulers easily legalize the rules by ratifying all the rules without any harmonization with the pluralistic character of Indonesian society. In addition, various unresolved problems are one indication that the current legal character is unable to meet the needs of a just law in Indonesian society (Rahardjo, 2006). Of course, this has an impact on the task of law enforcement carried out by the police as the chain of law enforcement, because the condition of the legal system will cause various disturbances and gaps that the police will face directly.

The police function is a government function so that the police institution is a state institution that has the status and position as an executive to carry out government functions in the field of maintaining security and public order, law enforcement, protection, protection, and service to the community.

In a modern democratic state, the police have the function of providing security services to individuals, communities (local communities) and the state. These security services aim to maintain, reduce fear from threats and disturbances and ensure security in the environment on an ongoing basis to improve welfare and productivity. Security and public order are the main objectives in realizing law enforcement, so efforts to create security and public order must be carried out systematically and comprehensively in carrying out the police function.

The police jurisdiction covers the entire territory of the Republic of Indonesia, this is in accordance with the provisions of Article 6 of Law Number 2 of 2002 concerning the Indonesian National Police. However, even though the police coverage is very broad, it is still not enough to eradicate all crimes that are increasingly rampant. In fact, these criminals have begun to involve children, be it children as victims or making children as perpetrators as well. This of course cannot be ignored and needs serious handling, because children are the future of a nation and state.

Children who are born are not expected to become thugs, rogues, thieves, pickpockets or gepeng (vagrants and beggars) and certainly are not expected to become members of motorcycle gangs that are relatively criminal, but children are expected to be useful people for the continuity of the family in the future, namely by becoming the backbone of the family and the bearer of the good name of the family, nation and nation (Gultom, 2012). Children are part of citizens and have the same rights as other citizens, which must be protected and respected by every citizen and state (Arliman, 2015). Every country in various parts of the world is obliged to give attention and protection to children's rights. The problems of children to date are still very numerous and need special attention in handling them.

The urgency of the need for recognition and protection of children's rights aims to grow and develop naturally as children, and minimize as far as possible the various kinds of threats and disturbances that come both from the environment and from the children themselves (Krisnawati, 2005). Because legal protection is really needed by anyone, anytime and anywhere, including children (Lubis, 2013). One of the efforts to recognize and protect children is by setting age limits and providing a definition of the child itself.

According to Law No. 39/1999 on Human Rights, the *Convention on the Rights of the Child* ratified by Presidential Decree No. 36/1990, Law No. 23/2002 on Child Protection in conjunction with Law No. 35/2014 on the Amendment to Law No. 23/2002 on Child Protection, Law No. 11/2012 on the Juvenile Criminal Justice System sets the age limit of a child as someone who is not yet 18 (eighteen) years old.

As it is known that children in the process of growth and development will be in a phase of "confusion and identity crisis", therefore children are the most vulnerable to being affected by motorcycle gangs, which are often reported negatively because they endanger security and public order. In fact, many children are directly involved or join the motorcycle gangs without knowing the impact that will determine the direction of their lives in the future.

Motorized groups or motorcycle gangs are a group of motorcycle lovers who like speeding and wild racing, regardless of the type of motorcycle they are riding. According to Yamil Anwar Adang as cited by Abdul Raahman, motorcycle gangs in terms of sociology and law are social groups that have the same basic goals or associations that can be called an association but have negative relationships with irregularities and tend to commit anarchist acts (Rahman, 2016).

In Indonesia, motorcycle gangs initially developed in Bandung and later spread to Jakarta, Surabaya, Medan, Makassar and other major cities (Jufri, 2016). The action of each motorcycle gang remains the same on the streets, which is to be the king of the streets who does not want to be preceded or overtaken by other motorists. Crimes committed by motorcycle gangs in Indonesia have increased significantly in recent years. In 2022, there were 1,844 cases of crimes committed by motorcycle gangs. This number increased from 1,250 cases in 2021. Based on this number, the most common crime committed by motorcycle gangs is theft with violence, with a total of 688 in 2022. Other types

of crimes that are also often committed by motorcycle gangs are persecution, robbery and brawls between motorcycle gangs (DPR, 2023).

Jambi City is one of the cities in Indonesia that is not spared from the problem of criminality of this motorcycle gang, most of whose members are children, even reaching alert status. The issue of child criminality in Jambi city is an important part of the local police's efforts to maintain public order and understand the importance of protecting children's rights. Child motorcycle crime in Jambi city has become a social issue that requires serious attention in law enforcement and protection of children.

Jambi Police in 2022 mapped and divided the motorcycle gangs in Jambi City into 5 (five) groups, including the flamboyant group, mayang group, yellow group, and bougenville group. In connection with the various criminal acts committed by children and adolescents who are members of this motorcycle gang, it is necessary to respond wisely. In the context of handling crimes committed by children and adolescents, it is still debatable whether the criminal justice system should be prioritized or can be resolved through deliberation (*out of court settlement*) without contact with the dominant criminal justice system. Criminal justice for children who commit crimes has two different sides.

On the one hand as a form of special protection for children. On the other hand, motorcycle gang children who commit these crimes will face the position of the community who feel disturbed by this behavior. The international community also emphasizes that due to physical and mental reasons, as well as the maturity of children, children need special protection and care, including in legal protection which is contained in the Declaration of the Rights of the Child and the Declaration of Human Rights. The attitude taken by the international community is motivated by the belief that if children and adolescents who commit crimes come into contact with the criminal justice system, then these children and adolescents are actually studying at the criminal academy and when they leave will produce new criminals (Burlian, 2015).

From these declarations, a juvenile justice system emerged. A special justice system for children. In the juvenile justice system, all activities must be carried out or based on the principle of the welfare of the child and the interests of the child without sacrificing the interests of society, considering that every criminal case decided by the court is aimed at the public interest. However, the interests of the child should not be sacrificed for the sake of the public interest. Based on this, the handling of children's cases prioritizes efforts outside the use of criminal law (preventive or non-penal) and makes penal means as an *ultimum remedium* considering the consequences or adverse effects that will occur to children.

As one of the law enforcers, police officers in law enforcement act as *gatekeepers*, who have a central role in tackling the criminality of motorcycle gangs. In the investigation and investigation process, the police can decide whether to resolve it based on the criminal justice process or outside the criminal process. This decision is of course based on applicable laws and regulations, the best interests of the child and careful consideration based on the conditions and situation at the time. This police decision is known as police discretion.

This police discretion is needed, because the handling of children's cases requires special police attention to pay attention to the conditions of children who are different from adults, maintaining children's mental health by avoiding children from a formal criminal justice system, placing children in prison and stigmatizing the position of children as prisoners. The use of police discretionary authority is allowed and justified by law as long as it is in accordance with the purpose of discretion, does not conflict with statutory provisions, based on objective reasons, does not cause conflicts of interest and is carried out in good faith. However, what needs to be a concern is that the use of police discretionary authority is prone to arbitrariness if the police in carrying out their duties and authorities cannot be professional, comply with professional ethics, do not decide on objective assessments, and are carried out for the sake of personal and group interests to the detriment of others when investigating cases of motorized child criminal groups.

Situations that often occur in using discretionary authority according to the author are *police-invoked law enforcement* and *police-invoked order maintenance*. Police who handle law enforcement against motorized juvenile criminal groups in Jambi City have ample reasons to take discretionary action, but it is likely to be modified by the wisdom of the leadership.

Police work cannot be separated from the control and pull of political interests in it, either directly or indirectly. Classic problems related to police neutrality in the political context of police work are far from being implemented in the field. The police are always close to the axis of power and power (*power*). Whether it is the axis of power at the central, or regional level, and because the police are positioned as state apparatus, it is often related to political interests in it (Ilham, 2015).

Law enforcement that aims to create a conducive and dynamic order of community life cannot be separated from the performance of law enforcement officials. However, in actualizing it, law enforcement officials often experience obstacles, both internal (apparatus factors themselves), and external (community factors) so that it leads to the ineffectiveness of law enforcement (Arliman, 2015). Based on the explanation above, the author is interested in conducting this research by raising the title "**Reconstruction of Police Discretion as Criminal Law Politics in Law Enforcement against Criminal Groups of Motorcycle Gangs.**"

METHODS

This type of research was normative juridical research. This research method used a statutory *approach* and *conceptual* approach to understand, capture, accept and analyze the problems of this research. The *state approach* was needed to analyze the regulation of police discretionary authority in law enforcement against criminal groups. While the *conceptual approach* was needed to examine and analyze the limits of the use of police discretion in law enforcement against criminal groups and their weaknesses.

Legal materials were collected through inventory procedures and identification of laws and regulations, books as well as classification and systematization of legal materials in accordance with research problems. Therefore, the data collection technique used in this research was a literature study and books related to this research. In this research, the research data was carried out qualitatively, namely on secondary data obtained through library data sources which analyzed thoroughly and objectively based on the data that has been obtained about the existing problems.

The data analysis that carried out was descriptive analysis. The data obtained, collected and arranged systematically and then the contents will be analyzed qualitatively. Because the data sought and collected in this study are sourced from documents or literature as well as interviews, more research locations will be carried out in three cities, precisely at the Jambi Regional Police Office of the Jambi City Resort, Bandung and Jakarta. This is because the documents and sources of this research are more in Jambi City.

DISCUSSION

Comparison of Police Discretion in Law Enforcement in Several Countries

Rene David and John E.C. Brierly are the main figures who introduced and compiled groupings in the form of classifications regarding the family of laws. David and Brierly state that the preparation of the family of laws in different legal groups considers the main elements of the laws in force in the world and is not based on the similarities or differences of these laws. The main elements stated by Rene David and John are legal characteristics (Atmasasmita, 2000). The three families of law according to Wicaksono (2022) that are recognized are: *The Romano-Germanic Family (Civil Law Family)*; *The Common-Law Family*; *The Family of Socialist Law*.

However, in addition to these three legal families there are other legal families such as the Islamic legal system, the Far Eastern legal system and the Chinese legal system (Effendy, 2012). Marc Ancel divides 5 (five) legal systems in the world which are grouped or classified in one legal family based on the origin of their development history and method of application (Qamar, 2010). The grouping in question is:

Civil law system (Continental Europe);

Common law system (anglo saxon);

Middle east system;

Socialist law.

Basically, although there are differences in the grouping of families of legal systems in the world as mentioned above, according to Nurul Qamar there are 5 (five) families of legal systems in the world and which in their development are found in the family of mixed legal systems, so that they can be shown as follows: European continental legal family, Anglo-Saxon legal family, socialist legal family, local/regional legal family, religious legal family and mixed legal family (Huda, 2010). The purpose of comparative law according to Van Apeldorn is twofold, namely practical purposes and theoretical purposes. Theoretical purposes explain law as a world symptom and therefore legal science must be able to understand the world's symptoms. Therefore, it is necessary to understand the law in the past and the law in the present. While the practical purpose is a tool to help order society and national legal reform and provide knowledge about various regulations and legal thoughts to lawmakers and judges (Atmasasmita, 2010). Soedarto argues that the use of comparative law is for legal unification, legal harmonization, preventing national legal *chauvanism*, understanding foreign law and legal reform (Indarti, 2010).

Japan

Community policing is a concept developed in Japan known as "*Chiki Keibi*" or "*Comuunity Police*". Through *koban* and *chuzai* as frontline units, the Japanese police carry out a democratic policing mission. *Koban* is a neighborhood police post in urban areas and is the smallest organizational unit in the Japanese police system (Meutia, 2017). *Chuzai* is a residential police station for rural or semi-rural areas and is occupied by a single officer, who lives with his or her family in an office that also serves as the officer's residence (Ames, 1981).

Police officers in both *Koban* and *Chuzai* conduct regular patrols on foot and respond to citizen requests as a form of service. Patrolling is a separate section in the police organizational structure, the *patrol police* section (Chryshnanda, 2004). Both *Koban* and *Chuzai* have the primary mission of solving residents' problems and serving the community, while crime prevention is a secondary priority.

The Japanese *police* through the *community* police, emphasized repressive activities (Jerome et al., 1966). The activities carried out by the Japanese police at the *Koban* and *Chuzai* levels consist of: a) Conducting patrols; b) Conducting visits to the community; c) Providing direction or counseling; d) Seeking community participation in the area to play an active role and cooperate with police officers in *Koban* and *Chuzai* (Marzuki, 2008).

The police in *Koban* and *Chuzai* also carry out limited legal action, namely by: a) visiting the scene of the crime; b) taking legal action against traffic violators; c) arresting people in cases where the suspect is caught red-handed and immediately handing over to the *police station* (Ali, 2013).

The conception of community policing in Japan is similar to the concept of community policing developed in Indonesia, namely Bhayangkara Pembina Keamanan dan Ketertiban Masyarakat (Bhabinkamtibmas). Bhabinkamtibmas, like the police in *Koban* and *Chuzai*, are given discretionary authority to make preventive efforts and resolve legal issues related to security and order non-verbally in the local community.

New Zealand

New Zealand customary law includes Maori customary law, tikanga. Much of New Zealand law was originally based on English law, which was imported to New Zealand after the signing of the Treaty of Waitangi. Both the common law and statutes of New Zealand reflect that heritage, although today they have distinctly New Zealand features. This is a result of the common law precedent system, which means that every case that is heard refers to legal principles developed in previous cases.

Discretion is also applied in the New Zealand legal system which can be found in *The Children, Young Persons and Their Families Act* which is a Children's Act in New Zealand that came into force on November 1, 1989. *The Children, Young Persons and Their Families Act* is an extension of police discretionary powers derived from the *common law* system. Police under the Children Act can deal with child or young person offenders without involving formal legal processes by taking actions (Prakoso, 2019):

Alternative Action

Under the principles in *The Children, Young Persons and Their Families Act*, the police are authorized to warn or provide alternative measures to child or young person offenders. Section 208 a of the Children's Act provides that criminal proceedings shall not be applied to a child if there is an alternative resolution to the case, unless it is in the public interest. Furthermore, Article 209 states that the police before giving warnings or other measures shall consider the nature of the offense and the number of previous offenses committed (Ashworth, 2005).

Alternative Action Process

The *Youth Aid Officer*, after receiving the documents and taking into account the principles and object of the matter, shall consider (Setiadi & Kristian, 2017): a) Declaring that the juvenile offender is responsible for his/her actions; b) The views and opinions of the victim; c) Whether or not the family can handle the offense; d) Whether there are other ways of handling the case other than through court proceedings.

Singapore

Singapore's legal system is common law which is derived from the English legal system. Singapore adheres to a parliamentary system of government based on the Westminster Model. Singapore has three sources of law, namely statutes, judicial precedents (case law), and customary law. In Singapore, the highest court is the Court of Appeal, followed by the High Court and then the State Court.

Law governing the operation of the Police Force in Singapore is set out in the *Police Force Act 2004*. It sets out, among other things, the functions, duties and discretions of the Singapore Police Force. Under this Act, the police force has functions:

To maintain law and order;

To maintain public peace;

To prevent and detect crime;

To arrest the perpetrator; and

To perform any other function conferred upon it by or under this Act or any other written law.

Under the *Police Force Act 2004* officers of the Republic of Singapore Police Force are authorized to exercise discretionary police action:

Police discretionary action applies in Singapore, in that police officers may exercise discretionary action where it is deemed necessary to do so in order to enforce the law, maintain law and order or for the prevention or detection of crime:

Conduct traffic smoothness arrangements on every public road or street or in public places according to the situation in the field; and

Take reasonable measures to prevent traffic congestion.

Any driver or rider of a motor vehicle who fails to obey a signal from a policeman may have his vehicle stopped before reaching his destination and may be taken into custody. In subsection (1) it is stated that the person is guilty of an offense and liable and subject to a fine of \$1,000 or imprisonment for a period not exceeding 6 months or to both.

Any police officer can make an arrest without a warrant:

Any driver of a motor vehicle who fails to obey a signal from a police officer and is liable to be stopped by such vehicle under subsection (1); or

Any driver of a motor vehicle referred to in paragraph (a):

Where the person refuses to give his/her name and place/address of residence in Singapore when requested by a Police officer;

If the police have good reason to believe that the rider's documents are false or misleading regarding identity and address in Singapore.

The Police shall be liable for any loss or damage to any vehicle, or for any injury to the driver or other rider or passenger of any vehicle, as a result of the driver of the vehicle failing to comply with any signal given by the Police.

Malaysia

Malaysia's legal system is a result of its history, particularly as a British colony. Malaysia adheres to the Anglo Saxon or common law legal system which is a legal system that developed in England in the 11th century. Here are some of the things related to the legal system in Malaysia:

Common law: Malaysia largely adheres to common law.

Islamic Law: Malaysia has a separate system of Islamic law.

Federal laws: Federal laws are made by members of Parliament and senators and apply nationwide.

State laws: State laws are made by legislators in the State Legislative Assembly and apply only in that particular state.

Law enforcement: local government bodies also have a role in law enforcement. policing is largely in the hands of the individual states and territories of Malaysia.

Lawmaking: Draft laws are presented to Parliament and read by the Minister or Deputy Minister of the relevant ministry.

In Malaysia, every member of the police force under the Law of Malaysia Act 344: Police Act 1967 in Section 3 subsection (3) has the duty to maintain law and order, preserve the peace and security of Malaysia, prevent and detect crime, arrest and prosecute offenders and secure the collection of security intelligence. Every police officer, auxiliary police officer and duty officer for the purposes of the Act, shall be deemed to be on duty at all times when required to act and shall perform the duties and exercise the powers conferred under the Police Act or any other law at any place in Malaysia, wherever the police officer may be on duty.

Article 20(2) of the Police Act 1967 confirms that the police in carrying out their duties and obligations are given discretionary powers, and if there are certain situations where it is deemed necessary to use their discretionary powers, then they can use them. However, in the case of children, neither the Police Act 1967 nor the Child Act 2001 provides for police discretionary powers.

Netherlands

The Netherlands adheres to the *civil law* system or what is commonly called the Continental European legal system which has its roots in *the Roman law system* and Roman law views "*the rules of law*" as rules of behavior related to the image of justice and morality. In countries that follow *civil law*, judges and other law enforcement officials, including the police, can be said to only be the mouthpiece of the law, this is also the case in the Netherlands.

Ernu Widodo states that the important *civil law* areas are mainland Europe and Latin America and also include Indonesia, which is a former Dutch colony based on tradition and history. Basically, the common ground of this group is the *reception of the Roman law*. The development of the Roman legal system was also an effort by Napoleon Bonaparte who tried to compile the *Code Civil* and *Code Napoleon* based on Roman law (Widodo, 2010).

In the Dutch judicial system, there are 19 (nineteen) Rechtbank which are courts of first instance. Each Rechtbank consists of four case sectors, namely criminal, civil, administrative and minor cases.

The development of Dutch criminal law shows the direction of the use of discretion in resolving criminal cases. Barda Nawawi Arief stated that there are stages of discretion in the Dutch Legal System. An example is the special provisions applicable to children who commit criminal offenses regulated in the Dutch Criminal Code Chapter VIII A, included in the Dutch WvS in 1994, Stb No. 528 (Arief, 2002). The stages of discretion in the Dutch legal system according to Prakoso (2019) are:

Police Transactions

Police Case Waiver

HALT Bureau

Transaction by public prosecutor

Alternative sanctions

The Use of Police Discretion in Law Enforcement Against Criminal Groups of Motorcycle Gangs in Indonesia

Through Police Regulation No. 8 of 2023 on Handling Crimes Based on Restorative Justice Principles, based on this regulation, the police as investigators can make efforts to stop investigations based on restorative justice principles.

Through the process of terminating investigations based on restorative justice, the interests of victims of crime will be more considered, the wishes of victims can be facilitated through the peace process. The increasing success of case resolution based on the principles of restorative justice, especially at the investigation level, shows that the community's need for a case resolution mechanism based on prioritizing the interests of victims is a mechanism that is more desired by the community and more in accordance with the community's sense of justice.

However, in conditions where regulations are still *partial*, they are still regulated in several regulations of each institution, namely: Perpol Number 8 of 2023 concerning Handling Crimes Based on the Principles of Restorative Justice,; PERJA Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Decree of the Director General of the General Justice Agency Number: 1691/DJU/SK/PS.OO/12/2020 dated December 22, 2020 concerning Guidelines for the Implementation of *Restorative* Justice in the General Justice Environment, as a result, the resolution of criminal cases based on the principles of restorative justice has not been implemented in an integrated manner (Hafrida & Usman, 2024).

Police discretion is an action taken according to his own judgment, the action can be accounted for and does not conflict with legal norms, social norms and propriety. The action taken with his own judgment is not for personal gain, but for the public interest, the action is an institutional action. Therefore, if it is understood that actions according to their own judgment can be interpreted as policy actions of police officers in enforcing the law for justice for society and the nation.

With regard to the law enforcement policy of motorized criminal groups, there are several elements that need to be considered as according to Lawrence M. Friedman, namely:

Structure: all existing legal institutions and their implementation or legal apparatus are running well. This includes the implementation of the police law with its police.

Substance: all legal rules, legal norms, legal principles, both written and unwritten, including court decisions.

Legal culture: namely beliefs, habits, ways of acting, ways of thinking by the community and law enforcement officials about the law and various phenomena related to the law.

The existence of this motorcycle gang has been very troubling with the various criminal acts they commit such as:

Theft: includes motor vehicle theft, house or shop theft, and theft of valuables.

Violence: includes fighting, beating, or extorting other individuals or groups.

Drug abuse: involves the use, distribution, or sale of narcotics and illegal drugs.

Traffic violations: such as illegal racing, driving without a license, or breaking other traffic rules.

Vandalism: damaging public or private property, including graffiti or vandalism.

Forgery: includes forgery of documents or money.

Robbery: involves violence or threats to deprive another person of their property.

In relation to law enforcement against criminal groups of motorcycle gangs in which there are minors, the Bandung Police, Bekasi Police and Jambi Police will provide guidance by calling the parents / guardians of the child. Polresta Bandung, Polresta Bekasi and Polresta Jambi in dealing with the problem of motorcycle gangs also take discretionary actions in accordance with the policies and

strategies adopted by the police in various regions. Here are some common ways in which police discretion is applied in motorcycle gang cases:

Preventive approach: the police may use discretion to conduct active patrols in known motorcycle gang areas of operation. This may include preventing activities such as wild racing or illegal gatherings.

Educational or community engagement approaches: discretion can be used to work with communities to educate young motorcycle gang members about the risks and consequences of their behavior. Educational and coaching programs can be offered as an alternative to prevent young motorcycle gang members from engaging in criminal activity.

Repressive approach: on the other hand, in situations where motorcycle gang activities have exceeded the limits of the law, the police can use discretion to take repressive measures, such as arrest or confiscation of evidence related to the illegal activities of motorcycle gangs.

Collaboration with related institutions and parties: the implementation of police discretion often involves collaboration with other institutions such as the prosecutor's office, local government, or civil society organizations to create a holistic and effective approach in tackling motorcycle gangs.

Reconstruction of Police Discretion as Criminal Law Politics in Law Enforcement Against Motorcycle Gang Groups

The settlement of criminal cases outside the court session basically cannot be separated from the principle of opportunity (discretion) owned by authorized law enforcement officials. The principle of opportunity is contrary to the principle of legality which states that all criminal offenses committed by a person must be accounted for by being resolved in court. The principle of legality requires the prosecution of all cases to court without exception, while the principle of opportunity provides an opportunity for law enforcement officials not to resolve criminal cases in court.

In the legal basis, police discretion is the legitimacy of the use of discretionary authority by the police of the Republic of Indonesia, so that all parties are protected both the duties of the police themselves and the community. Discretionary authority is regulated in Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police.

Police discretionary authority in the implementation of police duties and functions is to realize justice. The background of the police exercising discretion is the public interest that must be protected and is still within the scope of its authority by not violating the general principles of good governance. Discretion is carried out because there are goals of state life that must be achieved, namely to create people's welfare and enforce laws that are oriented towards legal policies that are just and legal expediency in relation to the duties and policies of the Police as investigators who have the freedom to screen a criminal case based on their own judgment.

Police discretionary authority is carried out in the public interest based on general principles of good governance and free of corruption and does not conflict with the police professional code of ethics as stipulated in the Regulation of the Indonesian National Police Number 14 of 2012 concerning Management of Criminal Investigation, and prioritizes aspects of social justice for the community. There are 2 (two) factors that encourage the Police as investigators to exercise discretion, among others:

Internal Factors

Substance of Legislation

The substance of legislation can be an internal factor driving a police officer to take discretionary action as stated in Article 16 paragraph (1) letter h and letter i of Law Number 2 of 2002 concerning the Indonesian National Police which states "in order to complete the main tasks of the Indonesian National Police as stipulated in Article 13 and Article 14 in the field of criminal proceedings, the Indonesian National Police is authorized to : (h) terminate the investigation; (i) submit the file to the public prosecutor".

Leader instructions

Structurally, leadership instructions have an important factor in taking a discretionary action by police investigators. Leadership instructions can assist in taking a discretionary action taken by the police in the criminal investigation process.

Investigators as law enforcers

Carrying out an investigation into a criminal case, an investigator is often faced with legal problems committed by the perpetrator of a criminal offense, which turns out to be a minor crime whose resolution will be more effective if it is carried out outside the judicial process and not through the judicial process.

Situation in the investigation

A police investigator in carrying out the task of investigation is very much based on the situation and conditions faced in a criminal case against the perpetrator.

External Factors

The external factor that encourages the police as investigators to exercise discretion is community support. Community support is needed in the implementation of discretion because the public interest aspect is closely related to the community. This is because the community is the object of the investigator's view of whether or not discretionary action can be implemented. The obstacle experienced from external factors is the difficulty of presenting witnesses if called to provide information on a criminal offense. Meanwhile, if it has been reconciled, it is not uncommon for extortion to occur against the suspect by asking for a nominal amount of money.

There are 4 (four) reasons for the police to exercise discretion, namely: a) In the public interest; b) To enforce the law; c) To provide protection, protection and services for the community; d) The police must be able to solve existing problems without violating statutory provisions or contrary to the law. article 14 paragraph (1) letter i of Law Number 2 of 2002 concerning the Indonesian National Police states "protecting the safety of body and soul, property, society and the environment from disturbances of order and/or disasters including providing assistance and help by upholding human rights and not contradicting the code of ethics of the Police profession".

Discretionary decision making should not have personal motivation in a police officer, and there needs to be legal considerations in taking the discretion. In this case, it is necessary to consider the principles that limit the obligations of the police, the conditions as stipulated in Article 14 paragraph (1) letter i and Article 13 concerning the provisions of the main duties of the police in Law Number 2 of 2002 concerning the Indonesian National Police.

The following is a table of reconstruction of police discretion as a legal politics of criminal law in law enforcement against criminal groups of motorcycle gangs.

No.	Applicable Conditions	Weaknesses	Reconstruction
1	Law Number 2 of 2002 concerning the Indonesian National Police, Article 18 paragraph (1): "In the public interest, officers of the Indonesian National Police in carrying out their duties and authorities may act according to their own judgment".	There is no detailed explanation of the intended public interest. The phrase self-assessment does not have a detailed explanation and lacks precision. New concept: The phrase public interest should be replaced with "the interest and good of the community and police officers on duty". New concept:	In the interest and good of the community and police officers on duty, Indonesian National Police officers in carrying out their duties and authorities may act according to their judgment based on the situation and conditions when carrying out their duties."

No.	Applicable Conditions	Weaknesses	Reconstruction
		The phrase self-assessment should be replaced with "assessment based on the situation and conditions when carrying out duties".	
2	Law Number 2 of 2002 concerning the Indonesian National Police, Article 18 paragraph (2): "The implementation of the provisions in paragraph (1) may only be carried out in very necessary circumstances with due observance of laws and regulations and the Code of Professional Ethics of the Indonesian National Police".	circumstances that are very necessary have not yet been explained in detail and detail and their indicators new concept: if not using discretionary authority, it will lead to worse consequences and disturb the order and goodness of society.	The implementation of the provisions in paragraph (1) may be carried out only if the situation and conditions at that time are compelling and urgent, which if not carried out may result in danger and disturbance to public order and good, while still paying attention to statutory regulations, unwritten laws and the Code of Professional Ethics of the Indonesian National Police".

The police in carrying out government functions, especially protection functions, have the right to use discretion in accordance with their objectives (Article 6 paragraph (2) letter e of Law No. 30 of 2014). The definition of discretion itself in Article 1 point 9 of Law No. 30 of 2014 is "decisions and/or actions determined and/or carried out by Government Officials to overcome concrete problems encountered in the administration of government in terms of laws and regulations that provide options, do not regulate, are incomplete or unclear, and/or there is government stagnation". Discretion can only be exercised by authorized government officials for the purpose of (Article 22 paragraph (1) and paragraph (2) of Law No. 30 of 2014):

Streamline government operations;

Filling the legal vacuum;

Provide legal certainty;

Overcoming government stagnation in certain circumstances for public benefit and interest.

Discretion of government officials includes: a) Making decisions and/or actions based on the provisions of laws and regulations that provide a choice of decisions and/or actions; b) Making decisions and/or actions because the laws and regulations do not regulate; c) Making decisions and/or actions because the laws and regulations are incomplete or unclear; d) Making decisions and/or actions due to government stagnation in the broader interest.

Police discretion is a form of restorative justice. Not all criminal cases can be resolved with peace "money", but not all criminal cases can also be resolved with the provision of penal sanctions. Therefore, in restorative justice (especially in the use of police discretion) alternative sanctions will be sought that not only deter, but also improve or restore conditions (moral, environmental and others) from the consequences of criminal acts committed and it is hoped that the same criminal acts will not occur again. This alternative sanction can be in the form of character guidance, social work, compensation and others. Thus, the use of criminal sanctions can be the last resort (*ultimum remedium*). Regarding the authority of the state (in this case represented by law enforcement officials), not all criminal offenses can be resolved by using discretion, the police also cannot use their discretionary authority for just any criminal offense (only for minor crimes, crimes where the perpetrators are children, crimes that are not punishable by death penalty, not a crime that eliminates life and others).

The reconstruction of police discretion as criminal law politics in law enforcement against criminal groups of motorcycle gangs is expected not to conflict with applicable laws, such as the SPPA Law, Child Protection Law, State Administration Law and other related laws. Therefore, it would be better at the time of drafting to harmonize with several related laws so that later there will be no overlapping regulations that will confuse the police themselves when carrying out their duties, especially when carrying out their duties to enforce the law against criminal groups of motorcycle gangs.

CONCLUSIONS

Based on the description that has been presented in the previous chapters, the following conclusions are presented which are answers to the problems raised in the study as follows:

The regulation of police discretionary authority in law enforcement against criminal groups of motorcycle gangs is regulated in the Law on the National Police of the Republic of Indonesia, the Criminal Procedure Law and the Juvenile Justice System Law (if the motorcycle gang members who commit criminal acts are children).

The use of police discretion in law enforcement against criminal groups of motorcycle gangs needs to be limited so that there are no deviations in the application of police discretion (negative discretion) and harm the community, victims and the police themselves.

The reconstruction of police discretion as criminal law politics in law enforcement against criminal groups of motorcycle gangs is by reconstructing Article 18 paragraph (1) and paragraph (2) of Law Number 2 of 2002 with the concept of reconstruction: "The implementation of the provisions in paragraph (1) may be carried out only if the situation and conditions at that time are compelling and urgent which if not carried out may result in danger and disturbance to public order and goodness, while taking into account statutory regulations, unwritten law and the Code of Professional Ethics of the Indonesian National Police".

References

- Ali, M. (Ed.). (2013). *Grounding Progressive Law*. Aswaja Presindo.
- Ames, W. L. (1981). *Police and community in Japan*. University of California Press.
- Arief, B. N. (2002). *Comparative Criminal Law*. Raja Grafindo Persada.
- Arliman, L. (2015). *National Human Rights Commission and the Protection of Children of Criminal Offenders*. Deepublish.
- Ashworth, A. (2005). *Sentencing and Criminal Justice*. Cambridge University Press.
- Atmasasmita, R. (1997). *Human Rights and Law Enforcement*. Bina Cipta.
- Burlian, P. (2015). *Legal System in Indonesia* (full text).
- DL, C. (2004). Koban and Chuzaisho: A form of Japanese police community policing. *Police Journal*, 6, 66.
- DPR. (2023). Didik Asks Police to Eradicate Street Crime. <https://www.dpr.go.id/berita/detail/id/46896/t/Didik%20Meminta%20Polri%20Membe-rantas%20Kejahatan%20Jalanan#:~:text=Berdasarkan%20data%20Polri%2C%20jumlah%20kasus,1.250%20kasus%20pada%20tahun%202021>. Accessed on December 24, 2024.
- Effendy, M. (2012). *Discretion: Legal Discovery, Corporations and Tax Amnesty in Law Enforcement*. Reference.
- Gultom, M. (2012). *Legal protection of children and women: a collection of seminar papers*. Refika Aditama.
- Huda, C. (2010). *Evaluation of the Implementation of Police Reform in Law Enforcement Problems: Review of Law Enforcement Agency Reform*. National Law Commission of the Republic of Indonesia (KHN).
- Ilham Prisgunanto, S. S. (2015). *Communication & Police: Third Edition Community, Image, Celebrity Bias, Digital*. Prisani Cendekia.
- Indarti, E. (2010). *Discretion and Paradigm: An Analysis of Legal Philosophy* [Inaugural Speech of Professor]. Diponegoro University.
- Jufri, M. (2016). *Criminological analysis of motorcycle gang behavior as a form of juvenile delinquency in Palu city* (Doctoral dissertation, Tadulako University).
- Krisnawati, E. (2005). *Legal Aspects of Child Protection*. Bandung: Utomo.

- Lubis, T. M. (2013). *From Dictatorship to Miss Saigon*. Gramedia Pustaka Utama.
- Marzuki, P. M. (2008). *Legal Research* (1st edition, 4th printing). Kencana.
- Meutia, I. F. (2017). The application of Chiki Keibi as an implementation of community policing in Japan. *MetaCommunication, Journal of Communication Studies*, 2(1), 91.
- Prakoso, A. (2019). *Discretionary Police Authority at the Investigation Stage*. Aswaja Presindo.
- Qamar, N. (2010). *Comparison of Legal and Judicial Systems*. Reflection Library.
- Rahardjo, S. (2006). *Law in the Realm of Order (Readings for Students of the Diponegoro University Doctor of Law Program)*. UKI press.
- Rahman, A. (2016). Application of Legal Sanctions Against Motorcycle Gang Crimes Committed by Minors. *Al Daulah: Journal of Criminal Law and State Administration*, 5(1), 174-187.
- Setiadi, E., & Kristian. (2017). *Integrated Criminal Justice System and Law Enforcement System in Indonesia*. Kencana Prenadamedia.
- Skolnick, J. H. (1966). *Justice Without Trial: Law Enforcement in Democratic Society*. John Wiley & Sons.
- Wicaksono, D. (2022). Comparison of the Indonesian and Dutch criminal law systems based on the characteristics of the Romano-Germanic legal family. *Adjudication: Journal of Legal Science*, 6(2), December 2022.
- Widodo, E. (2010). The relevance of civil law and common law systems in the legal regulation of standard agreements in Indonesia. *De Jure: Journal of Sharia and Law*, 2, 12