



## Strengthening Ethical Codes to Prevent Discretion Misuse and Preserve Public Trust in Law Enforcement Practices

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**Abstract:** *This study examines the role of discretion exercised by law enforcement officers, especially within the context of criminal investigations. Discretion refers to the authority granted to investigators, prosecutors, and judges to make decisions that are not always explicitly regulated by written laws or regulations. It is granted to allow flexibility in addressing situations that require quick, context-specific decisions. Discretion is necessary because not every legal situation can be anticipated in advance by the law, especially in dynamic and unpredictable situations that law enforcement professionals encounter daily. However, the exercise of discretion must be grounded in the core principles of justice, legal certainty, and respect for human rights, ensuring that decisions are made fairly and in accordance with legal norms. While discretion allows law enforcement officers to exercise judgment and adapt to diverse situations, it also carries significant risks, particularly the potential for abuse of power. Such abuse could manifest in inappropriate criminalization of innocent individuals, discriminatory practices, or biased decisions that undermine the legitimacy of the justice system. The possibility of such negative consequences necessitates a careful and responsible approach to the application of discretion. Law enforcement officers must not only act in accordance with the law but also adhere to ethical standards and ensure that their decisions are made transparently and equitably. Therefore, the study emphasizes the need for strict oversight and the development of clear, consistent guidelines to govern the exercise of discretion. Supervision mechanisms, such as internal audits and external oversight bodies, are crucial in monitoring law enforcement activities and ensuring that officers do not misuse their powers. Furthermore, providing adequate training to law enforcement personnel on the ethical and legal boundaries of discretion is vital in preventing arbitrary or unjust decisions.*

**Keywords:** *Discretion, Investigator, Police Code of Ethics, Republic of Indonesia Police*

### 1. INTRODUCTION

Discretion in criminal law is the authority given to law enforcement officers to make decisions or take actions based on certain considerations in situations that are not expressly regulated in laws and regulations (Said, 2012). In the Indonesian legal system, the concept of discretion is regulated in Law Number 30 of 2014 concerning State Administration (hereinafter Law Number 30 of 2014), specifically Article 1 number 9 which states that discretion is the freedom for State Administrative Officials to make decisions or take actions in the administration of government in accordance with laws and regulations (Ansori, 2015). Therefore, in criminal law, discretion is an important instrument for law enforcement officers, including investigators, in determining the appropriate steps in the criminal justice process.

Discretion plays an important role in the criminal justice system because it provides flexibility for law enforcement officers, such as the police and prosecutors, in adjusting their actions to the factual conditions that develop in the field (Laksana, 2017). For example, in conducting investigations and inquiries, investigators can use discretion to determine whether a case is worthy of being continued to the prosecution stage or not (Marfungah et al., 2017). Article 22 of Law Number 30 of 2014 stipulates that discretion can be used to address issues

that are not yet regulated in laws and regulations, implement unclear provisions, and handle urgent situations (Juliani, 2020). Thus, discretion becomes an instrument that allows law enforcement officers to carry out their duties more effectively, although they must still comply with the principles of transparency and accountability as stipulated in Article 24 of Law Number 30 of 2014.

In the criminal law system in Indonesia, investigators have discretionary authority to carry out their duties, especially in terms of law enforcement and maintaining public order (Ramadhan, 2021). Article 16 of Law Number 2 of 2002 concerning the Indonesian National Police gives the police the authority to carry out various police actions, such as patrols, searches, and arrests, as part of carrying out their duties (Pandelaki, 2018). However, the use of this discretion must still refer to the applicable legal principles, as regulated in Article 23 of Law Number 30 of 2014, namely that it must not conflict with statutory provisions, must be in accordance with the general principles of good governance, carried out in good faith, and can be accounted for (Mahardika, 2020). Therefore, although discretion is an important tool in law enforcement, its use must still be controlled so as not to cause abuse of authority.

The ambiguous regulation regarding discretion in the criminal law system in Indonesia is due to the absence of regulations that explicitly and specifically regulate the limitations and mechanisms for its use by law enforcement officers. Although discretion is recognized in Law Number 30 of 2014 concerning State Administration, its use in criminal law still depends on the interpretation of articles containing elements of discretionary authority, such as in Article 16 of Law Number 2 of 2002 concerning the Indonesian National Police, which gives the police the authority to carry out police actions. Without clear limitations, the application of discretion has the potential to create legal uncertainty and abuse of authority, so policy affirmation is needed so that discretion remains used within accountable and transparent legal corridors (Lobubun et al., 2022).

Investigators in the criminal justice system have the authority to take various legal actions, such as arrests, detentions, termination of investigations, and other actions related to the investigation process (Munib, 2018). This authority is regulated in Article 16 of Law Number 2 of 2002 concerning the Indonesian National Police, which provides a legal basis for investigators to take actions such as arrests, searches, seizures, and examinations of suspected persons. However, without clear regulations regarding the limits and mechanisms for implementing discretion in such authority, there is a risk of abuse of authority that could harm the principles of justice and legal certainty. Therefore, more detailed regulations are needed to

ensure that investigators' discretion is used professionally, transparently, and in accordance with the general principles of good governance.

The unclear regulations regarding discretion in the criminal law system open up opportunities for investigators to act beyond their authority. Without clear and firm rules, investigators can use discretion subjectively, which has the potential to lead to abuse of authority, such as arbitrary actions in arrest, detention, or termination of investigation. This is contrary to Article 23 of Law Number 30 of 2014 concerning State Administration, which states that discretion must be in accordance with the general principles of good governance and can be accounted for. Therefore, stricter regulations are needed so that the discretion given to investigators is not misused and remains within the legal corridor.

The ambiguity in the regulation of discretion can also have a negative impact on legal certainty and the protection of human rights. Investigators who use discretion without clear limitations can cause uncertainty in law enforcement, where one case can be treated differently from another case without a strong legal basis (Eddyono & Napitupulu, 2014). This has the potential to violate the principle of due process of law, which ensures that every individual is treated fairly in the legal process. In addition, Article 24 of Law Number 30 of 2014 requires the use of discretion to be carried out transparently and accountably, including by making notes and reporting them to direct superiors (Hasibuan & SH, 2021). Without an effective control mechanism, the rights of suspects or defendants can be neglected, so the principle of protecting human rights is threatened.

The lack of specific regulations regarding discretion can also lead to inconsistencies in the application of the law due to differences in interpretation between law enforcement officers. In practice, each investigator may have a different understanding of the extent to which discretion can be used in handling a case, leading to disparities in the investigation process. For example, in some cases, investigators may choose not to detain suspects on the grounds of discretion, while in other cases with similar conditions, suspects are detained. This is contrary to the principle of equality before the law as guaranteed in Article 27 paragraph (1) of the 1945 Constitution (Noor, 2017). Therefore, clearer and more uniform guidelines are needed in the use of discretion to prevent differences in interpretation that can harm the principle of justice.

The urgency of affirming the policy regarding discretion by investigators in the criminal law system is crucial to ensure legal certainty and prevent potential abuse of authority. Currently, the regulation regarding discretion is still general and spread across various regulations, such as Law Number 30 of 2014 concerning Government Administration and Law Number 2 of 2002 concerning the Indonesian National Police, but has not specifically regulated

the limitations and guidelines for its use in the investigation process. Therefore, it is important to formulate a more explicit policy regarding discretion in criminal law to provide certainty for investigators in making decisions, as formulated regarding the regulation of discretion in the criminal law system and the application of discretion by investigators. In addition, with the affirmation of the discretion policy, a stricter control mechanism can be created so that the authority of investigators is not used arbitrarily, in line with the urgency of regulating the affirmation of the discretion policy by investigators. With clearer guidelines, investigators can carry out their duties professionally, objectively, and transparently, so that justice and legal protection for the community can be more assured.

## **2. RESEARCH METHODOLOGY**

This study uses a normative legal method, namely research that focuses on the analysis of applicable laws and legal concepts. The approach used is the statute approach to examine legal norms that regulate the discretionary authority of investigators in the criminal law system, as well as the conceptual approach to understand and analyze the concept of discretion in law and its implications for legal certainty and protection of human rights. The data sources used in this study are secondary data, which include laws and regulations, legal journals, and relevant scientific literature, in order to provide a strong foundation in examining the regulation and urgency of policy affirmation regarding discretion by investigators.

## **3. RESULT AND DISCUSSION**

### **Discretionary Regulations in the Criminal Law System and the Implementation of Discretion by Investigators**

Discretion is the authority held by law enforcement officers in carrying out their duties to enforce the law and maintain order. This authority is given to enable officers to make decisions based on concrete situations that are not always explicitly regulated in laws and regulations. Based on Article 22 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, discretion can only be used by authorized Government Officials. The definition of Government Officials themselves is explained in Article 1 number 3 as elements that carry out government functions, both in the executive, legislative, and judicial environments (Abdullah, 2016). Therefore, law enforcement officers such as investigators, prosecutors, and judges have discretion in making decisions to carry out their duties effectively.

The concept of discretion differs in each law enforcement agency, depending on its duties and authorities. Judges have discretion in applying the law and interpreting norms based on the

principle of justice, as stipulated in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states that the court may not reject a case on the grounds that the law is absent or unclear (Sutrisno et al., 2020). The Attorney General has discretion in prosecution policy, for example in terminating prosecution based on the principle of opportunity (Saputra et al., 2014). Meanwhile, the Chief of Police and police officers use discretion in police actions, including investigations and law enforcement. Discretion in these various institutions must be used in good faith and by the principles of clean governance, as stated in Law Number 28 of 1999 concerning State Administrators Who Are Clean and Free from Corruption, Collusion, and Nepotism (Latunussa & Tamher, 2021).

Article 16 of Law No. Law No. 2 of 2002 grants the Indonesian National Police the authority to carry out various actions related to criminal proceedings, such as arrest, detention, search, and confiscation. Although it does not explicitly mention the term "discretion", this article provides room for police officers to make certain decisions based on the situation or conditions in the field, which may not be fully regulated in laws and regulations. This reflects the application of discretion in carrying out police duties to ensure the smooth running of the legal process but also requires strict accountability and supervision. In addition to Law No. 2 of 2002, there are several other laws that provide similar authority to law enforcement officers to use discretion in carrying out their duties. For example, Law No. 30 of 2014 concerning Government Administration provides room for government officials, including law enforcement officers, to use discretion in dealing with problems that are not regulated in laws and regulations, implementing unclear provisions, or dealing with urgent situations (Rini, 2018). Although it does not explicitly mention discretion, this regulation provides a clear legal basis for officers to decide on actions that are deemed necessary and appropriate in certain situations.

Although there are various regulations that give law enforcement officers the authority to act in situations that are not expressly regulated in legislation, the term "discretion" is rarely used explicitly in Indonesian legal regulations. It makes it necessary to interpret the articles containing such authority, to ensure that the actions taken are by applicable legal principles. Therefore, it is important to have clearer guidelines and affirmations regarding the application of discretion so that there is no abuse of authority and to maintain consistency and legal certainty in the criminal justice system.

Discretion in arrest refers to the authority held by investigators to determine whether someone should be arrested based on the existing situation, although laws and regulations do not always provide clear instructions (Ahmad, 2022). Article 16 paragraph (1) letter a of Law

No. 2 of 2002 gives the Indonesian National Police the authority to make arrests as part of the investigation process. Investigators have the space to consider factors such as available evidence, urgency of arrest, and potential threats to the investigation process, so they can use discretion to decide whether an arrest is necessary in a particular situation (Leksono et al., 2024). Discretion in detention is the authority of investigators to decide whether or not someone needs to be detained during the investigation process (Akbar & Mardany, 2024). Article 16 paragraph (1) of Law No. 2 of 2002 gives investigators the authority to carry out detention as part of the process investigation. In practice, investigators can use discretion to assess whether detention is necessary to prevent a suspect from fleeing, repeating a crime, or obstructing the legal process. However, the use of this discretion must consider the principles of justice and legal certainty so that there is no abuse of authority.

Discretion in terminating an investigation refers to a decision taken by an investigator to stop the investigation process of a case if a legitimate reason is found for it. Article 16 paragraph (1) letter h of Law No. 2 of 2002 gives investigators the authority to stop an investigation if insufficient evidence is found or the case is deemed unable to be processed further. In this case, investigators use discretion to assess whether the legal process can be continued or stopped, and the decision must be based on sufficient evidence and clear legal considerations to ensure justice for all parties involved.

One of the main requirements in the application of discretion by investigators is that the decisions taken must not conflict with applicable legal regulations. According to Article 16 paragraph (2) of Law No. 2 of 2002, actions taken by investigators must be following existing legal regulations. This means that, although investigators have the freedom to make decisions in certain situations, these decisions must remain within the established legal framework. Investigators cannot make decisions that conflict with laws or other statutory provisions, because this could potentially damage the existing legal system and create legal uncertainty.

The discretion applied by investigators must also take into account the applicable professional code of ethics. As law enforcement officers, investigators are expected to act professionally and ethically, and consider the principles of justice and objectivity. The police professional code of ethics, for example, regulates the treatment of suspects, witnesses, and other related parties, as well as the obligation not to abuse their authority. Discretion taken by investigators must not violate ethical norms established in the legal profession, so as not to tarnish the image of law enforcement agencies and violate individual rights.

The application of discretion by investigators must be in line with the legal obligations that require such actions to be taken and must be reasonable. This means that in every action

taken, investigators must ensure that the discretion applied is not only by the law but also proportional and logical based on the facts and situations at hand. Investigators must consider that the actions taken are in line with the legal objectives to be achieved, namely fair and non-discriminatory law enforcement. Irrational or excessive decisions can lead to abuse of authority and create injustice.

Discretion carried out by investigators must also be based on considerations of urgent and critical circumstances. This emphasizes that discretion should not be used carelessly, but only in conditions where certain actions are truly needed for the smooth running of the investigation process or the greater legal interest. For example, in certain cases, investigators may have to immediately detain or search to prevent the escape of a suspect or secure important evidence. Therefore, the use of discretion must be based on urgent needs and cannot be postponed any longer.

The last condition that is no less important in the application of discretion by investigators is respect for human rights. Article 16 paragraph (2) of Law No. 2 of 2002 emphasizes that every action taken by investigators must pay attention to human rights (HAM). Investigators must ensure that in using their discretionary powers, the basic rights of individuals are protected, such as the right not to be tortured, the right to receive fair treatment, and the right to access justice. Respect for human rights is a fundamental principle that must be maintained at every stage of law enforcement, including in the application of discretion.

Abuse of discretion by investigators in unlawful arrest and detention can occur when investigators exercise their authority without clear reasons or valid evidence. In this case, investigators may decide to arrest or detain someone without fulfilling the legal requirements stipulated in laws and regulations, such as the absence of sufficient evidence or the absence of a valid warrant. It can lead to human rights violations, damage public confidence in the justice system, and cause harm to individuals who are victims of such abuse of authority.

When discretionary policies are enforced without clear boundaries, there is a risk of undue criminalization or discrimination against certain groups.

Investigators who have the authority to make unilateral decisions may use this discretion to target certain individuals or groups based on non-objective reasons, such as racial, ethnic, or social discrimination. This can lead to injustice in the justice system and exacerbate public distrust of law enforcement officers because uncontrolled policies can be used for illegitimate purposes or potentially harm certain parties. Strict supervision of the use of discretion by investigators is essential to prevent abuse of authority and maintain the integrity of the justice system. Without effective supervision, investigators may take actions that exceed the limits of

their authority, which can harm parties involved in the legal process. Therefore, there needs to be a clear oversight mechanism, both from superior investigators, external supervisory institutions, and the community itself, to ensure that discretion is used wisely and by the principles of justice and human rights.

### **Urgency of Policy Affirmation Regarding Discretion by Investigators**

Law No. 2 of 2002 concerning the Indonesian National Police does not provide a clear or explicit definition of what is meant by discretion. Although certain articles mention the authority of investigators to take certain actions, such as arrest, detention, or termination of investigations, there is no in-depth explanation of how these discretionary actions should be implemented in the broader law. This legal vacuum leaves room for varying interpretations in practice, which could potentially lead to uncertainty and abuse of authority by investigators.

To avoid confusion and abuse of authority, it is very important to formulate clearer legal norms related to investigator discretion. The clear formulation is necessary so that investigators have definite guidelines in using their discretion, and to ensure that every action taken remains in accordance with the principles of justice and human rights. Clear legal norms will also protect parties involved in the legal process, prevent potential abuse, and ensure that investigators' authority is used wisely and by the objectives of applicable law.

Affirming the concept of discretion in the law can provide much-needed legal clarity in law enforcement practices, especially for investigators. With more detailed and explicit regulations on discretion, law enforcement officers can avoid misinterpretation and abuse of authority in making decisions. This will clarify the limits of investigators' authority and reduce the room for abuse in the investigation process. This affirmation can also be a reference in forming fairer and more transparent policies in implementing the law.

The preparation of guidelines or technical regulations regarding the limits and procedures for the use of discretion by investigators is very important to ensure that the authority held by investigators is not misused. These guidelines can include procedures that must be followed in decision-making, criteria that must be considered, and clear limitations on actions that can be taken by investigators in certain situations. With these guidelines, it is hoped that every discretionary action taken can be accounted for remain within the applicable legal corridor, and provide a sense of justice for all parties involved.

Increasing supervision and accountability in discretion by investigators is an important step to prevent abuse of authority. Tighter supervision can be done by supervisory institutions, such as the National Police Commission (Kompolnas) or by the courts, to guarantee that every decision is truly following the justice principles and law. Furthermore, investigators must have

a clear accountability mechanism, where every action taken can be accounted for transparently and can be re-examined by the authorities, to maintain the integrity of the justice system.

Strengthening discretionary policies can help prevent authority abuse by investigators by providing more explicit and more stringent guidelines regarding the limits of their authority. With provisions that regulate in detail when and how discretion can be applied, investigators will be more focused in making decisions, and reduce the room for arbitrary actions. It also creates a better oversight system, ensuring that every decision taken can be accounted for by appropriate law.

Strengthening discretionary policies provides legal certainty in the investigation process because there are clearer guidelines regarding the procedures and authority of investigators in using discretion. With more explicit regulations, both investigators and the public can understand the existing rights and obligations, reducing uncertainty in the legal process. This certainty also strengthens public trust in law enforcement officers, because they know that investigations will be carried out with clear and measurable standards.

Strengthening discretionary policies helps maintain a balance between investigators' authority and human rights protection by setting clear limits on discretion. When discretion is exercised wisely, investigators can exercise their authority effectively without violating the rights of individuals involved in the legal process. Enforcing appropriate discretionary guidelines will ensure that actions taken do not violate human rights principles, such as fair treatment and protection from abuse of power.

#### **4. CONCLUSION**

Discretion is the authority held by law enforcement officers, such as investigators, prosecutors, and judges, to make decisions in situations that are not fully regulated by laws and regulations. Although it provides flexibility, the application of discretion must still be based on the principles of justice, legal certainty, and respect for human rights. Abuse of discretion can cause injustice and damage the integrity of the justice system. Therefore, strict supervision and clear guidelines are essential to ensure that discretion is used wisely, objectively, and under applicable legal provisions, to prevent abuse of authority and maintain public trust in law enforcement officers.

The legal vacuum regarding investigator discretion in Law No. 2 of 2002 invites uncertainty and the potential for abuse of authority that can harm justice and human rights. Therefore, it is important to formulate clear and firm legal norms regarding investigator discretion, including guidelines that regulate the limitations and procedures for its use. The

affirmation of the concept of discretion in the law, accompanied by increased supervision and accountability, can strengthen law enforcement practices, prevent abuse of authority, and maintain a balance between investigator authority and human rights protection. With a more focused and structured discretionary policy, it is hoped that the investigation process will be more transparent, fair, and by applicable law.

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