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The Exercise of Police Discretionary Power Toward Perpetrators of Minor Crimes Within the Jurisdiction of The Nabire District Police (Polres)

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ABSTRACT

Minor criminal offenses present a challenge for criminal justice systems because strict law enforcement approaches may produce disproportionate consequences while increasing the burden on judicial institutions and correctional facilities. In Indonesia, police discretion has become an important mechanism for balancing legal certainty, the public interest, and restorative justice principles, particularly in resolving minor criminal offenses through mediation and other non-litigation approaches. This study aims to analyze the exercise of police discretionary authority toward perpetrators of minor crimes within the jurisdiction of the Nabire District Police (Polres Nabire) and to identify the factors that support and hinder its application. This study employed an empirical juridical method supported by normative juridical analysis. Data were collected through reviews of laws and regulations, literature reviews, document analysis, observations, and interviews with police officers involved in handling minor criminal cases. The data were analyzed qualitatively by examining the relationship among legal provisions, police practices, and social conditions influencing discretionary decision-making. The findings indicate that police discretion in Nabire has been exercised through restorative justice mechanisms, including mediation, reconciliation, compensation, and community-based settlements, particularly for minor offenses that meet applicable legal requirements. However, its implementation continues to be affected by several obstacles, including victims' demands for formal punishment, concerns about the potential misuse of authority, limited public understanding, challenges in interpreting regulations, and local security dynamics. The study concludes that police discretion is an essential instrument for achieving proportionate and humane law enforcement, provided that its exercise remains accountable, transparent, and consistent with applicable legal principles and restorative justice values.

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia establishes Indonesia as a state governed by law. It emphasizes that the Republic of Indonesia is based on law (rechtsstaat), rather than merely on power (machtsstaat), and explicitly states that "Indonesia is a state governed by law." In enforcing the law, the state requires institutions and officials responsible for implementing and upholding statutory provisions. Although the quantity of law-enforcement activities in Indonesia has increased, the quality of criminal case resolution, particularly in general criminal cases, has not improved significantly. One contributing factor

is the persistence of discriminatory practices in law enforcement (Bouziotis, 2021; Davis, 2024; Hetey & Eberhardt, 2018; Legewie, 2016; Menifield et al., 2019).

The duties and responsibilities of the Indonesian National Police extend beyond their role as law-enforcement officials. Police officers also serve as public-service providers and as officials responsible for maintaining public order. According to Satjipto Rahardjo, the latter function is particularly important because the maintenance of public order represents a universal dimension of police duties. This position significantly affects police officers because they frequently encounter situations in which members of the community criticize or challenge police actions, particularly when community interests are perceived as inadequately accommodated. Therefore, police officers require creativity, innovation, sound judgment, and responsiveness in carrying out their responsibilities as public servants. Conflicts that generate unfavorable public perceptions of the police may arise more frequently when officers perform duties involving competing legal and social interests (Brunson & Gau, 2015; Lawrence, 2023; Mourtgos & Adams, 2020; Tyler et al., 2015).

In certain situations, a police officer must be able to make an appropriate decision through the exercise of discretion. Such decisions must be made promptly and carefully, based on reasonable considerations and accompanied by accountability. Although the exercise of discretion inevitably contains a degree of individual judgment, its use must remain directed toward broader public interests rather than the personal interests of the officer exercising the authority (Beckett, 2016; Green, 2018; Green & Roiphe, 2023; Heath, 2020; Markowitz, 2017).

Police discretionary authority is regulated under Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, which provides that, in the public interest, officials of the Indonesian National Police may act according to their own judgment in carrying out their duties and authorities. Such actions, however, may be taken only in circumstances of genuine necessity and must remain consistent with applicable laws and regulations as well as the Professional Code of Ethics of the Indonesian National Police. Law-enforcement officials, particularly police officers who perform investigative functions in criminal cases, may face complex dilemmas when alleged offenders are children. Criminal justice responses involving children must consider not only legal accountability but also the protection of their future development and their role as the next generation of the nation. Accordingly, children require opportunities for healthy physical, psychological, educational, and social development through both formal education and appropriate non-formal educational processes (De Rossi et al., 2022; Fattah et al., 2025; Merino Orozco et al., 2026; Shohel & Howes, 2018; Syakhrani & Aslan, 2024).

Within the Indonesian legal system, police discretion provides an important institutional mechanism for reconciling legal certainty with the practical demands of justice. The manuscript underlying this study emphasizes that Indonesian police officers perform not only law-enforcement functions but also public-service and public-order-maintenance functions, which frequently require officers to respond to complex situations in which strict procedural enforcement may not always produce the most socially beneficial outcome. Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police authorizes police officials, in the public interest and under circumstances of necessity, to act according to their own judgment while remaining subject to applicable laws and the Professional Code of Ethics

of the Indonesian National Police. This discretionary authority is further situated within Indonesia's restorative justice framework through Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which provides a regulatory basis for eligible criminal cases to be resolved through restoration-oriented mechanisms. Thus, discretion should be understood not as unrestricted personal authority but as legally bounded decision-making power requiring necessity, proportionality, accountability, and consideration of the public interest.

The exercise of this authority becomes particularly significant within the jurisdiction of the Nabire District Police (Polres Nabire), where minor criminal cases are situated within distinctive social, cultural, and security conditions. The findings reported in the manuscript indicate that police officers may pursue mediation and restorative settlements in cases involving minor traffic incidents, minor assaults, community altercations, threats, and petty theft, particularly when victims and offenders are willing to reconcile and the harm suffered by victims can be remedied through compensation, restitution, or the return of property. However, the exercise of discretion is not automatic and must remain subject to applicable legal and procedural requirements.

The study identifies several practical obstacles, including resistance from victims or community members who demand formal punishment, officers' concerns about allegations of abuse of authority or bribery, limited public understanding of police discretionary powers, insufficiently uniform technical guidance, and the dynamic security and public-order conditions in Papua. At the same time, customary dispute-resolution mechanisms remain influential because some conflicts are initially resolved through customary fines, family deliberations, or community-based agreements, and such outcomes may subsequently be taken into consideration by the police when determining the appropriateness of a restorative settlement. These conditions make Nabire an important setting for examining how formal police authority interacts with restorative justice principles and local legal culture.

METHOD

This study employed normative juridical and empirical juridical research methods. The normative juridical method was used to examine relevant legal provisions and secondary legal materials, while the empirical juridical method was used to investigate factual conditions and minor criminal cases handled within the jurisdiction of the Nabire District Police (Polres Nabire).

The study applied statutory, literature, and case approaches. The statutory approach was used to examine relevant laws and regulations governing police discretion and minor criminal offenses.[1] The literature approach involved reviewing books, regulations, scholarly articles, and other relevant materials. The case approach was used to examine cases related to the issues addressed in this study.[2]

The legal materials consisted of primary, secondary, and tertiary legal materials. Primary legal materials included the 1945 Constitution of the Republic of Indonesia, the Criminal Procedure Code, Law Number 2 of 2002 concerning the Indonesian National Police, and the Criminal Code. Secondary legal materials included books, scholarly articles, research reports, and other publications concerning police discretion and minor criminal offenses. Tertiary legal

materials included legal dictionaries, general dictionaries, scientific journals, and other supporting materials relevant to the study.

Data were collected through interviews and document review. Primary data were obtained directly from respondents through interviews and structured questions, while secondary data were obtained from laws and regulations, scholarly publications, reports, and other documents relevant to the research topic.

The collected data were classified and analyzed qualitatively to identify relevant legal and empirical findings. The analysis focused on the relationship between applicable legal provisions and the exercise of police discretion in handling minor criminal offenses. The results of the analysis were then used to draw conclusions corresponding to the research problems and objectives.

RESULT AND DISCUSSION

Implementation of Police Discretion for Perpetrators of Petty Crimes in the Jurisdiction of the Nabire Resort Police (Polres)

Police discretion is not an act of deviation, but in the practice of carrying out police duties, there are still many police officers who are hesitant to use this authority, especially in handling criminal cases. Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia provides opportunities for police officers to exercise discretion as stipulated in Article 18 which states that:

(1) In the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment;
(2) The implementation of the provisions as referred to in paragraph (1) can only be carried out in very necessary circumstances by paying attention to the laws and regulations and the Professional Code of Ethics of the National Police of the Republic of Indonesia.

Based on the explanation of Article 18 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, it is stated that what is meant by "acting according to his own judgment" is an action that can be carried out by members of the National Police of the Republic of Indonesia who in acting must consider the benefits and risks of their actions, and are really in the public interest. Many factors support the police to exercise discretion, especially in the examination of criminal cases, including the existence of laws and regulations that provide opportunities for the application of discretion and the understanding of the police about the authority to exercise discretion. On this basis, discretionary actions are seen as official actions. 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 to the case. In order for the application of police discretion not to be seen as an engineering tool of the police to gain personal gain, its application must be based on a strong legal basis. Several laws that can be used as a legal basis for the application of discretion, especially in the criminal law enforcement process so that there is no suspicion as stated: Article 15 paragraph (2) letter k of Law Number 2 of 2002 concerning the Police, which states that the National Police of the Republic of Indonesia in accordance with other laws and regulations is authorized to: carry out other authorities that are included in the scope of police duties.

Article 16 paragraph (1) letter l of Law Number 2 of 2002 concerning the Police states that in order to carry out duties in the field of criminal proceedings, the National Police of the Republic of Indonesia is authorized to: carry out other actions according to responsible law. Paragraph (2) Other actions as intended in paragraph (1) letter I are investigative and investigative actions that are carried out if they meet the requirements, namely not contrary to a rule of law. In line with the legal obligation that requires such actions to be carried out appropriately, reasonably, and within the scope of their position, appropriate consideration based on circumstances that compel and respect human rights may be accepted. Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Police states that in the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities can act according to their own judgment. Paragraph (2) The implementation of the provisions as intended in paragraph (1) can only be carried out in very necessary circumstances by paying attention to laws and regulations, as well as the Professional Code of Ethics of the National Police of the Republic of Indonesia;

Regarding the application of police discretion in resolving criminal cases, there are several considerations that are commonly used as a basis or handle for members of the National Police, including:

1. Speed up the process of resolving cases; This is done considering that through formal channels, the case being examined will be completed within a long period of time;
2. Avoid the accumulation of cases; the duties and responsibilities carried out by the police from day to day are increasing, so that discretionary measures can be used as an effective means to reduce the workload;
3. . There is a desire for the case to be resolved with the best solution (win-win solution); considering that through formal means, it can be ensured that there will be a losing party and there will be a winner;
4. There is a feeling of compassion on the part of the victim, so the victim does not want his case to be extended.

Basically, police discretionary measures are carried out as a form of police responsibility given by the state, for example in the case of criminal acts where the perpetrators involve children. According to Adrianus Meliala, potential criminal cases are resolved through out-of-court settlement efforts, including by applying discretion carried out by the police.

The Head of the Nabire Police Criminal Investigation Unit, represented by Aiptu Pol. Frits Tonci Wakum, as the General Criminal Office of the Criminal Investigation Unit, when interviewed regarding police discretion over minor crimes that occurred in the Nabire Police Jurisdiction said:

"For minor crimes, such as laka-lantas, or minor persecution that does not have an impact on the victim's work, or fights between residents, or just fighting each other until they threaten and curse each other, and or theft that is minor in nature, then we will try to apply the discretion of the police in resolving the case through mediation without having to take it to court. It is a pity if they have to be processed and continued to the court, considering that they will always be called by the police or prosecutors and finally the court. The purpose of this police discretion is not because we want to sell services and then ask or expect payment, but the police discretion that we apply is our rights and

responsibilities that have been regulated in Article 16 Paragraph (1) and (2) of Law Number 2 of 2002 concerning the Police. Most of the victims can understand the problem, so in the end they are willing to make peace, and get compensation for what they have experienced. In principle, we, the Nabire police, are committed to fair and humane law enforcement. For minor crimes or cases with small material losses, we are committed not to always use criminal channels. We always prioritize restorative justice based on Perpol Number 8 of 2021. However, if the perpetrator is a minor, the mechanism is called diversion, which is regulated by the Law on the Juvenile Criminal Justice System (SPPA). The essence is the same, which is to settle matters outside of formal provisions in order to restore the situation to all."

The same thing was also conveyed by Briptu Pol. Taufik Hidayat, SH., Officer of the Iidik Unit I of the Criminal Investigation Unit of the Nabire Police:

"Usually, before we meet, the perpetrator has already apologized to the victim and promised to pay a certain amount of compensation to the victim, so that we do not have too much difficulty in reconciling them with discretionary efforts towards restorative justice that we want together. If the perpetrator has apologized and does not argue over who is right and who is wrong, then the victim will feel pity, so that peace is easy to do. Especially if only minor persecution does not injure the victim, then a younger peace is carried out. On the other hand, if the perpetrators still maintain the principle of who is wrong and who is right, then the police will also find it difficult to reconcile them. Usually if this is the case, then we will explain how the legal process is and how the regulations are violated, and what the legal threat is, if it has reached the court. If we have removed the impact if we do not want to reconcile, then the situation will melt away, and finally the two agree to resolve the case by means of restorative justice. If the perpetrator is from a child, then diversion is mandatory, especially if the criminal act committed is threatened with imprisonment of less than 7 (seven) years, and is not a repetition of a criminal act or recidivism."

A statement from Briptu Pol. Taufik Hidayat was added by his colleague, Bripda Pol. Michael Warobay, Officer of the Idik I Criminal Investigation Unit of the Nabire Police:

For adult offenders, the basis for settlement with restorative justice is based on Perpol Number 8 of 2021, namely there are formal requirements and strict material requirements so that cases of minor crimes can be resolved outside the court. The formal condition is that there is a peace stated in writing between the victim and the perpetrator as well as the restoration of the rights of the victim, namely the goods are returned or with compensation; and the material conditions, do not cause unrest in the community, do not have an impact on social conflicts, do not constitute a criminal act of terrorism or corruption, and the losses caused are relatively small, for example theft whose loss value is below Rp. 2,500,000.- (Two million five hundred thousand rupiah)."

From the information of the three members of the National Police from the Nabire Police above, it seems that the application of police discretion for perpetrators of minor crimes within the Nabire Police has been running optimally, but everything comes back to the perpetrators, whether the peace agreement can be realized or not. And this requires mental readiness from all parties involved in this problem.

Factors that hinder the application of police discretion to perpetrators of petty crimes in the jurisdiction of the Nabire Resort Police (Polres)

The application of police discretion to Petty Crimes (Tipiring) in the jurisdiction of the Nabire Police is often faced with a number of operational, structural, and cultural obstacles. Based on the results of the author's research, the factors that hinder the application of police discretion in solving misdemeanor crimes are:

1. Rejection from the victim and the community, there is still a strong legal culture of society that demands a formal settlement (criminalization). Victims or victims' families often reject peaceful or discretionary settlements offered by investigators because they feel aggrieved and demand absolute justice;
2. Concerns about *Abuse of Power* against officers often create a dilemmatic attitude. The use of discretion that releases or does not process the perpetrators of fraud is feared to cause negative accusations from the public, such as allegations of bribery or neglect of criminal acts;
3. The understanding and socialization of discretion that is rarely carried out makes the understanding of the Nabire people low about the concept and legal basis of police discretion. This makes the public consider that discretion is a form of procedural violation or negligence of the apparatus;
4. The substance of Law and Cross-Sectoral Coordination there is no uniformity of technical guidelines at the regional level that set firm limits for the application of discretion;
5. Situational factors in the field, namely the security and public order conditions (Kamtibmas) in the dynamic jurisdiction of Papua, require the police to be more careful so that discretion does not trigger further anarchist actions or vigilante actions by local residents.

To overcome these obstacles in the field, although the ranks of the Nabire Police preventively continue to prioritize *the Restorative Justice* approach and the function of bhabinkamtibmas in solving social problems in the community, observations of social conditions in the community are also still carried out.

The Head of the Nabire Police Criminal Investigation Unit, represented by Aiptu Pol. Frits Tonci Wakum, as the General Criminal Office of the Criminal Investigation Unit, when interviewed regarding the obstacles that accompany police discretion over minor crimes that occur in the Nabire Police Jurisdiction said:

> "Indeed, many tipring cases have been resolved with police discretion, because it is our responsibility and obligation to carry it out, which is also in accordance with the mandate of the police law. However, there are also those who because of the persistence of the victims who do not want to reconcile, we finally process it to court. But this often happens because the victim has often warned, but the perpetrator repeats his actions, finally the victim can no longer forgive the perpetrator and wants the perpetrator to be processed to prison. If it is like this, we also raise our hands, because it is the absolute right of the victim. Discretion is indeed only one way to facilitate settlement, facilitate compensation, and reconcile the perpetrator and the victim, but if the victim has stubbornly refused to forgive, then we can do nothing, other than process it all the way to the court. Moreover, the indigenous people in Nabire also have very strong customary ties, so often before

they make a police report, the problem is solved first at the customary level through the payment of customary fines or family settlements. We at Satreskrim really respect the completion of such a model. The results of the customary settlement can be used as a formal consideration to be carried out by restorative justice at the Nabire police office. The most important thing for us is that the security stability (Kamtibmas) in Nabire Regency is maintained, namely by the way the victim gets justice, and the perpetrator realizes his mistake without having to languish in prison for forgivable things."

The same thing was also conveyed by his colleague, Briptu Pol. Taufik Hidayat:

"Until now there is still a misunderstanding in the community, and discretionary socialization is rarely carried out, making the understanding of the Nabire people low about the concept and legal basis of police discretion. This is what has made the public consider that discretion is a form of violation of procedures or negligence of the apparatus in solving problems. For them, if there is a crime and it has been reported to the police, then the next concept is summons and examination and in the next process to the court. When they arrived at the court, they did not want to know more about the outcome of the trial. What is important for them is that the perpetrator is detained and follows the grueling course of the trial. For them, it is already a punishment for the perpetrator, namely his tiredness and busyness in facing the trial."

What was conveyed by Briptu Pol. Taufik Hidayat, SH., above, is true, because from the results of the author's observation in court, most serious or light cases are never witnessed by the victim again. In fact, most of the victim's testimony in the trial was read by the Public Prosecutor. Most of the victims, if their cases have reached the court and have made the perpetrators go back and forth to the trial, both those who are detained and those who are not detained, have satisfied their feelings.

Another obstacle in the implementation of police discretion was conveyed by Bripda Pol. Michael Warobay is;

"Discretion in its implementation and implementation still has many obstacles in its implementation, To overcome these obstacles that arise, the Nabire Resort Police have made efforts so that discretion can be implemented properly. The police are currently continuing to build a positive image so that the public's negative perception of the police can be avoided. So far, in the view of the public, the police are closely related to bribery and nepotism, so the police must now build their image as a good protector of the community. by providing good and friendly community services and conducting routine patrols in residential areas. To overcome the low public knowledge of the applicable discretionary regulations, the Nabire police conducted counseling to the wider community about the applicable regulations. So it is hoped that the public understands and understands the applicable legal regulations. Counseling carried out by the police is currently still limited to seminars, the installation of banners or pamphlets in strategic areas, and the provision of information through citizen wall magazines. If there is a victim's family who does not agree to be applied, discretion must be given understanding, the UPPA investigator always gives understanding to the victim or family for the actions taken. If the party feels difficult in taking care of a problem, sometimes the police can ask for help from Non-Governmental Organizations, Village

Heads, School Principals, or other community leaders, so that all can work synergistically in resolving them at the discretion of the police."

From this explanation, the author is increasingly confident that the implementation of police discretion can be successful if all parties, both the victim's family, the perpetrator's family, and the indigenous community groups of each party can accept the results of the deliberations to reach an agreement.

CONCLUSION

The exercise of police discretion toward perpetrators of minor crimes within the jurisdiction of the Nabire District Police (Polres Nabire) has generally proceeded as expected. However, members of the Nabire District Police should continue to develop a consistent understanding and interpretation of Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police. The provision explains that “acting according to one’s own judgment” refers to actions that may be taken by members of the Indonesian National Police after carefully considering the benefits and risks of such actions and ensuring that they are genuinely undertaken in the public interest. Accordingly, when police officers encounter cases requiring the exercise of discretion, they should be able to act with legal certainty and professional confidence, while remaining aware that such authority constitutes part of their legal duties and responsibilities.

To reduce obstacles to the exercise of police discretion toward perpetrators of minor crimes within the jurisdiction of the Nabire District Police (Polres Nabire), investigators should continue to consider the specific circumstances of each case while recognizing that victims, offenders, and community members may have different perspectives regarding appropriate case resolution. Police discretion may therefore be used, where legally permissible, to resolve eligible minor criminal cases through non-litigation mechanisms, including restorative justice approaches. Such measures may contribute to reducing the accumulation of cases within judicial institutions and help alleviate overcrowding in correctional facilities, provided that discretionary decisions remain lawful, proportionate, accountable, and consistent with the public interest.

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