

LAW ENFORCEMENT OF POLICE DISCRETION TO RESOLVE TRAFFIC ACCIDENTS AT THE INVESTIGATION LEVEL

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Abstract

Traffic accidents are one of the serious problems that are often faced in the context of law enforcement, especially in countries with high traffic density such as Indonesia. This study aims to evaluate how discretionary decisions taken by police investigators can affect the case settlement process, taking into account aspects of justice and public interest. The study utilized policy documents as the primary data source, focusing on analyzing these documents through a systematic document analysis and content analysis approach. The document analysis technique will help in organizing and summarizing these documents to identify relevant information and protocols regarding the application of discretion. The content analysis will then be employed to examine the specifics of how discretion is framed and regulated within these policies, revealing the underlying principles and standards guiding police decision-making in traffic accident cases. This research would contribute to refining policies and practices related to police discretion, ensuring they effectively balance flexibility with adherence to legal and ethical standards.

Keywords: *Police, Investigation, Discretion*

INTRODUCTION

Traffic accidents are one of the serious problems that are often faced in the context of law enforcement, especially in countries with high traffic density such as Indonesia (Bagasatwika, 2020; Mohammed et al., 2019; Soehodho, 2017; Susilo et al., 2015; Tacconi et al., 2019). This kind of accident not only caused material and physical losses, but also presented challenges in the investigation and law enforcement process. In this situation, police officers are faced with complexity that requires quick and appropriate decisions to determine the next steps, including whether to continue the investigation or take other discretionary measures (Bacon, 2017; Bonner, 2018; Chan & MOSES, 2014; Walsh & Conway, 2011; Wilson, 2012).

In the last 10 years, traffic accidents in Indonesia have resulted in an average of 10,000 deaths every year. Traffic levels show that about 332 people die from every 1,000 accidents that occur. In addition to causing casualties, traffic accidents also result in financial or material losses (Afolabi & Kolawole, 2017; Anjuman et al., 2007; Chen et al., 2016; Khan et al., 2020; Pukalskas et al., 2015). This loss is estimated to reach 41.3 trillion rupiah. Therefore, as the party responsible for dealing with traffic accidents, the National Police tries professionally to reconcile the parties involved in the accident through penal mediation, or better known as criminal mediation.

Discretion means policy and graduation which means the ability to choose wisely (Akosa & Asare, 2022; Golan-Nadir et al., 2022; Hassan et al., 2023; O'meara, 2021). The exercise of discretion by the police must comply with general principles, especially those related to human dignity and dignity (Degollado, 2023; Gomes de Almeida, 2020; Skinns et al., 2020; Yao, 2023). In the application of discretion by the police, it is important to pay attention to the general principles that are the basis of laws and regulations in Indonesia, such as the basic principles of the doctrine of material illegality, the principles of good judicial administration, and principles related to human dignity and dignity. These principles must be

used as a foundation and benchmark to minimize potential deviations to the lowest level (Martha & Sutrisno, 2018). Police discretion in Indonesia is juridically regulated in Article 18 (1) of Law No. 2 of 2002, which states that "in the public interest, officials of the State Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment." Article 18 paragraph (2) adds that "the implementation of the provisions as paragraph (1) can only be carried out in circumstances that are very necessary by paying attention to the laws and regulations and the professional code of ethics of the National Police of the Republic of Indonesia."

Police discretion refers to the authority possessed by police officers to make decisions based on their own judgment in certain situations, especially when faced with situations that are not fully regulated by existing laws or regulations. This concept is very relevant in the context of law enforcement in Indonesia because it gives the police the flexibility to assess and respond to various situations more effectively and fairly. For example, in the case of a traffic accident, discretion allows the police to consider various factors such as the seriousness of the accident, the condition of the perpetrator, as well as the impact on the community. With discretion, the police can make wise decisions, such as choosing whether to continue the investigation or provide an act of forgiveness, based on considerations of the public interest and the specific circumstances of the incident.

This study aims to evaluate how discretionary decisions taken by investigators can affect the case settlement process, taking into account aspects of justice and public interest. Thus, this study will provide insight into how the use of discretion in the context of traffic accidents can improve effectiveness and justice in law enforcement.

RESEARCH METHOD

The method applied in this study utilizes the normative juridical method. The study utilized policy documents as the primary data source, focusing on analyzing these documents through a systematic document analysis and content analysis approach. The data collection will involve gathering and reviewing official guidelines, procedural manuals, and internal policies related to police discretion in traffic accident investigations. The document analysis technique will help in organizing and summarizing these documents to identify relevant information and protocols regarding the application of discretion. Content analysis will then be employed to examine the specifics of how discretion is framed and regulated within these policies, revealing the underlying principles and standards guiding police decision-making in traffic accident cases. This methodology will provide a detailed understanding of the theoretical and practical aspects of police discretion as outlined in policy documents, offering insights into its impact on investigation practices and outcomes.

RESULT AND DISCUSSION

There are causative factors in the use of discretionary authority carried out by the Cirebon City Police Traffic Unit.

Internal Factors

In the implementation of police duties, the use of discretion by investigators is commonplace. This step was taken to optimize and increase the effectiveness of the implementation of police duties and authorities. Internal factors in the discretion of investigators with the duties and functions of the investigation given by the state are factors that exist and affect the police investigators themselves in making decisions related to investigation discretion.

According to Ibn Artadi, there are several properties inherent in the meaning of discretion. There are four main things that are the basis of factors in the exercise of discretion, namely:

- 1) The freedom to act on one's own initiative spontaneously, contextually, rationally, and in accordance with discretion in making discretionary decisions.
- 2) Discretionary decisions must be based on authority or authority guaranteed by law.
- 3) Discretionary decisions are not entirely based on the law.
- 4) Discretionary decisions must be morally and legally accountable.

Among these internal factors are as follows.

Substance of Laws and Regulations

According to the Cirebon City Police Laka Lantas Kanit, the substance of the current laws and regulations is enough to support the discretionary actions taken by police investigators. This includes the provision in Article 16 paragraph (1) letter h, it is explained that "a police investigator has the right to stop the investigation." Article 16 paragraph (1) letter i and Article 18 paragraph (1) also state that in the public interest, "officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act based on their own judgment." This means that in the context of discretion, police officers have the right to stop the investigation of a criminal case, as long as the action is carried out in accordance with their own judgment, provided that the action is in the public interest.

This shows that the law in Indonesia provides space for police investigators to exercise their discretion in certain situations, taking into account the specific circumstances of each case. In practice, this allows investigators to make decisions that are more flexible and responsive to case dynamics, including stopping investigations if deemed necessary in the public interest. For example, in the case of a traffic accident involving a minor offense or a situation where formal legal action is deemed ineffective, the investigator may decide to stop the investigation or take alternative measures. The application of this discretion is very important to ensure that the law enforcement process is not only in accordance with the applicable legal provisions, but also responsive to the context and needs of the community. Discretion helps to maintain a balance between strict law enforcement and the protection of individual rights, as well as supports efficiency and effectiveness in the resolution of criminal cases.

In the context of law enforcement, police officers play an important role in handling various criminal cases, including using discretionary authority to make appropriate decisions. This discretion allows investigators to assess the situation individually and take steps that are deemed to be most in the public interest. However, although existing laws and regulations already provide a basis for the use of discretion, practice in the field shows that there are shortcomings in terms of technical guidance governing the application of discretion. Limitations in these guidelines can make it difficult for investigators to determine when and how discretionary measures should be applied, especially in criminal cases that are considered light or less effective if formally processed. As a solution, a clear and comprehensive technical guidebook is needed to assist investigators in implementing discretion consistently and in accordance with applicable regulations.

Given the importance of the role of discretion in handling criminal cases, especially in cases that do not always require settlement through formal legal channels, the preparation of more detailed technical guidance is an urgent need. This guide will serve as a reference for investigators in making decisions that are not only based on subjective judgment, but also in line with applicable legal principles. With clear guidance, it is hoped that investigators can be more effective in determining the right steps, either to stop the investigation or continue it, by considering various factors such as the public interest, the rights of the parties involved, and

the social impact that may arise. This will also provide better legal protection for investigators, as well as increase public confidence in the law enforcement process carried out by the police.

Instructions from the Leaders

Instructions from the leaders are one of the internal factors that are very influential in discretionary decision-making by investigators. As an apparatus under a hierarchical structure, investigators often rely on directions from superiors to determine steps in handling cases. These instructions can be direct commands to take certain actions, such as stopping the investigation, or giving the investigator the freedom to exercise discretion in situations that require quick and precise judgment. This directive serves as a guideline for investigators in carrying out their duties, especially when facing complex cases or being in gray areas that are not fully regulated by law.

In addition, instructions from leaders can provide clarity and certainty in the decision-making process. In many cases, investigators may face ethical or legal dilemmas that make them hesitate in determining the most appropriate course of action. With clear instructions from superiors, investigators can feel more confident in exercising discretion, because they know that the decision is supported by the police hierarchy. It also helps to ensure that the actions taken are aligned with the policies and priorities of the institution, which aims to maintain order and justice in society.

Instructions from the leadership also serve as a form of protection for investigators in carrying out their duties. In the context of law enforcement, discretionary actions can cause controversy or legal challenges in the future. However, with formal and documented instructions from the leadership, investigators have a solid basis to defend their actions if questioned. This reduces the risk to investigators in the event of allegations of abuse of authority or violations of the law, while also increasing accountability in the law enforcement process. Therefore, instructions from the leadership not only encourage discretion, but also strengthen the legitimacy and validity of the actions taken by investigators.

Investigators as Law Enforcers

In carrying out an investigation into a criminal case, an investigator often faces legal problems related to the perpetrator of the crime. This legal issue is often considered mild and less effective if processed through formal criminal law. Investigators as law enforcers have a crucial role in maintaining order and justice in society. As a party at the forefront of handling criminal cases, investigators are expected not only to carry out their duties in accordance with the applicable law, but also to be able to assess the situation wisely.

Discretion is an important tool for investigators to make decisions that are not only legal, but also fair and on target. In complex situations, where the law may not provide sufficiently specific guidance, the investigator needs to use his or her professional judgment to determine the most appropriate course of action, in the public interest and justice. In addition, as law enforcers, investigators have a responsibility to ensure that the investigation process does not just fulfill legal procedures, but also achieves a larger goal, namely substantive justice. In some cases, legal actions that are too rigid or too procedural can actually harm certain parties or society in general. Therefore, discretion is essential for investigators in balancing legal provisions with conditions in the field. With discretion, investigators can make more flexible decisions, for example, by choosing not to continue investigations into minor offenses that do not have a serious impact, so that police resources can be focused on more serious cases.

Furthermore, the discretion possessed by investigators also functions as an adaptive mechanism that allows law enforcement to remain responsive to evolving social dynamics.

Investigators must be able to adjust their approach in accordance with changes in social, economic, and cultural conditions in the community. The ability to exercise discretion wisely allows investigators to act in a more humane and contextual manner, so that law enforcement is acceptable to the wider community. In this case, investigators as law enforcers are not only enforcers of rules, but also guardians of the values of justice that live in society, which in turn can strengthen public trust in police institutions.

Situation Under Investigation

In carrying out investigation duties, a police investigator pays close attention to the situation and conditions of criminal cases involving the perpetrators. One of the obstacles to discretionary actions by investigators is if the victim refuses to dismiss the case and urges the investigator to continue the investigation process. This is an important factor that must be considered in every legal problem faced by police investigators.

The assessment of whether a case requires discretionary action by an investigator is very important. Existing situations and conditions often determine whether investigators need to exercise their discretionary authority in handling criminal cases. If according to the police's assessment, the case is a complaint that is considered light and ineffective to be further processed through investigation, then the discretionary authority possessed by the investigator becomes very useful and effective in this context.

External Factors

An external factor that encourages investigators to use their discretionary authority when investigating traffic accident cases is the support of the community. This support is very important because the public interest is closely related to the community. The public as a party involved in the investigator's view can influence the decision whether discretionary actions should be carried out or not. Therefore, the public's view of a case is very important to ensure the effectiveness of the investigation process. Investigators need to ensure that the discretionary actions taken do not cause a negative impact on the community.

Public support is very important for the police in improving the performance and professionalism of police officers in an effort to eradicate crime that threatens a sense of security and peace in daily life. The community plays a role as social control over the police apparatus, ensuring that law enforcement runs well as part of the supervision process (gate keeper in the process). The process carried out by the police is included in the criminal justice system, especially in the investigation stage.

Discretionary actions are very important as a driving factor because in some criminal cases, continuing the case can cause new conflicts and problems, or involve perpetrators who are young and have a long future. In carrying out criminal investigations, an investigator often faces challenges related to the fulfillment of the rights of criminals. These rights include obtaining legal assistance from an advocate and social support from the community as a form of supervision or control over the investigator's authority. This effort is important to improve the quality of law enforcement, both now and in the future.

It is true that state administrators have the authority to make laws and regulations with the aim of changing the structure and improving social order to be in accordance with the ideals of the state (Harmono & Nurwenty, 2021). In addition, community support also functions as a form of social control that can direct the use of discretion in a more positive direction. People who are active and concerned about the law enforcement process tend to encourage investigators to use their discretion more wisely and responsibly. When investigators know that the public is observing and supporting their actions, they are more likely to consider the long-term impact of their decisions and avoid actions that could harm the community or cause public dissatisfaction. Public support not only provides moral

strength for investigators, but also ensures that discretion is used in the public interest, so that law enforcement can run more effectively and efficiently.

The community's demands for the quality of law enforcement today do not only focus on the formal aspect, but rather on the quality of law enforcement materially or substantially. This can be seen from several main issues raised by the community, including (Arief, 2008):

- 1) Protection of human rights (HAM)
- 2) Upholding the values of truth, honesty, justice, and mutual trust
- 3) Avoidance of abuse of power or authority
- 4) Free from the practice of favoritism or favoritism
- 5) The realization of independent judicial power or law enforcement and the enforcement of the code of ethics or professional code,
- 6) Implementation of clean and authoritative government.

CONCLUSION

The study emphasizes the importance of police discretion in resolving traffic accidents at the investigation level, ensuring fairness, efficiency, and public interest. It emphasizes the need for careful application of discretion based on clear guidelines to maintain legal and ethical standards. In Indonesia, police discretion is regulated by Article 18 paragraph (1) of Law Number 2 of 2002, allowing officers to act based on their own judgment in the public interest. However, this can only be implemented in urgent circumstances, requiring adherence to laws and regulations and the police's professional code of ethics. Future research could explore the effectiveness and challenges of implementing discretion in traffic accident investigations across different jurisdictions or regions, analyzing its impact on fair and efficient outcomes. Additionally, investigating training and guidelines' role could provide valuable insights for improving discretion's application. This research could contribute to refining police discretion policies and practices, ensuring they balance flexibility with adherence to legal and ethical standards.

REFERENCES

- Afolabi, J. A., & Kolawole, T. G. (2017). Road Traffic Crashes In Nigeria: Causes And Consequences. *International Journal of Shipping and Transport Logistics*, 17(April).
- Akosa, F., & Asare, B. E. (2022). Street-Level Bureaucrats and the Exercise of Discretion. In *Global Encyclopedia of Public Administration, Public Policy, and Governance* (pp. 12397–12402). Springer International Publishing. https://doi.org/10.1007/978-3-030-66252-3_3353
- Anjuman, T., Hasanat-E-Rabbi, S., Siddiqui, C. K. A., & Hoque, M. M. (2007). Road Traffic Accident: a Leading Cause of the Global Burden of Public Health Injuries and Fatalities. *International Conference on Mechanical Engineering, 2007*(December).
- Arief, B. N. (2008). *Mediasi Penal (Penyelesaian Perkara di Luar Pengadilan)*. Pustaka Magister.
- Bacon, M. (2017). *Taking Care of Business: Police Detectives, Drug Law Enforcement and Proactive Investigation*. OUP Oxford. <https://books.google.co.id/books?id=txzRDAAAQBAJ>
- Bagasatwika, A. (2020). Electronic Traffic Law Enforcement: Is it Able to Reduce Traffic Violations? *Unnes Law Journal*, 6(1). <https://doi.org/10.15294/ulj.v5i1.28642>
- Bonner, H. S. (2018). The decision process: police officers' search for information in dispute encounters. *Policing and Society*, 28(1). <https://doi.org/10.1080/10439463.2016.1147040>
- Chan, J., & MOSES, L. B. (2014). Using big data for legal and law enforcement decisions : testing the new tools. *University of New South Wales Law Journal*, 37(2).

- Chen, Y., Li, Y., King, M., Shi, Q., Wang, C., & Li, P. (2016). Identification methods of key contributing factors in crashes with high numbers of fatalities and injuries in China. *Traffic Injury Prevention, 17*(8). <https://doi.org/10.1080/15389588.2016.1174774>
- Degollado, J. P. B. (2023). Factors Affecting the Exercise of Police Discretion as Perceived by the Sorsogon City Police. *Journal of Advances in Humanities Research, 2*(2). <https://doi.org/10.56868/jadhur.v2i2.131>
- Golan-Nadir, N., Cohen, N., & Rubin, A. (2022). How citizens' dissatisfaction with street-level bureaucrats' exercise of discretion leads to the alternative supply of public services: the case of Israeli marriage registrars. *International Review of Administrative Sciences, 88*(4). <https://doi.org/10.1177/0020852320972177>
- Gomes de Almeida, F. E. (2020). POLICE DISCRETION AND PROCEDURAL JUSTICE. *Revista Do Instituto Brasileiro de Segurança Pública (RIBSP), 4*(8). <https://doi.org/10.36776/ribsp.v4i8.120>
- Harmono, H., & Nurwanty, I. I. (2021). Urgensi Good Will Pemerintah dalam Pembentukan Undang-Undang yang Baik. *Syntax Literate; Jurnal Ilmiah Indonesia, 6*(2). <https://doi.org/10.36418/syntax-literate.v6i2.2237>
- Hassan, M. S., Ariffin, R. N. R., Mansor, N., & Al Halbusi, H. (2023). The Moderating Role of Willingness to Implement Policy on Street-level Bureaucrats' Multidimensional Enforcement Style and Discretion. *International Journal of Public Administration, 46*(6). <https://doi.org/10.1080/01900692.2021.2001008>
- Khan, K., Zaidi, S. B., & Ali, A. (2020). Evaluating the nature of distractive driving factors towards road traffic accident. *Civil Engineering Journal (Iran), 6*(8). <https://doi.org/10.28991/cej-2020-03091567>
- Martha, D. A., & Sutrisno, E. (2018). Pelaksanaan Diskresi Kepolisian dalam Penyelesaian Tindak Pidana Lalu Lintas Studi di Kepolisian Resor Kuningan. *Syntax Literate; Jurnal Ilmiah Indonesia, 3*(5).
- Mohammed, A. A., Ambak, K., Mosa, A. M., & Syamsunur, D. (2019). A Review of the Traffic Accidents and Related Practices Worldwide. *The Open Transportation Journal, 13*(1). <https://doi.org/10.2174/1874447801913010065>
- O'meara, K. (2021). Leveraging, checking, and structuring faculty discretion to advance full participation. *Review of Higher Education, 44*(4). <https://doi.org/10.1353/RHE.2021.0012>
- Pukalskas, S., Pečeliūnas, R., Sadauskas, V., Kilikevičienė, K., & Bogdevičius, M. (2015). The methodology for calculation of road accident costs. *Transport, 30*(1). <https://doi.org/10.3846/16484142.2015.1020871>
- Skinns, L., Sorsby, A., & Rice, L. (2020). "Treat Them as a Human Being": Dignity in Police Detention and Its Implications for 'good' Police Custody. *British Journal of Criminology, 60*(6). <https://doi.org/10.1093/bjc/azaa051>
- Soehodho, S. (2017). Public transportation development and traffic accident prevention in Indonesia. *IATSS Research, 40*(2). <https://doi.org/10.1016/j.iatsr.2016.05.001>
- Susilo, Y. O., Joewono, T. B., & Vandebona, U. (2015). Reasons underlying behaviour of motorcyclists disregarding traffic regulations in urban areas of Indonesia. *Accident Analysis and Prevention, 75*. <https://doi.org/10.1016/j.aap.2014.12.016>
- Tacconi, L., Rodrigues, R. J., & Maryudi, A. (2019). Law enforcement and deforestation: Lessons for Indonesia from Brazil. *Forest Policy and Economics, 108*. <https://doi.org/10.1016/j.forpol.2019.05.029>
- Walsh, D. P. J., & Conway, V. (2011). Police governance and accountability: Overview of current issues. *Crime, Law and Social Change, 55*(2–3). <https://doi.org/10.1007/s10611-011-9269-6>

- Wilson, J. M. (2012). Articulating the dynamic police staffing challenge: An examination of supply and demand. *Policing*, 35(2). <https://doi.org/10.1108/13639511211230084>
- Yao, W. (2023). Police Discretion: A Power that Can Be Abused and Should Be Regulated. *Proceedings of the 2nd International Conference on Culture, Design and Social Development (CDSO 2022)*. https://doi.org/10.2991/978-2-38476-018-3_73

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