

Implementation of Discretion Perspective of Penal Policy (Study of Yogyakarta Police Department)

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The purpose of this research is to know the regulation of police discretion of Yogyakarta special region in criminal law enforcement and how to apply police discretion in criminal law enforcement in terms of penal policy aspect. The implementation of the special police discretion of the special region of Yogyakarta is guided by the provisions of written rules and unwritten rules that live in the community and is guided by the lines of criminal law policy. The application of the special area police discretion of Yogyakarta can be applied by investigators and investigators through restorative justice approaches in certain cases, the settlement in this way is a form of protection to both the perpetrator and the victim in order to reach a peace agreement.

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INTRODUCTION

THE 1945 Constitution of the State of the Republic of Indonesia in Article 1 Paragraph 3 states the form of the state of Indonesia as a state of law.¹ Whereas the definition of the rule of law itself is to limit the state's power to the attitudes of the rulers and the state apparatus, and to regulate all citizens based on the law.²

The law enforcement apparatus in carrying out its obligations, which guides not only on the substance of the law, but has to explore the living norms of society supported by good knowledge, interpretation, logic, and conscience so that law enforcement can be carried out with correct. In law enforcement, of course, cannot be separated from some aspects that support the establishment of law but need to master the principles contained in the criminal law, interpretations and analogies and mastery of criminal law theories.

¹ Art 1 (1) 1945 Constitution of Indonesia

² Abdul Aziz Hakim, 2011, *Negara Hukum Dan Demokrasi Di Indonesia*, Yogyakarta, Pustaka, p.8

The criminal justice system that used to solve the criminal cases emphasized that justice in society is not necessarily guaranteed because the criminal justice system is not the only tool for the parties who demand justice against him, so many several theories that emerged and a way out community justice can be obtained one of them is through efforts through restorative Justice, through the efforts by using this victim and the perpetrator of crime can get a good solution that is peaceful effort.

In the legal system there is a chain that should not break up with each other, when the legal system is applied in the criminal justice process the link must be maintained, the link in question is the structure, the substance, and the culture must remain mutually interact.³

Law enforcement process if implemented without seeing the values in the legal system will have a bad impact in society, the values that exist in the legal system such as philosophical, sociological and juridical values are always contradictory then the objectives of law enforcement cannot run well. In these three values contain the meaning of justice, benefit and legal certainty, these three values should not be contradictory and must be in line. In this context—implementation of law enforcement—people expect that law enforcement should more professional, because in law enforcement did not give sense of justice in society in general.⁴

Implementing law enforcement is a task that must be carried by law enforcement officers, such thing is an obligation that must be implemented.⁵ Implementation of law enforcement is a very difficult profession demands, because it must be done professionally supported by true science. In carrying out professional duties there must be factors that can support the passage of duties as well as having very disciplined personality, physical and physical health well.⁶

In the opinion of Satjipto Rahardjo in carrying out law enforcement need to see the relationship or correlation between law enforcement with society, because law enforcement is not independent activity, but there is mutual relationship with society, law enforcement implementation also influenced by society structures which exist behind him. the community can be a constraint, because in society consists of various dimensions, either in the form of social facilities and social conditions that allow law enforcement to run, or cannot be run, because the structure of society can be obstacles that

³ Lawrence M. Friedman, 2013, *Sistem Hukum Perspektif Ilmu Sosial*, translated from Lawrence M. Friedman, *The legal System Social Science Persfpective*, Bandung, Nusamedia, p. 17.

⁴ Bagir Manan, 2009, *Menegakan Hukum Suatu Pencarian*, Jakarta, Asosiasi Advokat Indonesia, p.51.

⁵ Bernard L Tanya, 2011, *Penegakan Hukum Dalam Terang Etika*, Yogyakarta, Genta Publishing, p. 25.

⁶ Neal E. Trautman, ny, *Police work A Career Survival Guide*, Pearson Prentice Hall Upper Saddle River, New Jersey 07458, p. 126.

cause law enforcement cannot be run carefully.⁷

One of the law enforcement agencies to be discussed in this paper is the police institution as an investigator institution in Indonesia which is regulated in Law No. 8 of 1981 on the Criminal Procedure Code and some of its provisions regulate the authority of the police institution in performing the duties and obligations in handling a case. According to Marcus Priyo Gunarto, that the police institution is one component of the criminal justice system in Indonesia, this institution is the first entrance of a criminal case, so in the criminal justice system, the police institution in handling a case or case must be charged with sensitivity.⁸

The police in applying discretionary measures, not rigidly bound to the sentence of a rule. In law enforcement, members of the police force must act quickly, as opposed to concrete cases, the police force needs ample room for the action to reach the goal and succeed in its task.⁹ In applying the discretion, the police often experience obstacles or factors that can hinder the task, so that in applying the provisions of criminal law need the existence of policies, such as stopping or putting aside the criminal case that is deemed accountable from the angle of police duties.¹⁰

The police of Indonesia continue to improve and improve the quality of service, integrity and professionalism. Progress and development of science and information technology become the demands and expectations of the public for the performance of police and it is possible to do repositioning that leads to strengthening the role and function of the police in carrying out the duties and authorities as a police. Performing a reposition is a step to answer various problems and challenges in the task, as the reason for repositioning and fulfillment of the demands and expectations of the community to materialize, safe life peaceful society, orderly, prosperous, and realize the police beloved and trusted the community.¹¹

If looking at the characteristics of the police in carrying out its work very closely with the use of coercive power, it often leads to negative assumptions of the community, as well as in making decisions that must be done individually or individually. Decision-Making The need for maturity in action by promoting moral considerations, rationality and prioritizing public interest, inadequate policy making and excessive use of police power will have a disadvantageous effect, although on the grounds that safeguarding is the

⁷ Satjipto Rahardjo, 2009, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Yogyakarta, Genta Publishing, p. 31.

⁸ Marcus Priyo Gunarto, 2000, "Sikap Memidana Yang Berorientasi Pada Tujuan Pidanaan", *Mimbar Hukum*, 21 (1), p. 94.

⁹ Satjipto Rahardjo, 1980, *Hukum Masyarakat Dan Pembangunan*, Bandung, Alumni, p. 148.

¹⁰ Marcus Priyo Gunarto, 1994, "Batas-Batas Pengguna Diskresi Dalam Penanggulangan Kejahatan Pelajar Dan Mahasiswa Di Wilayah Polwil Yogyakarta Dan Polres Klaten", *Research Report*, FH UGM, Yogyakarta, p. 41.

¹¹ Suara Kompas April, 2014, *Bersama Membangun Polri Yang Professional dan Mandiri*, p. 14.

primary duty of the police by using refreshing measures always take precedence but sometimes tend to appear abuse of power or abuse of police power that violate human rights.¹²

In carrying out the duties of police officers are often confronted with two impressions of characters or mythic image, members of the police force as criminals and control of public order.¹³ These two can be done by investigating and investigating the crime, this activity also to anticipate the occurrence of crime as well tackling crime as a whole, it is the duty of the police all over the world. Investigation and investigation activities are an attempt to make the light of a criminal case based on the ability and skills of collecting evidence so that the suspect can be prosecuted.¹⁴

Investigation and investigation activities are part of preliminary investigations or preparation for prosecution and authorities, investigations and investigations are police actions to carry out repressive tasks. While the police action in general to maintain public order and obedience to the law is a preventive task. The two police tasks are interrelated, but must be strictly separated to avoid mistakes in acts leading to the abuses of authority and unlawful acts by police officers.¹⁵

IMPLEMENTATION *of* DISCRETION ON YOGYAKARTA POLICE DEPARTMENT

The Setting of Discretion in the Police

This description of restorative justice is explained by many scholars in several writings, whether in a book or in an article or journal. Furthermore, the elaboration of the definition of restorative justice in the opinion of Horward and Marshall as cited by Marwan Effendy is:

The concept of criminal justice which views criminal acts as a crime against the public is not a crime against the state and to create obligations for victims and society to improve it. This concept focuses on the dangers of crime rather than the violation of a provision and outlines the relationship between the victims of society against the offenses associated with the punishment imposed by the state. The restorative justice model provides the right, direct and indirect dialogue between victims and perpetrators in the form of mediation

¹² M. Wresniwiro, 2000, *Membangun Polisi Profesional*, Jakarta Mitra Bimtimas, p.96.

¹³ Jenifer M. Brown, 1994, *Stress and Policing Sources and Strategies*, England Jhon Wiley and Baffins lane, chichester west Sussex, Wiley Publishing, p. 151.

¹⁴ *Ibid.*, p. 274.

¹⁵ Bambang Poernomo, 1988, *Pola Dasar Teori Dan Azas Umum Hukum Acara Pidana*, Yogyakarta, liberty, p. 39.

between victims and perpetrators.¹⁶

The concept of restorative justice according to Yoachim Agus Tridiartono is a form of justice that focuses more on the needs of victims, perpetrators of crime and society. So that the victim becomes the object of suffering from the consequences of the crime committed by the perpetrator, the victim holds accountable to the perpetrator for the deed done to the victim, so that the dignity of the perpetrator can also be recovered so that the society condition becomes harmonious on agreement between the victim and the perpetrator to make peace so there is no vengeance between perpetrators and victims.¹⁷

Similarly, in the opinion of Susan Sharpe as cited by Allison Morris and Gabrielle Maxwell that there are five principles of restorative justice in solving criminal cases so that police action can be done by the police:

- a. Requesting the participation of other parties to the agreement of both parties, the victim and the perpetrator so that the community may be involved or an interested person interested in participating in the settlement of the problem.
- b. Seeing what has been damaged for correction, the victim and the perpetrator to both mutually improve and both parties must be able to escape from mistakes or fears, they need to require a solution that underlies the conflict or the problem of evil, both parties are given the opportunity to use the mind with correct.
- c. Directly look at the situation to be accountable, although it is not so easy that the offender must face the fact that they have violated the law, they must also meet with the person who suffered a loss and see how their actions against other damage. Various interested parties expect an explanation of what happened to the victim and the community so as to make sense of it. Parties will always expect to take rare to repair the damage.
- d. Redefining the things that have split the cause of the crime between the people in society that caused enormous damage. The restoration process works directly towards peace for victims and perpetrators to reintegrate into society. Holding to the restorative view between the victim and the perpetrator is only temporary and non-permanent. Each of them thinking about the future and forgetting the past. Not too long establish the cause of loss and suffering.
- e. Can see ways to strengthen the community in maintaining the order so that there is no damage.¹⁸

¹⁶ Marwan Effendi, 2014, *Teori Hukum dari Perspektif kebijakan Perbandingan dan harmonisasi hukum Pidana*, Jakarta, Gaung Persada Press Group, p.132

¹⁷ Yoachim Agus Tridiartno, 2015, *Keadilan Restoratif*, Yogyakarta, Cahaya Atma Pustaka, p. 27.

¹⁸ Allison Moris dan Gabrielle Maxwell, 2001, *Restorative Justice for Juveniles*, Oxford Hart Publishing, Portland Oregon, pp. 5-6.

Similarly, on the principles of restorative justice, according to Tony Marshall and Susan Sharpe, quoted by Marlina that this principle has actually been practiced for thousands of years by the community even though non-formal. Thus it is further argued by Marlina that in Indonesia restorative justice is often used in some areas with the term of familial settlement, it is a tradition in society, this form of practice has also developed as in European countries, America, Canada, Australia and New Zealand in terms which are different but in principle the same.¹⁹

The general discretion according to Lawrence M. Friedman that this discretion has a variety of meanings but more to the consideration of very subjective thinking, meaning that when faced with a case in the implementation of law enforcement with the authority or power and the status of law enforcers can choose among various alternatives, because in principle the rules of law have several aspects and have a double meaning both to legal officers and to the public.²⁰

Similarly, opinion Prawira *et al* in Legowo Saputro explain the form of discretion can be grouped into two consisting of:

- a. The discretion is individualized, the discretion done by the police officers in the field based on the knowledge and understanding that is considered correct, usually the implementation and implementation in the field based on emergency situations and conditions so that without any observation or in-depth research on what he decided.
- b. The discretion made is organizational usually the guidelines are the policies of the applicable bureaucracy.²¹

In the implementation of discretion even though its implementation rests on the mind and conscience of individual members of the police force, but there are still arrangements as a guide so as not to get out of the legal purpose. Discretionary arrangements in his opinion Roger Cotterrell says the use of things is required not to set standards in legislation, administration and in court. While a legal regulation requires that official government action be controlled by a clear regulation that allows the creation of the essentials of citizens' rights and duties. A discretionary rule in his opinion emphasizes relativity and virtue in implementing a policy in official government action rather than formal execution according to the rules, so discretionary arrangement is often interpreted as the main thing in the substantive law as a form of fulfillment of certain political goals, social benefits and moral values through law.²²

¹⁹ Marlina, 2012, *Peradilan Pidana Anak Di Indonesia, Pengembangan Konsep Diversi dan Restorative Justice*, Bandung, Reflika Aditama, pp. 180-181.

²⁰ Lawrence M. Friedman, 2009, *Sistem Hukum*, Bandung, Nusamedia, p. 42

²¹ Legowo Saputro, 2015, "Diskresi Anggota Kepolisian Negara Republik Indonesia Dalam Penanganan Aksi Unjuk Rasa Dan Implikasinya Terhadap Ketahanan Wilayah", *Thesis*, Yogyakarta, Universitas Gadjah Mada.

²² Roger Cotterrell, 2012, *Sosiologi Hukum*, Bandung, Nusamedia Ujung Berung, p. 225

Similarly, discretionary arrangements according to Hon Edward F Wait that the police officer in performing the task field, when found a criminal act can directly arrest but may not directly conduct a detention even in the event of a crime or violation with some evidence in hand even if police officers directly or automatically make a detention, in addition to the application of police-party discretion, it must also require some experts to clearly define the efforts undertaken for law enforcement in certain acts.²³

Legal Basis for Implementation of Discretion on Yogyakarta Police Department

Police in acting based on their authority have never escaped and are always in touch with human rights in terms of what actions of the police, the reasons for the authors pointing out here in some provisions of article by article and several verses are put forth in its entirety in order to make clear the actions taken by the police shall be governed in several statutory provisions and rules under the law or the decision of the head of the police, if related to the opinion of Utrecht as cited by Untung S. Rajab all police authorities in acts governed by such provisions in their respective acts the police always require discretion.²⁴

In the provisions of Law Number 30 of 2014, Article 30 paragraph (1) on Government Administration explains the category beyond the authority when applying discretion, such as acting has passed the time limit of the authority of an official granted by the provisions of legislation, with the general principles of good governance, if this is done then the act of discretion is invalid.

As the basis of behavior in acting in applying discretion, the regulation is regulated in the provisions of Article 1 of Regulation of the Head of State Police of the Republic of Indonesia Number 14 Year 2011 regarding Code of Ethics of the Police Professional of the Republic of Indonesia. Article 1 point 5 is the code of ethics of the Police profession, hereinafter abbreviated as KEPP²⁵. Then in Article 4 describes some ethics that must be executed by members of the Indonesian republic police in carrying out their duties and authorities are: (1) State Ethics; (2) Institutional Ethics; (3) Community Ethics; and (4) Personality Ethics.

Of the several ethics that must be carried out above in the provisions of Article 5 of the Indonesian National Police Regulation No. 14 of 2011 on

²³ Hon Edward F Wait, 1911, "Police Discretion in the Enforcement of Law", *The American Institute of Criminal Law And Criminology*, 1 (5), pp. 794-795

²⁴ Untung S. Rajab, 2003, *Kedudukan Dan Fungsi Polisi Republik Indonesia Dalam Sistem Ketatanegaraan Berdasarkan UUD 1945*, Bandung, CV Utomo, p.214

²⁵ Definition of KEPP itself is the norms of the rules which constitute the unity of the ethical or philosophical foundation relating to the behavior or speech regarding the things that are required, prohibited, inappropriate or inappropriate to be done by the Polri members in performing the duty, authority and responsibility of the position

police ethics, re-explain the state ethics which contains the guidelines of behaving Police Members in relation to the establishment of the Unitary State of the Republic of Indonesia or NKRI, Pancasila, The Basic State of the Republic of Indonesia of 1945, and Bhineka Tunggal Ika (*Unity in Diversity*).

In the state ethics described also in Article 6 which must be implemented by members of the Indonesian republican police that is loyal to the Republic of Indonesia based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, safeguarding the internal security which includes maintaining the security and order of society, order and law enforcement, the implementation of the protection, protection and public service, and the establishment of the tranquility of the people by promoting human rights, maintaining the unity of the nation and the unity of the nation in Bhineka Tunggal Ika with the high end of the sovereignty of the people, prioritizing the interests of the nation and NKRI rather than self-interest, person and/or class. Later in institutional ethics contains guidelines to behave members of the Police in relation to the *Tribata* as a living guide, *Catur Prasetya* as a work guide. In social ethics contains guidelines for behaving of members of the police in relation to the maintenance of public order or security or order, law enforcement, protection, guidance and community service.

In personality ethics contains guidelines for behaving of members of the Police in relation to religious life, obedience and obedience to the law and manners in family life, community, nation and state. Furthermore, for Institutional Ethics, it is also described in Article 7 paragraph (1) that the Police Force is obliged to be loyal to the police as a service to the community, nation and state by guiding and expanding the *Tribata* and *Catur Prasetya*, maintaining and enhancing the image, solidarity, credibility, reputation, and the honor of the Police, carrying out their duties professionally, proportionally and procedurally, to resolve the task carefully and responsibly.

From several provisions regulated by law and regulation concerning police duties and authorities there are matters to be considered as well as the provisions set forth in Article 8 of the Regulation of the Head of State Police of the Republic of Indonesia Number 14 Year 2011 regarding the Code of Ethics of the State Police of the Republic of Indonesia which stated that: Each Police Member shall prioritize roles, duties, authorities and responsibilities under the provisions of legislation rather than status and rights, taking into account religious norms, morality norms, and the values of local wisdom.

The provisions of Article 8 have been described in the above discretionary measures set out by Roger Cotterell, that members of the police force should prioritize the public interest in performing duties rather than

personal or group interests.²⁶ When there is a suspicion of a criminal offense, a police officer in the process of investigation or investigation of a case, a member of the police has an obligation to carry out, it is also regulated in the police code of ethics Article 9 stipulates: Every member of the police who performs law enforcement tasks as investigator investigator assistants and investigators are obliged to conduct investigation of criminal case investigation and resolve in accordance with the provisions of legislation and report the results of the implementation of their duties to the superior investigator.

As the state apparatus in the case of law enforcement as described above in the social ethics of each member of the police in carrying out the duty, of course always dealing with the public so as the state apparatus that the position attached to a member of the police force can act on their own without prior orders from the superiors , the act is always related to the interests of the community, as well as to public order and peace, but with the limits set in ethics as described in Article 10 code of ethics each Police Member shall:

1. Respect human dignity and human dignity based on basic principles of human rights;
2. Uphold the principle of equality for every citizen before the law.
3. Providing services to the public quickly, accurately, easily, comfortably, transparently and accountably in accordance with the provisions of laws and regulations;
4. Performing the first police action as required in the police duties, whether on duty or off duty.
5. Providing public information services to the public in accordance with the provisions of legislation;
6. Upholding honesty, truth, justice and maintaining honor in dealing with society.

The provisions of Article 11 of the Regulation of the Head of Police of the Republic of Indonesia No. 14 of 2014 concerning the ethics of police members that every member of the Police has the obligations set forth in the provisions of the rules such as the obligation to believe and cautious to the omnipotent God, be honest, trustworthy, responsible, disciplined, working together, fair caring, responsive, assertive and humane, and obeying and respecting the norms of decency, religious norms, the values of local wisdom and legal norms. The provision of this Article 11 is necessary to be explained because the provisions if applied are a reflection of the morality of police personnel.

²⁶ Roger Cotterell, *op,cit.*

Similarly, in the opinion of Don L. Kooker, the code of ethics serves as a standard to justify the rules on the behavior of police officers and its provisions can be used. The code of ethics can also provide a very objective underlying understanding of the standardization of rules in general in which the provisions of legislation or the rules of the police agency can help to conform.²⁷

IMPLEMENTATION OF DISCRETION PERSPECTIVE OF PENAL POLICY IN INDONESIA (STUDY ON YOGYAKARTA POLICE DEPARTMENT)

IMPLEMENTING law enforcement is the main duty of the police throughout the world, as well as with the special district police of Yogyakarta (POLDA DIY), that law enforcement can be done with criminal law policies aimed at preventing and tackling crime, so according to Barda Nawawi efforts or policies to prevent and the prevention of crime is inseparable from the social policy that is the policy or efforts to provide welfare to the community and protect the community, so in the prevention of crime committed by using penal means at the application stage should pay attention and lead to the achievement of the goal of social policy.²⁸

According Remington and Ohin as quoted by Romli Atmasasmita, argued that the criminal justice system can be interpreted as a system approach to the interaction of law enforcement elements in the administration of justice.²⁹ In the judicial system in the opinion of Helbert L Packer that the criminal justice system has two models: *crime control model* and *due process model*, the two system models referred to by Packer, if using a crime control model provide an illustration that professional action is required because this model is more likely to emphasize aspects of war against criminals in the judicial process, while the due process model is more to the process and tend is in the middle.³⁰ Furthermore, according to Packer crime control model more to efficiency in criminal justice process more to applying principle of presumption of guilt, while due process model more to applying presumption of innocence principle, the two models are conflicting ideas, the presumption of innocence cannot predict

²⁷ Don L. Kooker, 1947, "Ethics in Police Service", *Journal of Criminal Law and Criminology*, 38 (1): 61-74

²⁸ Barda Nawawi Arif, 2007, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Jakarta, Kencana Prenada Media Group, p. 77.

²⁹ Romli Atmasasmita, 2010, *Sistem Peradilan Pidana Kontemporer*, Jakarta, Kencana Prenada Media Group, p. 2.

³⁰ Helbert. L. Packer, 1986, *the Limits of The Criminal Sanction* (Chapter Eight, Two Model Of The Criminal Process), California, Stanford University Press Stanford, p. 157.

the outcomes and consequences that will occur or the impact of the process, whereas the presumption of guilt presumption can predict the outcome or impact.³¹

According to two models presented by Packer, in the judicial system can be an analytical tool for the judicial system in Indonesia, especially the judicial system conducted by the special district police of Yogyakarta, whether to use one or combine the two models, if the two models are connected with discretion, according to the author of crime control model if in the application of discretion using this model in the criminal justice system or the criminal justice system (SPP) is more likely to apply the discretion used is individual or individual of the police members, while the due process model if the application of discretion in this model, more to the action of discretion done by the police institution or organization.

If it is related to the discretion actions conducted by the Yogyakarta special region police with the opinion of legal experts such as Bentham against the above case examples, it has correlation so that the actions taken by the special region Yogyakarta police according to the author has been extraordinary, because of the policy it is the rights of the perpetrator and the victim both can be protected. If the policy adopted by the Yogyakarta provincial police investigator connected with Bentham's opinion states that the application of the criminal law in a case has absolutely no value of justification, if merely applied or imposed, because it always gives a lot of suffering or even harm community.³²

Departing from this thinking according to Heather Strang and Jhon Braithwaite that criminal prosecution in today's criminal justice system always involves victim and perpetrator in decision making, so that sanction given to perpetrator also pay attention to his rights and life in the future.³³ From the opinion of experts or doctrines already described above, as well as the application of special police discretion in Yogyakarta, so the writer took the red thread between the interview with the investigator about the implementation process of punishment conducted by the Yogyakarta Special Police, that the application of discretion in the new breakthrough by the investigators of the Yogyakarta regional police are still in certain cases who are concerned about the rights of the victims and demand the obligations that must be fulfilled by the perpetrators of crime as in the example of the above case

Table 1 Number of Discretion Cases in Yogyakarta, on 2015

No	Type of Crime	Provision	Number	Other Explanation
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³¹ *Ibid.*

³² Eddy.O. Hieriej, 2006, *Teori Perundang-undangan: Prinsip-Prinsip Legislasi Hukum perdata Dan Hukum Pidana*, Nurhadi (Trans), Nuansa, Bandung, p.25

³³ *Ibid.*, p. 26

1	Crime of false notice	KUHP	1	Not explained
2	Theft and violence	KUHP	1	Not explained
3	Domestic violence	KUHP	2	Not explained
4	Adultery	KUHP	2	Not explained
5	Serious deeds	KUHP	1	Not explained
6	Fraud	KUHP	3	Not explained
7	Fraud and embezzlement	KUHP	10	Not explained
8	Falsification of letters	KUHP	1	Not explained
9	Embezzlement	KUHP	1	Not explained

Source: Yogyakarta Police Department.

Table 2 Number of Discretion Cases in Yogyakarta, on 2016

No	Type of Crime	Provision	Number	Other Explanation
1	Fraud and embezzlement	KUHP	3	Not explained
2	Domestic violence	KUHP	2	Not explained
3	Persecution	KUHP	1	Not explained
4	Embezzlement	KUHP	2	Not explained

Source: Yogyakarta Police Department.

From the data obtained from the police in Yogyakarta Special Region Police (POLDA DIY) in 2015 which is in the table compiled by the author there are 9 types of crime with each number of cases that have been done discretion action with the total number of cases, 22 cases, the authors make in the form of data tables in order to easily find out the number of cases that have been done discretion by the police in the special district police Yogyakarta (POLDA DIY). Of the above cases the most numerous are cases of fraud and embezzlement. Regarding Article which is imposed in each case is not explained as seen in the table above, it is proved that every type of crime contained in the table of Year 2015 has been undertaken discretion measures. With the example of the above cases it is evident that the application of discretion by the police in the police of POLDA DIY is a form of criminal law policy both intended by the explanation of Sudarto and A Murder in *strafrechts politiek*, of 9 types of cases taken discretionary action with a total of 22 of actions or policies that have been done is a very progressive action, because it can see that the criminal acts committed by individuals or society should not be solved by using the principle of legality alone but can be solved by efforts outside the court.

Regarding the data table from the year 2016 above, the implementation

of discretion by the police in the special district police Yogyakarta POLDA DIY of 4 types of cases with the amount of 8 acts of discretion has been done. From the two tables above, the discretion of 2015 to 2016 is evidence that the police in the special district police of Yogyakarta POLDA DIY always apply discretion measures with various types of cases that have been done.

The implementation of discretion by the Yogyakarta Special District Police (POLDA DIY) which has been described earlier by the author, when viewed from the penal policy that the application of discretion in a criminal case is indeed a lot of obstacles to be faced, but to explain things thus first explaining the underlying problem in criminal policy by means of penal or criminal law, as it is a matter of how to determine: (a) What actions should be criminalized; and (b) What sanctions should be used or imposed on the offender.

For two things above can be released from the concept of interconnected, the two concepts above each intended from the concept of criminal policy with the concept of social policy or also called national development policy. The above two concepts should be directed towards achieving certain goals of established social and political policy.³⁴

If we look at the form of the application of discretion by a special region police officer of Yogyakarta (POLDA DIY), in some ways already described above, be it done by the investigator in charge of the field as well as the investigator as the administration in the process of a criminal case. The author explains about discretion and criminal law policy, if interpreted the definition of discretion is a policy conducted by individuals or individuals and organizations, while the understanding of criminal law policy, if re-quotes Marc Ancel's opinion described by Barda Nawawi is a science and art ultimately has a partial purpose to enable the rule of positive law to be formulated better and to provide guidance not only to lawmakers but also to courts that apply the law as well as to the organizers or executing court decisions.³⁵

Continuing the above explanation that criminal justice policy is also synonymous with *Strafrecht politiek*, as Barda Nawawi cites A. Murders's view that *Strafrecht politiek*, is the policy line that determines, how far the applicable criminal provisions need to be changed, what can be done to prevent the occurrence of criminal offenses and regulate the manner in which criminal investigation and execution should be conducted.³⁶

Based on the opinion of A Murder on the application of discretion by a special region police officer of Yogyakarta, if connected with the activities undertaken by the investigator and the investigator has been done and has been applied, even if guided from the opinion of A Murder according to Marc

³⁴ Barda Nawawi Arief, *op.cit.*, p. 30

³⁵ *Ibid.*, p. 23.

³⁶ *Ibid.*

Ancel contrary to the legal system because in an organized society it has a criminal law system consisting of: Criminal law rules and sanctions, a criminal law procedure and a criminal enforcement mechanism. According to the author what A Murder describes is a form and a line of policy in applying an act of discretion that the opinion of A Murder becomes very strong with the policies made by members and officials of the Yogyakarta regional police in solving a criminal case.

If refer to the opinion of A Murder and Marcus Priyo Gunarto that the application of discretion is indeed deviate from the provisions of the law but not contrary to the purpose of law, from the opinion that the discretion applied by members of the special region of Yogyakarta police has been able to say a breakthrough that previously the application of discretion only on but in severe cases discretion has also been applied only to certain severe cases more to the criminal acts committed by the company, although responsible in this regard according to AKBP Riyanto is the owner of the company, such as the case examples described above.

CONCLUSION

THE application of special police discretion of Yogyakarta region conducted by Yogyakarta Police Department, it has been a breakthrough in the criminal justice system which, in the opinion of Howard and Marsall, argued that the criminal justice system has always considered crime more to the people than to the state. From this the pattern of settlement is more priority settlement made by the community itself is the settlement using restorative justice facilitated by law enforcement that is the police. If seen from the pattern of criminal law crime policy conducted by police in POLDA DIY has been a new breakthrough in the application of discretion, investigators and police investigators in POLDA DIY in solve more problems to see the rights of victims and perpetrators so that with the policy it settlement of the case submitted to interested parties and the community. The approach of restorative justice provides benefits to both parties—victims and perpetrators—of the same criminal acts to obtain a peace agreement. If viewed from the aspect of criminal law policy application of discretion conducted by POLDA DIY is in line with the theory put forward by Sudarto and A Murder that his both opinion almost the same explain how the policies that can be taken with guided by existing provisions but can apply.

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Law Adagium

**LEX NEMINI
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The law works an injustice to no
one and does wrong to no one