

The Role of the Police for the Security of Natural Resources is Associated with Constitutional Law

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ABSTRACT

The purpose of this study is to analyze: 1) How is the understanding and regulation of police discretion in laws and regulations in resolving disputes over the use of natural resources? 2) How is the application of police discretion in resolving disputes over the use of natural resources and its contribution to the implementation of ADR in order to uphold *Restorative Justice*?. The research method used is empirical juridical with a legislative approach, a conceptual approach, and a case study.

The results of the study show that: 1) Understanding and regulating the discretion of the police in laws and regulations in resolving disputes over the use of natural resources. The understanding and regulation of the discretion of the Police in the Laws and Regulations in the settlement of disputes over the use of Natural Resources and its contribution to the implementation of ADR in order to uphold *Restorative Justice* in the discretionary authority in the implementation of the duties and functions of the Police in Indonesia is carried out based on justice and usefulness in the implementation with the aim of realizing justice, usefulness and legal certainty. Police discretion is part of the alternative to non-litigation dispute resolution in the role of the police to secure natural resources associated with Constitutional law. 2) The application of police discretion in resolving disputes over the use of natural resources and its contribution to the implementation of ADR in order to uphold *Restorative Justice*. Police discretion in Indonesia is juridically regulated in Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, especially in Article 18 paragraph (1) which stipulates that for the public interest police officers in carrying out their duties and authorities can act according to their own actions and can only be done in circumstances that are very necessary by paying attention to laws and regulations, as well as the Police Code of Ethics.

Keywords: Role, Police, Security, Natural Resources, Constitutional Law

INTRODUCTION

Background

The relationship between the state and natural resources as stated in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution according to the Constitutional Court (MK) is reduced to five functions, namely: regulation (*regelendaad*), management (*beheersdaad*), policy (*regulation*), management action (*bestuursdaad*), and supervision (*toezichthoudensdaad*). The meaning of "*Aglemene* or *generale preventie*, which is prevention aimed at the general public, so that the nature of prevention is general, and *bijzondere* or *speciale preventie*, which is prevention aimed at the criminals themselves (special prevention).¹

The natural resources owned by the State can excessively trigger conflicts, and the growth of the human population will exceed the availability of natural resources. Bongaarts states that mentioning that increasing population and human density leads to scarcity of land and food. While food scarcity causes further environmental degradation such as deforestation, soil salinization, air pollution, and biodiversity extinction.² Natural resource conflicts become big because they are common interests/rights so that the intersection of utilization and use is inevitable.

Thus, conflicts arise not only between individuals, but with corporations, even with the state. This is where personal conflicts develop into *intrastate* conflicts and then develop into global conflicts. Many researchers focus on finding answers to the phenomenon that is developing today, namely how internal conflicts within a country can expand into global conflicts.

Fair management of natural resources is the management of natural resources carried out by the state that is able to provide a degree of happiness to its society as a whole. The degree of happiness of the society as a whole will be seen and seen if individuals in society get satisfaction, because these individuals are the real ones in society.³

¹ Koeswadji, *Environmental Criminal Law*, Citra Aditya: Bandung, 1993, p.12.

² Green, B. E. (2002). *Sharing Water: a Human Ecological Analysis of the Causes of Conflict and Cooperation Between Nations over Freshwater Resources* Dissertation, The Ohio State University.

³ The Liang Gi, *Theories of Justice*, Super, 1979, p. 11.

Conflict resolution in the use of natural resources requires the role of law enforcement, one of which is from the police. The Indonesian National Police (Polri) is a state tool that plays a role in maintaining public security and order, law enforcement, protection, protection, and service to the community in order to maintain internal security. Therefore, the National Police is required to continue to develop to be more professional and closer to the community. The position of the National Police in state organizations has a dominant influence in the implementation of the police in a proportionate and professional manner which is a condition for supporting the realization of good *governance*.⁴

The National Police as the bearer of the mandate of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia has a very strategic position in maintaining the continuity of national development. Likewise, in resolving conflicts regarding natural resources, the National Police has an important role in it as law enforcement officers and security forces where conflicts occur.

One alternative form of dispute resolution outside the court is *Alternative Dispute Resolution* or *Apropriate Dispute Resolution*). *Alternative Dispute Resolution* (ADR) is generally used in civil cases, not criminal cases. In the development of law in Indonesia, based on the applicable legislation, although in principle criminal cases cannot be resolved outside the court, in certain cases it is possible to resolve criminal cases outside the court. The practice of resolving criminal cases outside the court so far has no formal legal basis, so there are often cases where there has been an informal settlement of peace.⁵

The authority to take action given to the National Police can generally be divided into 2 (two), namely: general authorities that are based on actions taken by the police with the principles of Legality and *Plichtmatigheid* which are partly preventive and the second is a special authority as the authority to carry out duties as a tool of the law enforcement state, especially for the purpose of investigation and investigation, where most of them are repressive.⁶

⁴ Sadjijono, 2008, *Police, Police and Good Governance Legal Series*, Laksbang Mediatama, Surabaya, p. 22.

⁵ Priyo Santoso, "Police Discretion Through Penal Mediation (Case Study at the Galur Police Station, Kulonprogo), *Journal of Law Enforcement and Justice*, Vol.1 No.2, 2020, p. 96.

⁶ *Ibid*.

Problem Formulation

1. How is the understanding and regulation of police discretion in laws and regulations in resolving disputes over the use of natural resources?
2. How is the application of police discretion in resolving disputes over the use of natural resources and its contribution to the implementation of ADR in order to uphold *Restorative Justice*?

Theoretical Framework

1. Good Governance Theory

Governance is defined as the mechanism, practice and procedure of government and citizens managing resources and solving public problems. In the concept of *governance*, the government is only one of the actors and is not always the decisive actor. The implications of the government's role as a development and service and infrastructure provider will shift to encourage the creation of an environment that is able to facilitate other parties in the community. *Governance* demands a redefinition of the role of the state, and that means a redefinition of the role of citizens. There are greater demands on citizens, including to monitor the accountability of the government itself.⁷

2. Hierarchy Theory of Legal Norms

According to Hans Kelsen, legal norms are rules, patterns or standards that need to be followed. Then it is further explained that the functions of legal norms, are:⁸ Command, Forbid, Control, Enable, and Save. In specializing in the discussion or discussion of legal rules or norms, it is necessary to understand the theory more deeply "*Stufenbau*" from Hans Kelsen. According to Hans Kelsen, the legal system of a country, is a hierarchical system of legal methods that in its very simple form.⁹

⁷ Sumarto Hetifa Sj, *Innovation, Participation and Good Governance*, (Bandung: Yayasan Obor Indonesia, 2003), pp. 1-2.

⁸ Yuliandri, *Principles of Forming Good Laws and Regulations*, (Jakarta: PT. King Grafindo, 2010), p. 21

⁹ Purnadi Purbacaraka, *Regarding the Rule of Law* (Bandung: Opset Alumni, 1979), p. 41

3. Dispute Resolution Theory

Dean G Pruitt and Jeffrey Z. Rubin put forward a theory of dispute resolution. There are 5 (five), namely: First, *contending* (competition), which is trying to apply a solution that is preferred by one party over the other. Second *yielding* (yielding), that is, lowering one's own aspirations and being willing to accept the shortcomings of what is actually desired. Third *Problem Solving* (problem solving), namely looking for satisfactory alternatives from both parties. Fourth *with drawing* (withdrawing), that is, choosing to leave the dispute situation, both physically and psychologically. Fifth *in action* (silent), that is, doing nothing.¹⁰

4. Environmental Law Theory

In environmental law, it consists of two elements, namely the legal understanding and the environmental understanding. Environmental law is divided into two parts, namely classical environmental law and modern environmental law. Classical environmental law is oriented to environmental use or use oriented while modern environmental law is oriented to the environment.¹¹

5. Restorative Justice Theory

The restorative justive *theory* is one of the theories in law to close the loopholes of weaknesses in the resolution of conventional criminal cases, which is a repressive approach as implemented in the Criminal Justice System. The weakness of the repressive approach as a settlement of criminal cases is that it is oriented towards retaliation in the form of punishment and imprisonment of the perpetrator, but even though the perpetrator has served his sentence, the victim does not feel papacy.¹²

¹⁰ Dean G Pruitt & Z. Rubin, *Social Conflict*, (Yogyakarta: PustakaSiswa, 2004), pp. 4-6.

¹¹ Munadjat Danusaputro, *Environmental Law Book 11*, (Bandung: Binacit National Publisher, 1985), p. 201.

¹² Mansyur Kartayasa, "Restorative Justice and Its Prospects in Legislation Policy" paper presented at the National Seminar, The Role of Judges in Improving Professionalism. Towards Great Research, Organized by IKAHI in the context of the 59th Anniversary of IKAHI, April 25, 2012, pp. 1-2.

Research Methodology

The research in this dissertation is included in the type of non-doctrinal research, where the approach method used is empirical juridical. Empirical research is research conducted by researching primary data, namely data obtained directly from the public. This empirical thinking is also called sociological thinking. The empirical juridical approach examines how normative provisions actually manifest in society.¹³ This sociological approach identifies and conceptualizes law as a real and functional social phenomenon in a real-life system.¹⁴ In this study, the application of police discretion in overcoming conflicts in the use of natural resources is studied.

This data collection method is by *library research* or commonly called literature study, this method is carried out to obtain secondary data both in the form of primary legal materials and secondary legal materials. After being inventoried, a review is carried out to make the essence of each regulation concerned. Data is collected by studying literature sources in the form of literature books, laws and regulations, and collecting existing data in the form of data that is directly related to the research being conducted.¹⁵

RESEARCH RESULTS

Understanding and Regulating Police Discretion in Laws and Regulations in Resolving Disputes over the Use of Natural Resources

Law Number 5 of 1960 concerning Basic Regulations on Basic Agrarian Principles (Statute Book of the Republic of Indonesia of 1960 or better known as the Basic Agrarian Law (UUPA) which is the basis of national land law does not provide an explicit definition or understanding but even though the UUPA does not provide an explicit understanding of what is stated in the considerations, articles, and explanations, it can be concluded that the

¹³ Noor Muhammad Aziz, Legal Research and Assessment of Urgency Establishment of Legislation, *Journal: Rechtsvinding*, Vol 1 No 1, 2012, pp. 17-32

¹⁴ Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: Universitas Indonesia Press Press, 1986, p. 51.

¹⁵ Ediwarman, 2010, *Monograph, Legal Research Methodology*, Postgraduate Program, University of Muhammadiyah North Sumatra, Medan, p. 24 reviews

definition of agrarian and agrarian law is used in very broad meaning.¹⁶ The definition of agrarian according to Article 2 of the UUPA includes the earth, water, and space, not only about land but also includes the earth, water, and space, and the wealth contained in it.

Article 1 paragraph (2) of Law Number 5 of 1960 concerning Agrarian Principles Regulations provides a limit on the ownership of the entire earth, water and space including the natural resources contained in it within the territory of the Republic of Indonesia as a gift of God Almighty is the earth, water and space of the Indonesian nation and is a national asset.¹⁷ Article 2 also affirms that the earth, water, and space, including the natural resources contained therein, are at the highest level controlled by the state, as the organization of power of all the people. In accordance with the principle of nationality contained in Article 1, according to Article 9, only Indonesian citizens can have property rights to land, water, and space, therefore property rights cannot be owned by foreigners.¹⁸ So it means that the state has the authority to control the territory of the Republic of Indonesia, including all customary law community areas.¹⁹

Natural resources are everything in the natural environment that can be used for various human interests and needs to be more prosperous. The 1945 Constitution Chapter XIV, concerning Social Welfare, in Article 33 (3) states that the Earth, Water, and Natural Resources contained therein are controlled by the state and used for the greatest possible prosperity of the people. Based on Article 21 (2) of Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems, hereinafter referred to as the KSDAE Law, everyone is prohibited from:

- 1) Catching, injuring and killing, then storing, and possessing, keeping, transporting, and also trading protected animals alive.
- 2) Catching, injuring and killing, then storing, and owning, keeping, transporting, and also trading protected animals in a dead state.

¹⁶ Boedi Harsono, *Indonesian Agrarian Law, History of the Establishment of Basic Agrarian Law, Its Contents, and Implementation*, Djamban, Jakarta, 2007, p. 6

¹⁷ A.P Parlindungan, *Commentary on the Basic Agrarian Law*, Alumni Publisher, Bandung, 1990, pp. 26-27

¹⁸ Daud Silalahi, *Legal Regulation of Water Resources and Environment in Indonesia*, Alumni Publisher, Bandung, 1996, p. 43

¹⁹ Ali Achmad Chomzah, *Agrarian Law (Indonesian Land)*, Prestasi Pustaka, Jakarta, 2003, p. 49

- 3) Removing protected wildlife from a place in Indonesia to another place inside or outside Indonesia.
- 4) Trading, storing or possessing the skins, bodies, or other parts of protected wildlife or goods made from such parts or removing them from a place in Indonesia to another place within or outside Indonesia.
- 5) Taking, damaging, destroying, trading, storing or possessing eggs and retrieving or nesting of protected animals.

In the KSDAE Law, Article 40 paragraph (2) also states: Whoever deliberately violates the provisions as referred to in Articles 21 (1) and (2) shall be sentenced to imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Considerations of Government Regulation No. 7 of 1999 concerning the Preservation of Species and Animals are as follows:

- 1) That plants and animals are part of priceless natural resources so that their sustainability needs to be maintained through efforts to preserve species;
- 2) That based on the above and as the implementer of Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems, it is considered necessary to establish regulations on the Preservation of Plant and Animal Species with Government Regulations; B

Law and society are like two sides of a coin that cannot be separated from each other. The enactment of law is indeed in a social order called society by the Romans called *ubi societas ibi ius* which illustrates how close the relationship between law and society is.²⁰ The duty of the police as an investigator in the criminal justice system places him at the forefront, so that the police are required to be able to select or sort out which cases are appropriate to be submitted to court or not based on laws and regulations.²¹

Law enforcement is conceptual, so the essence and meaning of law enforcement lies in the activity of harmonizing the relationship of values described in the principles that are stable

²⁰ Mochtar Kusumaadja, *Concepts in Development*, (Bandung: Alumni, 2006), p. 6.

²¹ Satjipto Rahardjo, *Dissecting Progressive Law*, (Jakarta: Kompas, 2006), p. 65

and embodied and the attitude of action as a series of elaboration of values in the final stage, to create, maintain, and maintain peace in life.²²

There are 3 ways to enforce the law against the environment, namely:

1. Through Administrative Legal Instruments, the resolution of state administrative disputes is carried out by the agency that issued the decision or another agency or the superior agency of the one who issued the decision. In other words, administrative efforts are dispute resolution by and within government agencies, not by judicial institutions.²³
2. Through Civil Law Instruments, there are two ways that can be taken to resolve environmental disputes. First, dispute resolution through a dispute resolution mechanism outside the court. Second, dispute resolution through the courts.
3. Through Criminal Law Instruments The enforcement of criminal environmental law is nothing but the enforcement of the criminal provisions of environmental law (*strafrechtelijk milieurecht*). The substance, institutional authority, and procedures used in general are subject to the provisions of environmental law, unless it has not been specifically regulated. In such a case, what is used is the provisions that apply in criminal law in general.

Enforcement of dispute resolution using administrative legal instruments In the administrative legal instruments, there are 2 supervisions, namely preventive and repressive supervision. Preventive supervision is carried out to control environmental impacts, and prevent pollution or environmental damage, while repressive supervision is supervision carried out to restore the state to its original state, rescue and control the violation. This repressive supervision is carried out after a pollution or environmental damage occurs. By coercing the government to end the occurrence of violations.

In this case, the Discretionary Regulation of the Police in the Laws and Regulations is through the Law (UU) on the Conservation of Biological Natural Resources and Their Ecosystems with Criminal Sanctions According to the Provisions of Law No. 5 of 1990. In Law

²² Soerjono Soekanto, *Factors Affecting Law Enforcement*, (Jakarta: PT. Raja Grafindo Persada, 2007), p. 5.

²³ Ridwan, *Three Dimensions of Administrative Law and Administrative Predilan*, Print 1, FH UII Press, 2009, p. 167.

Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems, criminal sanctions are regulated in Article 19 paragraphs (1) and 21. Article 19 paragraph (1) Everyone is prohibited from carrying out activities that may result in changes to the integrity of the nature reserve area.²⁴ Article 33 paragraph (1) Everyone is prohibited from carrying out activities that may result in changes to the integrity of the core zone of the national park; and paragraph (3) Everyone is prohibited from carrying out activities that are not in accordance with the functions of the utilization zone and other zones and national parks, forest parks, and tourist parks.

The police are given the authority or discretion by our criminal law to carry out a whole series of processes against anyone involved in a crime. The²⁵ authority of the police is not to influence the course of the criminal process, but to strengthen the law enforcement process.²⁶ In Indonesia itself, the authority of the police in general has been regulated in Law Number 2 of 2002 concerning the Police. Meanwhile, in the process of criminal law enforcement, it is regulated separately through Law Number 8 of 1981 concerning the Criminal Procedure Law, or commonly referred to as the Criminal Procedure Code (KUHP). As for when it is associated with the authority of the police in handling conflicts, it has been specifically regulated in the Law on the Handling of Social Conflicts, along with the internal regulations of the National Police, namely PROTAP POLRI Number 1/X/2010 concerning Anarchy Countermeasures.

The role of the police in this crisis stage is very vital. Investigation skills and the speed and accuracy of decision-making are indispensable in dealing with riots in times of conflict. In the body of the police, there are several elements at once that help carry out the role of the police in carrying out their duties to maintain order, namely Samapta/Brimob, Criminal Investigation and Intelligence. In this stage, referring to the 2010 PROTAP on the Use of Force in Police Actions, the police can take a repressive stance if necessary with the note of avoiding

²⁴ Explanation of Article 19 paragraph (1) of Law No. 5 of 1990. What is meant by changes to the integrity of nature reserves is destroying the integrity and ecosystem, hunting animals in the area, and including non-native species.

²⁵ Joseph, H. Tieger, Police Discretion and Discriminatory Enforcement, Duke Law Journal Vol. 1971:717, (United States: Duke University School of Law), p. 718.

²⁶ Joseph, Goldstein, Police Discretion No To Invoke The Criminal Process: LowVisibility Decisions In The Administration Of Justice, Yale Law Journal Vol. 69 No. 4, March 1960 (New Haven: Yale Law School), p. 543

human rights violations. If critical conditions continue to escalate, the police can ask for the help of the Indonesian National Army (TNI) to ask for additional strength.²⁷

The Application of Police Discretion in Dispute Resolution on the Use of Natural Resources and Its Contribution to the Implementation of ADR in the Context of Upholding *Restorative Justice*

The urgency of managing natural resources and the environment is a shared responsibility. The government has issued regulations related to environmental management, namely in Law Number 23 of 1997 concerning Environmental Management. Furthermore, it is further regulated in Government Regulation No. 27 of 1999 concerning Environmental Impact Analysis, Government Regulation No. 19 of 1999 concerning the Control of Lake Pollution or Marine Destruction, and Government Regulation No. 41 of 1999 concerning Air Pollution Control, including Law No. 32 of 2009 concerning Environmental Protection and Management.

Regarding Natural Resource Management, there are several principles that have been available so far, such as:

- 1) The optimal principle, the 1945 Constitution of the Republic of Indonesia article 33 paragraph 3 explains that "The earth, water, and natural resources contained in it are controlled by the state and used to the greatest extent for the prosperity of the people". Sustainable *development* is development that is carried out to meet current and future needs. If the principles of sustainable development are not implemented, there will be a scarcity of natural resources, especially petroleum natural resources. The optimal use of energy is possible for the needs of the country;
- 2) The principle of sustainability is an effort to manage natural resources and their ecosystems whose goal is to maintain their nature and form. The principle of sustainability in natural resource management is an effort carried out to strive to maintain the existing natural resources, judging from their nature or form. The United Nations held a conference in 1972, on "*The Human Environment*" in Stcholm bringing

²⁷ Law Number on Police, Law No. 2 of 2002, LN Number 2 of 2002, TLN Number 4168, Ps. 41 number 1.

industrialized countries and through joint development to illustrate the human rights and their families to a healthy and productive environment;

- 3) The principle of market mechanism, is a tendency in the free market in terms of price changes until the market becomes balanced. Standard economic theory states that although institutional influences other than *the free market* can also provide efficient and maximum allocation results. In other words, if the market does not exist, the allocation of resources becomes inefficient and optimal. In terms of law and policy, damage to natural resources (SDA) and environmental pollution tend to be caused by the political and legal paradigm adopted by the government to manage natural resources and the environment. Concretely, this paradigm can be seen from the legal instrument used by the government to regulate the control and management of natural resources and the environment. If examined critically, it is found that the substance of state *law* products in the form of legislation regarding natural resources management tends to be centralistic, sectoral, repressive and prioritizes a security *approach*.

In daily practice, natural resource management is often assumed not to be based on the conservation function and productivity function perfectly. From the context of productivity, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia has stipulated that natural resources must be based on the principle of "quasi-state" and the principle of "for the greatest prosperity of the people". Thus, if the management of natural resources weakens the principle of "quasi-state" and the principle of "for the greatest prosperity of the people", then it can be said to be unconstitutional.

In practice, the Constitutional Court has carried out *judicial review* on several laws in the field of natural resources that are considered inconsistent with the 1945 Constitution of the Republic of Indonesia (NRI) interpreting the phrase "controlled by the state" as a testing tool in testing a law in the field of natural resources.

These laws include Law Number 41 of 1999 concerning Forestry, Law Number 22 of 2001 concerning Oil and Gas. Oil and Gas is an important branch of production for the state and controls the livelihood of many people, besides that it is a natural wealth contained in the earth and water of Indonesia that must be controlled by the state and then used for the

greatest prosperity of the people as much as possible as the content of Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

In Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, especially regarding the phrase "controlled by the state". The phrase "controlled by the state" is the most important phrase in the current fertile state of economic liberalization. Today's economic liberalization has resulted in the emergence of closed natural resource liberalization through liberal laws and regulations. Neoliberalism's siege on the exploitation of natural resources can also be manifested in the law. The siege of the liberalization of natural resource exploitation can threaten so this is very worrisome if the exploitation of natural resources, which are 51 economic commodities, is not in line with the mandate of the 1945 Constitution of the Republic of Indonesia, namely Article 33 which is a foothold so that natural resources remain controlled by the state while providing the greatest possible prosperity for the people.

Based on the above, examining the conception of natural resource management is trying to reconstruct the main current of thought in the paradigm of natural resource management, namely the tendency of the state towards exploitation, minimal improvement and preservation. It is evident that the state in many cases exploits in certain sectors (for the sake of increasing state income and foreign exchange, so that the use of natural resources is carried out without paying attention to the principles of justice, democracy and the continuation of natural resource functions, ecology).

The government conducts counseling/information activities to the community will be important to maintain the functions and benefits of forests in order to help maintain forest sustainability and strict law enforcement by law enforcement officials, the National Police assisted by POLHUT in carrying out investigations against local or village government officials who abuse their authority to trade timber in protected forests as well as arrest and conduct a thorough investigation of the cukongs timber that costs the country trillions of rupiah every year.

The National Police in this case must carry out its role as ordered in Law No. 2 of 2002, of course, inseparable from the discussion of the duties and authorities of the National Police. Juridically, the duties and authorities of the National Police have been regulated in the constitution and various products of laws and regulations.

Such a juridical direction about the role of the National Police is then further elaborated in the Police Law, especially in Article 5, Articles 13 and 14. From the juridical directive, it appears that police institutions in Indonesia not only fight as part of law enforcement patterned in the criminal justice system (SPP), but further than that also play a role as an institution to maintain public security and order, as well as protectors, protectors and servants of the community. Characteristics of the role played by the police institution. It turns out to be much broader in carrying out social control for the community, both pre-emptive, preventive and repressive. When the police institution becomes part of the criminal justice system, its actions must also be able to be returned to the context of the larger system.

Police discretion must be applied in the implementation of Police duties As mandated in article 13 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia, the duty of the National Police is to maintain public security and order, enforce the law and provide protection, protection and service to the community.

Therefore, in practice, the application of discretion by the Police wants the Prosecutor to depend on the subjectivity of the person concerned. If the law enforcer in question lives up to moral or ethical values as a police officer or prosecutor, then the application of discretion will give birth to a sense of justice and peace in society. On the other hand, if the Police do not adhere to moral and ethical values, then the application of discretion will give birth to arbitrariness. The substance of the Police's duties to maintain security and order comes from the Police's obligation to ensure public security. The main duties of the National Police are related to law enforcement derived from the provisions of laws and regulations that contain the duties of the National Police in relation to criminal justice.²⁸

The police are one of the parties responsible for securing forests from the danger of forest destruction. The main task of the police in the field of resources is to prepare, implement, develop, monitor, and evaluate and report on forest protection and security activities as well as the circulation of forest products. (Article 4 of the Regulation of the Minister of Agriculture and Bureaucratic Reform No. 17 of 2011). The duties of the police in the field of natural resources and ecosystem protection are as follows:

²⁸ Pudi, R. *Police Law: Professionalism and Police Reform*. Surabaya: Laksbang Mediatama, 2007.

- 1) Enforce and limit the damage to forest products caused by the actions of humans, livestock and others.
- 2) Defend and safeguard state rights and forest products.

The legal basis for the application of discretion can be described as follows. The criminal justice system, which is embraced by the Criminal Procedure Code and the special criminal procedure law rules, is an integrated criminal justice *system* that is based on the principle of functional differentiation, namely distinguishing between the functions and authorities of each component of law enforcement based on its agency. The integrated criminal justice system puts all law enforcement officials in an equal position based on their functions and authority.²⁹

Police discretion can indirectly be used in the application of the mediation process in handling cases between the two parties, namely the perpetrator and the victim of a criminal act to solve good legal problems and to achieve justice and usefulness which is part of the legal objectives. So that in this case the police can become heroes for their nation, by making the right choices in carrying out their duties and authority as a police profession.³⁰

Given this, the benefit of discretion from the Police is to make the implementation of policies based on professionalism in working from the Police which is required to work optimally in providing a servant, coaching and protection to the wider community in general and enforcing the law in particular from the Police more effectively and efficiently.³¹

The participation of the National Police in supervisory activities on the control, management, and/or utilization of certain natural areas and or resources aimed at the implementation of social functions, economic functions, and ecosystem functions in a

²⁹ Ruslan Renggong, *Criminal Procedure Law (Understanding the Protection of Human Rights in the Detention Process in Indonesia)*, Kencana, Jakarta, 2014, p. 164

³⁰ Satjipto Raharjo, *Building Civil Police, Legal, Social, and Community Perspectives*, PT Kompas Media Nusantara, Jakarta, 2007, p. 262

³¹ M. Faal, *Screening of Criminal Cases by the Police (Police Discretion)*, Pranya Paramita, Jakarta, 1991, pp. 15-16.

balanced manner. In addition, it is also in activities to provide benefits to the area and make it a source of life for the community, by providing certain norms of obligations and responsibilities, to the parties concerned in managing and utilizing natural resources and the environment so as not to carry out monopolistic business activities or ignore the rights and justice of the people in the area.

The settlement of criminal cases in the field of KSDAHE requires good cooperation between related parties. So far, the KSDA Center has established good cooperation with Police investigators and investigators in the City and Regency Police to jointly reveal various cases of violations in the KSDAHE field.

Cooperation between conservation area managers and local communities is believed to be an important part of the sustainability of conservation area management in the long term. This cooperation can be realized in the form of community involvement in the management of conservation areas. Community involvement in the management of conservation areas has been regulated in Law No. 41 of 1999 concerning Forestry. Especially for community participation in forest security, it has been mentioned in Article 69 paragraph (1) of Law Number 41 of 1999 concerning Forestry. This article explains that the community is obliged to participate in maintaining and protecting forest areas from disturbance and destruction. Therefore, to implement this rule, the community needs to be involved in the implementation of forest security. Regulation of the Minister of Forestry No. P.56/Menhut-II/2014 concerning the Forest Police Partner Community (MMP).

CONCLUSION

The results of the study show that;

- a. Understanding and regulating police discretion in laws and regulations in resolving disputes over the use of natural resources. The understanding and regulation of the discretion of the Police in the Laws and Regulations in the settlement of disputes over the use of Natural Resources and its contribution to the implementation of ADR in order to uphold *Restorative Justice* in the discretionary authority in the implementation of the duties and functions of the Police in Indonesia is carried out based on justice and usefulness in the implementation with the aim of realizing justice,

usefulness and legal certainty. Police discretion is part of the alternative to non-litigation dispute resolution in the role of the police to secure natural resources associated with Constitutional law.

- b. The application of police discretion in resolving disputes over the use of natural resources and its contribution to the implementation of ADR in order to uphold *Restorative Justice*. Police discretion in Indonesia is juridically regulated in Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, especially in Article 18 paragraph (1) which stipulates that for the public interest police officers in carrying out their duties and authorities can act according to their own actions and can only be done in circumstances that are very necessary by paying attention to laws and regulations, as well as the Police Code of Ethics.

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