



Limitations of Police Discretion in the Settlement of Domestic Violence Cases

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Abstract

Police discretion is an accepted instrument of criminal law enforcement in Indonesia, but its use in domestic violence cases is contested because informal settlement may expose the victim to further harm. This article identifies and analyses the use and application of police discretion in the settlement of domestic violence offences and the limits to which that discretion should be subject. The study is normative legal research using statutory and case approaches, drawing on the Criminal Procedure Code, Law Number 2 of 2002 on the Indonesian National Police and Law Number 23 of 2004 on the Elimination of Domestic Violence. The study finds that police discretion has a clear legal basis and is exercised on the principles of necessity, the interests of duty, purpose and proportionality, and that it is limited generally by the public interest, by the circumstances of necessity, and by legislation and codes of ethics. For domestic violence, the article argues that the limits of discretion require explicit legal determination: because the offence is a complaint offence, discretion must be victim-oriented, and victims should be kept away from informal peace settlements that allow the violence to recur.

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1. Introduction

The application of the law may encounter obstacles arising from individual behaviour, notwithstanding the existence of legal rules, institutions and law enforcement officials equipped with the necessary facilities and infrastructure. However, the lack of awareness of citizens as individual members of society is not supported by law. In society, law develops and advances. Law is a tool to uphold order and tranquility so that citizens can live in harmony. When people realize the importance of the legal system in everyday life, law is able to develop and grow. Meanwhile, the achievement of a peaceful state in society is the goal of the law itself. As a result, the law defends human interests such as independence. In addition, to avoid solving problems that can cause divisions between humans and humans, as well as between humans and institutions.¹

Discussing the provisions of the laws and regulations that apply in Indonesia will definitely result in a settlement and a reduction in the number of cases there and around it, such as domestic violence which increases every year. Violence in society is not a new phenomenon. In society there is a development of attitudes, perceptions, and definitions of domestic violence. Most people believe that domestic violence is a problem that only exists in the home and family.² Newspapers and other media have reported several incidents of violence between employers against household help, spouses against wives, and parents against children. Actually, domestic violence is not a new phenomenon.³ However, the families, as well as the victims themselves or their relatives, have always kept it a secret or covered it up in the past. Violence that occurs in the home often contains something unique or special. The relationship between the perpetrator and the victim in particular, familial or professional relationships (employer-housekeeper) is what makes the crime unique.

Within the family, domestic violence is a concern. Anyone can experience domestic violence (KDRT), including husbands, wives and children. This article confines its discussion of domestic violence to abuse committed by husbands against their spouses. This makes sense considering that spouses are the majority of victims of domestic violence. There are many unhappy families, households that are constantly engulfed in storms of bickering and conflict, if we investigate further. Any woman would find it hard

¹ Christine S. T. Kansil, *Pokok-Pokok Hukum Pidana Hukum Pidana Untuk Tiap Orang* (PT Pradyana Paramita, 2017).3.

² Apripari et al, "Restorative Justice in Victimless Crimes under the Criminal Procedure Code: Problematics and Solutions," *Jurnal Hukum Novelty* 17, no. 1 (2026): 144-66, <https://doi.org/10.26555/jhn.v17i1.31003>; Dian Ekawaty Ismail et al, "Cyber Harassment of Public Figures: Causes and Importance of Legal Education," *E3S Web of Conferences* 594 (2024): 03005, <https://doi.org/10.1051/e3sconf/202459403005>; Cut Nangrie Sari Abuthalib et al, "Plea Bargaining Dalam Bayang-Bayang Keadilan: Antara Efisiensi Penegakan Hukum Dan Degradasi Nilai Kepastian Hukum," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 1130-46, <https://doi.org/10.61104/alz.v4i1.3201>; Dian Ekawaty Ismail et al, "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 2, <https://doi.org/10.22219/ljih.v32i2.35374>; Dian Ekawaty Ismail et al, "Model for Legal Settlement on Damage to the Tanjung Panjang Nature Reserve in Pohuwato Regency," *Russian Law Journal* 11, no. 3s (2023): 3s, <https://doi.org/10.52783/rlj.v11i3s.734>.

³ Alimuddin, *Penyelesaian Kasus KDRT Di Pengadilan Agama* (CV Mandar Maju, 2016).38.

to live her life comfortably under these circumstances. The majority covered in Law Number 23 of 2004 concerning Domestic Violence (KDRT) stipulates that women must receive protection from the government and society to prevent and be free from violence or threats of violence, torture or other treatment. which demeans human dignity.

Domestic violence is generally correlated with women's lack of access to economic resources (such as capital, immovable property, and other sources of welfare), age, education, religion, and ethnicity. Women's experiences with domestic violence (KDRT) are multi-layered, meaning they can experience various types of economic, psychological, sexual and physical violence. Domestic violence is thus defined as any action against a person, especially a woman, that causes physical, sexual, psychological, or domestic neglect, as well as threats to take action, coercion, or unlawful deprivation of freedom in the household context.

The United Nations Commission on the Status of Women defines violence against women as any form of abuse based on sex that causes or will result in pain or suffering to women, whether physical, sexual or psychological, and includes threats, restrictions on liberty, coercion, whether occur in public or private places. ⁴Violence against women is an act or attitude that is carried out with the intent to cause physical and psychological harm to women. Another crucial thing is that even if an event harms women, it is not considered violence. The information shown above does not mean that only men harass women; rather, it suggests that tensions and disagreements within the family often result in physical assaults by husbands against wives.

So that the husband, who should act as a protector, is contrary to what his family members anticipate of him. Prior to the enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, KDRT received a significant response from several women's groups, both affiliated with the government and non-government. One of the things that contributes to social unrest is domestic violence, especially when a partner is the victim. The results of several community studies show that the pain caused by wife abuse does not end with the suffering of the wife or children; instead, it continues outside the home and influences society as a whole. The annual figures for domestic violence recorded by the Gorontalo Regional Police are set out below.

[TABLE MISSING – data on domestic violence cases in Gorontalo referred to in the text is not present in the manuscript and must be supplied by the author.]

Based on the data that the author obtained through the Gorontalo Regional Police, the number of cases of domestic violence in the last 3 years is quite large, namely as many as 53 cases. Violence that occurs in family institutions is a sign of social problems that are detrimental to the family. Because it is taboo or inappropriate for victims to talk about almost all forms of family violence perpetrated by men, such as wife beating and family rape, women, and especially wives, tend to remain silent because they feel powerless.

⁴ Herkutanto, *Kekerasan Terhadap Perempuan Dalam Sistem Hukum Pidana, Dalam Buku Penghapusan Diskriminasi Terhadap Wanita* (PT Alumni, 2015).25.

Most victims are ashamed of their situation and don't even dare to reveal it to others. The psychological impact of violence on partners can be in the form of anxiety, melancholy, tension, low self-esteem, lack of confidence in their husbands, self-blame, and other conditions. Bruises, broken bones, physical disabilities, mental illness, and even death are examples of physical effects. Domestic violence not only harms women, but also affects children. Children who live in homes where violence occurs at least half the time also experience abuse. Children may be directly abused or suffer the consequences of watching their father abuse them.

The majority experienced physical, emotional, and/or sexual abuse. Children often become paralyzed, terrified, and helpless at the sight of violence, some of them trying to stop their fathers from torturing their mothers or seeking help from others. Witnessing violence is a very painful experience for children. Data collected from around the world shows that adult children who are unable to help their mothers who were abused for years end up killing their fathers. Children are taught through domestic violence that cruelty in the form of abuse is a normal aspect of life. Children will find that using force is a good way to deal with pressure. The use of violence to solve children's problems is acceptable and common.⁵

Boys are taught through domestic violence not to respect women. Every rule that regulates retribution is made to be implemented in accordance with the purpose and meaning contained therein, because the law functions as a social engineering tool as well as social control. As a party that is the target of regulations, citizens (individuals) must be sincere and fully aware of the law.

As a form of effort to resolve this case, we know that the stages that will be passed by the party concerned are mediation and police discretion which will later assist in handling the domestic violence case as intended. However, this is a polemic that is often questioned by the public if the police do not adhere to the principle of professionalism in resolving the case in question. Seeing that there are so many cases of domestic violence that were born in the midst of society which automatically opens up opportunities for the weakness of the applicable law, especially the Law on *Domestic Violence Act* or domestic violence. On the basis of the foregoing, this article examines the limits of police discretion in the settlement of domestic violence cases.

2. Method

This research is normative legal research or doctrinal legal research or also known as library research or document study. Referred to as doctrinal legal research, because this research is conducted or aimed only at written regulations or other legal materials. While it is said to be library research or document study because this research is mostly done on secondary data in the library.⁶

⁵ Sudarto, *Hukum Pidana I* (Yayasan Sudarto, 2019).65.

⁶ Suratman and Philips Dillah, *Metode Penelitian Hukum* (Penerbit ALfabeta, 2013).51.

3. The Use and Application of Police Discretion in Criminal Law Enforcement

Discretion comes from the English "Discretion" which according to Alvina Treut Burrows means "the ability to choose wisely or to judge for oneself". In this case it is defined as the ability to choose wisely or consider for yourself.⁷ According to the legal dictionary, Simorangkir means that discretion is the freedom to take appropriateness in every situation faced according to his own opinion.⁸ Discretion is known in public officials which comes from the English "Discretion" or *Discretionary Power*, which means freedom of action.⁹ In the administrative law environment, it is known as "Freies Ermessen" from the German word, which means to consider, assess, suspect or judge, consider and decide.¹⁰

"Discretion" in the *Black's Law Dictionary* means "A public official's power or right to act in certain circumstances according to personal judgment and conscience". The emphasis in this sense is on the power of public officials to act according to their own decisions and conscience. The action is carried out on the basis of inherent power or authority. According to Thomas J. Aron in his book **The Control of Police** as quoted by M. Faal, "discretion" is defined as "discretion is power authority conferred by law to act the basis of judgment or conscience and its use is more on the idea of morals than law".¹¹ Which can be interpreted as a power or authority exercised on the basis of judgement and conscience and emphasizes moral considerations rather than legal considerations. With this explanation, discretion is exercised not without legal provisions, but discretion is exercised within the legal framework.¹²

The existence of discretion in the order of implementing government tasks, where the police as one of its components is inseparable from the objectives to be achieved, namely to fulfill needs that are felt to be important in organizing and realizing a high level of general welfare.

Every member of the police has the right to exercise discretion in seeking solutions to problems for the benefit of the wider community in general and components of the criminal justice system in particular. Discretion itself is essentially an action or policy carried out by members of the police which is against or contradicts existing rules with the aim of being in the greater and more beneficial public interest. However, discretion by the police is sometimes a way out that is taken but slightly deviates from the established legal rules. However, it is precisely this discretion that is a way out that is quite helpful for the police so that the problem becomes more effective and efficient. Of course the police do not just take the initiative to exercise discretion for the sake of convenience, but discretion itself has a basis that allows discretion by the police according to law. The laws and regulations that form the basis of police discretion are:

⁷ Warsito Hadi, *Hukum Kepolisian Di Indonesia* (Prestasi Pustaka, 2005).115.

⁸ M. Faal, *Penyaringan Perkara Pidana Oleh Polisi (Diskresi Kepolisian)* (Pradnya Paramita, 1991).15.

⁹ Ridwan, *Diskresi Dan Tanggung Jawab Pemerintah* (FH UII Press, 2014).123.

¹⁰ Ibid.124.

¹¹ Faal, *Penyaringan Perkara Pidana Oleh Polisi (Diskresi Kepolisian)*.16.

¹² Ibid.17.

3.1. The Criminal Procedure Code

The provisions of article 5 and article 7 of Law Number 8 of 1981 states that : " Every qualified police officer investigates and investigates in the context of carrying out tasks in the field of criminal justice because his obligations are authorized by law". Considering that it is impossible to regulate the authority of the police to carry out police actions in detail, the provisions of Article 5 paragraph (1) number 4 and Article 7 paragraph (1) letter j state that "the police are authorized because of their obligations to take other actions according to the law who are responsible".

The purpose of other actions here is the actions of investigators or investigators for the benefit of investigations or investigations provided that they do not conflict with legal obligations requiring official acts to be carried out, these actions must be appropriate and reasonable and fall within the scope of their positions and based on appropriate considerations based on compelling circumstances and respect human rights. Thus, these other actions, such as the actions of investigators in the form of police discretion, may be taken by investigators at the Police as long as they are still within the path determined by the law itself.

Based on Article 7 paragraph (1) the police may take other actions during an investigation other than those stated in the provisions of the law as long as it is in the interest of police duties, even though the police have been given the authority by law to take these other actions only the police must be able to be accountable for all actions and decisions that have been taken in carrying out their duties. This is intended so that the police do not abuse the authority they have, bearing in mind that the authority to take other actions by the police during the investigation is so wide.

3.2. Law Number 2 of 2002 concerning the Indonesian National Police

Police discretion is an action that is justified by law according to Article 16 paragraph (1) letter l and Article 18 paragraph (1) and paragraph (2). Article 16 paragraph (1) letter l:

The National Police of the Republic of Indonesia has the authority to take other responsible actions according to law.

Article 18 paragraph (1) and (2):

(1) 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 judgement.

(2) Implementing the provisions referred to in paragraph (1) can only be carried out in very necessary circumstances by taking into account the laws and regulations, as well as the professional code of ethics for the Indonesian National Police.

The purpose of acting according to his own judgment is an action that can be taken by members of the National Police of the Republic of Indonesia who in acting must consider the benefits and risks of their actions and are truly in the public interest. So that it can be used as the basis for police discretion. The role of criminal legislation in the criminal justice system is very important because these laws give power to policy makers and provide a legal basis for the policies implemented. This is as stated by Muladi that: Operationally,

criminal legislation has a strategic position in the criminal justice system, because it provides a definition of what actions are formulated as criminal acts, controls government efforts to eradicate crime and punish the perpetrator, provides limitations on the punishment that can be applied to each crime. In other words, criminal laws create a legislated environment that regulates all procedures and procedures that must be complied with at various levels of the criminal justice system.¹³

With regard to efforts to enforce criminal law, it has been agreed that one cannot only pay attention to the criminal law that will be enforced normatively and juridically without regard to its relationship with society, because if enforcing criminal law only looks at the law or norms, it is certain that the purpose of the criminal justice system will be hard to reach. Therein lies the flexibility of the criminal justice system, and you also need to think about the development of the criminal justice system, and you also need to think about the self-development of suspects who break the law within the framework of the broader goals of the criminal justice system. It is also in this case that the selectivity of cases is possible at each stage of the process. In this regard, the police, who are at the forefront of the criminal justice system, have the power to select cases through discretion, as well as other components.

The position of discretion on the other components is as stated by M. Faal that: ¹⁴At the prosecution level, discretion is in the form of the prosecutor's authority to depound a case which is often referred to as the principle of opportunity, while at the judicial level it is in the form of acquittal judge decisions (*vrijspraak*), conditional sentences (*voorwaardelijk veerordeling*) or release (*de beklaag dewordt ontslage van alle rechtsvervolging*) and be fined. While at the correctional level in the form of reduced sentences or remissions.

As is understood, the criminal justice system is tasked with enforcing the law, aiming to tackle, prevent or allow and reduce crime or violations of criminal law. Legal institutions are a tool to resolve disputes that occur and to prevent abuse of the rules that are collected in various social institutions.¹⁵

Through the criminal justice system it is known that punishment is not the final goal nor is it the only way to achieve criminal goals or the goals of the criminal justice system. Many ways can be taken. Can use criminal law or by means outside the criminal law or outside the court. Criminal law enforcement as a process must be seen as realistic so that actual law enforcement *must* be seen as a part of discretion that cannot be avoided due to limitations, even though integrated monitoring will provide positive feedback.

There are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the necessity of discretion. Even light cases or cases that are less serious if included in the criminal justice system, are likely to be sentenced to imprisonment by the judge, even if they are only sentenced to 1 (one) or 2 (two) days in

¹³ Muladi, *Merenungi Kritik Terhadap Polri Buku II* (Cipta Manunggal, 1995).23.

¹⁴ Faal, *Penyaringan Perkara Pidana Oleh Polisi (Diskresi Kepolisian)*.2.

¹⁵ Soerjono Soekanto, *Pokok – Pokok Sosiologi Hukum* (Citra Niaga Rajawali Pers, 1994).64.

prison. ¹⁶From an economic point of view, the criminal justice system is not only inefficient, but also imprisonment that is not really necessary should not be applied. So that discretionary policy, so the implementation of discretion, even though it seems to set aside existing legal formalities, is still within the framework of legal principles, so does not cross the boundaries of the legal framework.

Apart from referring to the Criminal Procedure Code and the Police Law, there are also matters that underlie police discretion. In fact, unwritten law as a legal basis is something that is constitutional in nature, because this is recognized by the general elucidation of the 1945 Constitution: "Unwritten basic law is the basic rules that arise and are maintained in the practice of administering the state. ¹⁷In connection with the implementation of police duties, in resolving legal issues in society it can often be resolved based on unwritten law in the form of customary law.

The relationship with customary law is in accordance with the explanation that customary law that can be used as a guideline is the customs that exist in society that are appropriate or not contrary to existing positive law, have the aim of maintaining security and order in society and not harming the rights of others.

The elements of a criminal act which are the conditions for determining the extent to which a human's actions can be subject to punishment. ¹⁸Likewise, the settlement of cases or the exclusion of light criminal cases based on customary practices or unwritten laws is usually taken because if the application of criminal law is enforced it will actually create new problems, so it is customary that is used in resolving a case, because after all it is felt to be more practical and cheaper than being resolved through the criminal justice system. For example, this can be done through family efforts that are felt to be able to solve problems without making the existing relationships in the community become tenuous or break up.

The work of the police is actually not far from the work of adjudicating. Because providing an interpretation of criminal law when dealing with certain people who commit violations of the law includes the work of adjudicating as well. Thus the social norms that exist in society such as attitudes that are rooted in Indonesian society in general are in the form of unity, mutual cooperation, tolerance, forgiveness, peace-loving, harmony, tolerance, the norms adopted are also the basis for the police's considerations. in enforcing the law through means of this discretion. This is the reason why customary law that applies in society also has a role in the exercise of discretion by the police.

Opinions from legal experts are also used as a rationale or to add broader insight into everything related to police discretion, so that the policies taken by investigators will have a strong foundation or reason. Opinions, explanations, teachings or research results of scholars or experts can be used as a basis for thinking or adding broader insights on

¹⁶ D. Kojongian, "Tindakan Diskresi Polisi Dalam Pelaksanaan Tugas Penyidikan," *Jurnal Lex Crimen* 4, no. 4 (2015).

¹⁷ Faal, *Penyaringan Perkara Pidana Oleh Polisi (Diskresi Kepolisian)*.117.

¹⁸ Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana Indonesia* (Eresco, 1989).74.

everything related to police discretion. ¹⁹Explanation by legal experts will complement unclear laws, so that the policies taken by law enforcers, in this case the police, will receive a relatively strong foundation.

The legal basis for Police Discretion includes Law Number 2 of 2002 Article 18 paragraph (1) that "In the public interest, officials of the Indonesian National Police in carrying out their duties and authorities can act according to their own judgement". Of course, in carrying out these actions it must be in accordance with Article 4 of Law No. 2 of 2002, namely by upholding human rights. Then the term Police Discretion according to Article 15 Paragraph 2 letter k is known as "other authorities", according to Article 16 Paragraph (1) letter l it is known as "another action according to the law that is responsible and according to Article 7 paragraph 1j of the Criminal Procedure Code it is known as "what action only according to the law that is responsible".

Article 16 paragraph 1 of Law no. 2 of 2002, article 18 of Law no. 2 of 2002 and Article 7 paragraph 1 sub j of the Criminal Procedure Code if there are no clear and firm restrictions, the exercise of discretion can be misinterpreted which can lead to acts of deviating police discretion.

Police Discretion in carrying out police duties, it is necessary to recognize the Police Professional Ethics, as a very fundamental and important matter and has a great influence on the good or bad implementation of Police Discretion. This ethic forms the basis for forming "self-assessment" for each Police officer in carrying out his duties in the field, including: personality/service ethic, institutional ethic and state ethic.

The application of Police Discretion that cannot be prosecuted before the law is a discretionary action by the police which is limited by:²⁰

- 1) The principle of necessity, that action must be absolutely necessary.
- 2) The actions taken are truly in the interests of police duties.
- 3) The principle of purpose, that the most appropriate action to eliminate a disturbance or not the occurrence of a concern for a bigger consequence.
- 4) The principle of balance, that in taking action must be taken into account the balance between the nature of the action or target used and the size of the disturbance or the severity of an object to be acted on.

4. The Limits of Police Discretion in the Settlement of Domestic Violence Cases

Certainty Acts of violence in society is actually not a new thing. Violence is often carried out in conjunction with a form of crime, as stipulated in the Criminal Code (KUHP), for example theft with violence (Article 365 of the Criminal Code), assault (Article 351 of the Criminal Code), rape (Article 285). The crime was committed with violence or the threat of violence, while the way in which the violence was committed or the means used, each

¹⁹ Dian Ekawaty Ismail and Mohamad T. Z. Sarson, "Criminolog Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. Spesial (2021).

²⁰ Satjipto Raharjo, *Polisi Pelaku Dan Pemikir* (Gramedia Pustaka, 1991).12-13.

depended on the case that arose. These acts can happen to anyone, both men and women, from children to adults.

The investigative process is a process in which the search for the truth of a criminal event.²¹Based on Article 1 point 2 of the Criminal Procedure Code, investigation is a series of Investigator actions in terms of and according to the method regulated in this law to search for and collect evidence that occurred and to find the suspect, then Article 1 number 1 of the Criminal Procedure Code states that the investigation is carried out by investigators . namely officials of the state police of the Republic of Indonesia or certain civil servant officials who are given special authority by law to conduct investigations.²²

The series of processes of the Criminal Justice System begins with an event that is suspected of being a criminal event (crime). After a new criminal incident begins an act of investigation and investigation. Investigation and investigation are actually a series of actions that cannot be separated, even though the stages are different. If the investigative process is integrated with the investigation, it will be seen that there is a continuity of action that facilitates the next process. In the process of examining cases according to the Criminal Procedure Code there is no penal mediation effort, thus in handling cases of Domestic Violence in accordance with the Law on the Elimination of Domestic Violence, there is no loophole in the Criminal Procedure Code to use penal mediation in the problem solving process.

The process of solving domestic violence cases through the discretionary route is quite often carried out. Researchers found data at the Padang Police based on the Chief of Police Letter No. Pol: B/ 3022/ XII/2009/ Sdeops date. December 14, 2009 concerning Handling of cases through *Alternative Dispute Resolution* (ADR), namely for crimes with small losses and agreed upon by the litigants, through the principle of deliberation for consensus, and respect for social/customary law norms and based on justice for the parties (*win- win solution*). In the practice of mediation, it appears as an alternative thought in solving.

The implementation of ADR by Police investigators is manifested by the Police's discretionary actions based on Article 18 paragraphs (1) and (2) of the Police Law. Discretion is the act of a police officer who is on duty in the midst of society alone, who is required to be able to make decisions based on his own judgment if there is a disturbance to public order and security or if it is predicted that a danger to public order and security will arise, in this case such a situation it was impossible for him to ask for directions or directions from his superiors, so at that moment the officer must have the courage to complete his actions.

According to the theory of legal objectives, when viewed from the perspective of legal philosophy, the objectives of law are emphasized in terms of justice, this is supported by ethical teachings which assume that in principle the purpose of law is solely to create justice, and according to Radbruch that we must use the principle of priority where the

²¹ Imam Abas et al, "Problematisasi Pelaksanaan Asesmen Terpadu Dalam Proses Penegakan Hukum Penyalahgunaan Narkotika," *Philosophia Law Review* 2, no. 1 (2022): 30-49.

²² Yahya Harahap, *Pembahasan Dan Permasalahan Penerapan KUHAP* (Sinar Grafika, 2010).75.

first priority always "justice", then benefit and legal certainty. ²³Settlement of criminal cases through mediation cannot be separated from the ideals of law which are based on the foundation of legal philosophy, namely justice (*law is justice*), the legal principle of the case settlement process which refers to written sources of law and unwritten sources of law.²⁴

The formulation of legal principles to resolve criminal cases is carried out through mediation which is derived from legal ideals and legal principles. Therefore the pattern of mediation that is applied must refer to the values of justice, the value of legal certainty and expediency. The sense of justice sometimes lives outside the law, what is clear is that the law will be very difficult to balance. Likewise, on the other hand, the law itself is felt to be unfair when a sense of justice really exists and is felt by a collective majority, legal certainty will move towards a sense of justice itself. Legal certainty is a sense of justice itself, because justice and law are not two separate elements.²⁵

Handling cases of domestic violence through criminal law channels according to Law No. 23 of 2004 is called handling with an integrated criminal justice system. Being called integrated means that the handling of cases of domestic violence does not only prosecute suspects/perpetrators of violence but also thinks about the rights of victims and how to recover. Therefore the goals of eliminating domestic violence are:²⁶

1. Prevent all forms of domestic violence.
2. Protect victims of domestic violence.
3. Prosecute perpetrators of domestic violence.
4. Maintaining integrity in a harmonious and prosperous household.

In fact, in Law Number 2 of 2002 concerning the Indonesian National Police, there is no clear and firm formulation regarding discretion, but the use of acts of abuse of authority and arbitrariness in the use of police discretion can be controlled through the conditions formulated in Article 16 paragraph (1). 2) Law No. 2 of 2002, where the action is carried out with the following conditions:

1. Does not conflict with a rule of law;
2. In line with the legal obligation that requires the action to be carried out;
3. Must be appropriate, reasonable, and included in the position environment;
4. Reasonable consideration based on compelling circumstances; And
5. Respect human rights.

Regarding cases/cases of domestic violence, where the main case does not disturb the general public, and on the other hand the victims of these crimes can be "conditioned", the

²³ Achmad Ali, *Menguak Tabir Hukum* (PT Toko Gunung Agung, 2002).39.

²⁴ Hadi, *Hukum Kepolisian Di Indonesia*.113.

²⁵ Sukarno Aburaera, *Filsafat Hukum* (Pustaka Refleksi, 2010).45.

²⁶ Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga (2004).Article 4.

Police considers discretion to be exercised in these cases by not continuing the investigation process. This aims to avoid accumulation and arrears of domestic violence cases which are one of the most prevalent criminal cases in Indonesia. Based on research conducted by Rido Matua Simamora, it was found that cases of domestic violence registered at the Padang Police were more dominantly resolved at the investigation stage than those that were forwarded to court. In the settlement at this stage of the investigation, the discretionary authority of the police is an alternative for fast and cost-effective settlement of cases so that there is no accumulation of cases.

Cases of domestic violence in Padang City, which was the location of Rido Matua Simamora's research from 2016 to 2017, totaled 68 cases. Of the total cases, only 3 cases were resolved and ended up in court, 21 cases were through mediation at the request of one of the parties, and 44 cases were resolved through discretion.²⁷ It is said to be discretionary because efforts to reconcile the parties were taken by the police without any request at all. From this it can be seen that the picture between police discretion and mediation is almost the same. It's just that the difference here is that mediation is carried out on the initiative/request of the victim with a request from the victim to withdraw the report, while discretion is carried out on the basis of the initiative of the National Police investigator.

The investigator's initiative in taking the peaceful path, according to the researcher, can be said to be one of the reasons for the rise in cases of domestic violence. Because the end of the case does not give any fear or deterrent effect to the perpetrators. Even as a complaint offense, researchers think that victims of domestic violence cases must be kept away from so-called peaceful efforts. Domestic violence cases that end peacefully at the investigation stage have a high chance of repeating themselves, because the perpetrators will think that even if they are reported to the police later, they will end peacefully again. So that the case will drag on in an endless circle.

5. Conclusion

Based on the description of the discussion that the researcher outlined in the previous chapter, the conclusions that can be drawn are:

The application of police discretion has legality or legal basis according to the Criminal Procedure Code and Law Number 2 of 2002 concerning the Police of the Republic of Indonesia. The proper application of Police Discretion is based on: The principle of necessity, that the action must be absolutely necessary; The actions taken are truly in the interests of the police's duties; The principle of purpose, that the most appropriate action to eliminate a disturbance or not cause a concern for a bigger consequence; and The principle of balance, that in taking action a balance must be taken into account between the nature of the action or the target used and the size of the disturbance or the severity of an object to be acted on.

²⁷ R. M. Simamora, "Analisis Diskresi Kepolisian Dalam Penyidikan Tindak Pidana Kekerasan Dalam Rumah Tangga (Studi Pada Unit PPA Sat Reskrim Polresta Padang)," *UNES Journal of Swara Justisia* 2, no. 3 (2019).332-343.

Police discretion is generally limited by the public interest, necessary circumstances, and by laws and codes of ethics. For the settlement of domestic violence crimes, police discretion must be given legal determination regarding the limits, that as an offense the complaint must be victim-oriented, and victims of domestic violence cases must be kept away from so-called peaceful efforts so that the case does not recur.

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