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Reconciling Legal Certainty and Justice in Indonesian Police Law Enforcement

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ABSTRACT

This study analyses how the Indonesian National Police (Polri) enforces the law from the perspective of legal certainty and justice, and examines police discretion as an instrument for balancing both principles in practice. This study uses normative legal research with statutory, conceptual, and analytical approaches. Legal materials were collected through a literature review of legislation, legal doctrines, journal articles, judicial decisions, and related legal literature. The materials were then analysed qualitatively using a descriptive-analytical method. The findings show that legal certainty and justice must be balanced in every exercise of police law enforcement authority. The implementation of these principles is reflected in the exercise of police discretion, particularly under Article 18 of Law Number 2 of 2002 on the Indonesian National Police. Nevertheless, police discretion still faces challenges identified in the literature, namely the absence of uniform standards, the potential for abuse of authority, institutional pressure toward quantitative targets, and weak internal and external oversight. The study therefore recommends strengthening guidelines for police discretion, improving police professionalism, enhancing oversight, and harmonising legal certainty with substantive justice so that law enforcement can provide legal protection, serve the public interest, and strengthen public trust in the Indonesian National Police.

Keywords: *Legal Certainty, Justice, Police Discretion, Law Enforcement, Indonesian National Police*

INTRODUCTION

Law enforcement is a central function of a democratic state governed by the rule of law. In Indonesia, the National Police of the Republic of Indonesia *(Kepolisian Negara Republik Indonesia*, hereinafter *Polri)* holds a strategic position within the criminal justice system because its duties include maintaining public security and order, enforcing the law, and providing protection and service to the community.[1] These functions require police officers to apply legal rules and to ensure that their actions reflect both legal certainty and justice. Legal certainty demands that law enforcement rest on clear, consistent, and predictable standards. As a foundational principle of the rule of law, certainty restrains public authority and protects individuals from arbitrary treatment.[2] Justice, however, directs attention to the substantive consequences of legal action and calls for proportionality, equality, human dignity, and sensitivity to the particular circumstances of each case.[3] The tension between these principles becomes most visible when strict adherence to written rules produces outcomes that offend the public sense of fairness. A purely formal reading of the law may satisfy the requirement of predictability while failing to deliver the fairness that the law ultimately serves.

Several studies have examined this tension from different angles. Yahman argues that law enforcement officials draw on certainty, equity, and utility, particularly through progressive instruments such as restorative justice.[4] He concludes that law enforcement involves harmonizing legal norms with societal values, which requires officers to look beyond the text of regulations. Another study examines traffic law enforcement and the legal protection of police officers who must navigate conflicting norms between government regulations and internal police instructions.[5] It shows that hierarchical legal sources and operational directives can create practical dilemmas for officers in the field. A further study addresses disciplinary violations within the police force and the legal processes used to resolve them, emphasizing that legal certainty in disciplinary enforcement

[1] "Undang-Undang (UU) Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia" (2002), https://peraturan.bpk.go.id/Details/44418/uu-no-2-tahun-2002.
[2] "Undang-Undang Dasar (UUD) Tahun 1945 Dan Amandemen Nomor - Tentang UUD 1945 Dan Amandemen" (n.d.), https://peraturan.bpk.go.id/Details/101646/uud-no--.
[3] G. Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," *Oxford Journal of Legal Studies* 26, no. 1 (March 1, 2006): 1–11, https://doi.org/10.1093/ojls/gqi041.
[4] Dr. Yahman Yahman, "UNDERSTANDING LAW ENFORCEMENT IN THE PERSPECTIVE OF EXPEDIENCY AND JUSTICE," *Journal of Law Theory and Law Enforcement* 3, no. 1 (February 7, 2024): 26–34, https://doi.org/10.56943/jlte.v3i1.468.
[5] Erki Maulana Putra and Dr. M. Sholehuddin, "LEGAL REVIEW OF INFRINGEMENT PROSECUTION UNDER GOVERNMENT REGULATION OF INDONESIA NO. 80/2012 THROUGH TELEGRAM LETTER OF THE HEAD OF INDONESIAN NATIONAL POLICE NO. ST/2264/X/HUM.3.4.5./2022," *Journal of Law Theory and Law Enforcement* 2, no. 4 (October 27, 2023): 29–46, https://doi.org/10.56943/jlte.v2i4.404.

is essential to maintaining professionalism and public trust.[6] These studies confirm that police work unfolds where formal rules and contextual judgment intersect, yet they do not fully explain how officers should reconcile certainty and justice in everyday enforcement.

A significant gap therefore remains in the literature. Existing studies tend to describe the tension between legal certainty and justice or to examine discrete areas of police practice, such as traffic enforcement, restorative justice, or disciplinary proceedings. What is missing is a focused analysis of police discretion as the specific legal instrument through which these two principles are reconciled in Indonesian law enforcement. Article 18 of Law Number 2 of 2002 on the Indonesian National Police provides the statutory basis for discretion, yet scholarly discussion of how this provision operates in relation to the principles of certainty and justice remains underdeveloped. The absence of clear guidance on the exercise of discretion, combined with institutional pressures that reward measurable enforcement outcomes, leaves officers without a coherent framework for balancing formal compliance with substantive fairness.

This study offers a new perspective by treating police discretion as the point of convergence and contestation between legal certainty and justice. Instead of examining the two principles in isolation, the study analyzes how discretion functions as a legally controlled mechanism for applying general norms to concrete situations that legislation cannot fully anticipate. It also identifies the institutional, professional, and normative conditions under which discretion strengthens the rule of law. In doing so, the study moves beyond the descriptive accounts that dominate the existing literature and proposes a normative framework for evaluating whether discretionary decisions satisfy the demands of both certainty and justice.

The novelty of this study lies in three aspects. First, it does not merely describe the tension between legal certainty and justice but formulates police discretion as a normatively structured point of convergence, not as an exception to the principle of legality. This approach differs from studies that position discretion as a "free space" or mere "subjective wisdom." Second, it proposes a three pillar framework for legitimate discretion, namely a clear legal basis, proportionality and equality, and supervision and documentation. This framework has not been explicitly formulated in existing literature, which tends to stop at general recommendations about"strengthening oversight" without operational indicators. Third, it directly connects Article 18 of Law Number 2 of 2002 with the General Principles of Good Governance in Law Number 30 of 2014, thereby placing police discretion within the framework of administrative law, not only criminal law.

[6] Yahman Yahman et al., "DISCIPLINARY ACTIONS UNDER THE POLICE CODE OF ETHICS FOR OFFICERS INVOLVED IN ADULTERY," *Journal of Law Theory and Law Enforcement* 3, no. 4 (January 10, 2025): 24–35, https://doi.org/10.56943/jlte.v3i4.680.

Previous studies tend to discuss discretion within criminal law or administrative law separately, whereas this study integrates both.[7]

This study sets out to achieve two interrelated objectives. The first is to analyze the normative relationship between legal certainty and justice within the framework of Indonesian police law enforcement, with particular emphasis on Article 18 of Law Number 2 of 2002 and the General Principles of Good Governance. The second is to explore how police discretion operates as a mechanism for balancing these principles in practice, and to identify the legal and institutional factors that facilitate or obstruct such balancing. Ultimately, the study seeks to contribute to clearer guidelines for discretion, stronger oversight, and a more coherent understanding of how Indonesian police officers can enforce the law in a manner that is both legally certain and substantively just.

LITERATURE REVIEW

The relationship between legal certainty and justice has long occupied a central place in legal theory, particularly in discussions of how law should be applied in concrete cases. Radbruch famously argued that a law that is intolerably unjust must yield to justice, a position that continues to inform debates on the limits of formal legality.[8] Within the Indonesian context, this tension is especially pronounced in police law enforcement, where officers must apply general norms to situations that legislation cannot fully anticipate. Legal certainty demands consistency, predictability, and adherence to statutory procedures, while justice calls for proportionality, equality, and attention to the specific circumstances of each case.[9] Scholars have therefore turned to the concept of discretion as a mechanism that allows officers to navigate between these two demands, though the precise boundaries of that discretion remain contested.

Studies on Indonesian police practice have explored this tension across different areas of enforcement. Yahman, for instance, argues that law enforcement officials draw on certainty, equity, and utility, particularly through progressive

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[7] Doni Hafendi and Wilma Silalahi, "DISCRETION AS AN INSTRUMENT OF LAW ENFORCEMENT: A STUDY ON POLICE AUTHORITY BASED ON THE POLICE LAW," *Rewang Rencang : Jurnal Hukum Lex Generalis.* 5, no. 12 (2025): 1–27, https://jhlg.rewangrencang.com/%0ABATASAN; Kathryn Farrow, "Blame Culture: The Line between Blame and Accountability in Policing," *Policing: A Journal of Policy and Practice* 18 (January 1, 2024): 1–7, https://doi.org/10.1093/police/paae034; Nahwan Nahwan, Ilyas Ilyas, and Ihlas Ihlas, "PENERAPAN DISKRESI KEPOLISIAN DALAM PENEGAKAN HUKUM PIDANA: TINJAUAN DARI UNDANG-UNDANG KEPOLISIAN DAN PERATURAN KAPOLRI," *GOVERNANCE: Jurnal Ilmiah Kajian Politik Lokal Dan Pembangunan* 13, no. 7 (July 5, 2026): 221–31, https://doi.org/10.56015/gjikplp.v13i7.1073.

[8] Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)."

[9] Undang-undang Dasar (UUD) Tahun 1945 dan Amandemen Nomor - tentang UUD 1945 dan Amandemen.

instruments such as restorative justice.[10] He concludes that effective enforcement requires harmonizing legal norms with societal values, which means officers must look beyond the text of regulations. Another study by Putra and Sholehuddin examines traffic law enforcement and the legal protection of police officers who face conflicting norms between government regulations and internal police instructions.[11] Their findings show that hierarchical legal sources and operational directives can create practical dilemmas for officers in the field, leaving them uncertain about which norm should take precedence. A further contribution by Suhardin and colleagues addresses disciplinary violations within the police force and the legal processes used to resolve them, emphasizing that legal certainty in disciplinary enforcement is essential to maintaining professionalism and public trust.[12] These studies confirm that police work unfolds where formal rules and contextual judgment intersect, yet they do not fully explain how officers should reconcile certainty and justice in everyday enforcement.

A significant gap therefore remains in the literature. Existing studies tend to describe the tension between legal certainty and justice or to examine discrete areas of police practice, such as traffic enforcement, restorative justice, or disciplinary proceedings. What is missing is a focused analysis of police discretion as the specific legal instrument through which these two principles are reconciled in Indonesian law enforcement. Article 18 of Law Number 2 of 2002 on the Indonesian National Police provides the statutory basis for discretion, yet scholarly discussion of how this provision operates in relation to the principles of certainty and justice remains underdeveloped.[13] The absence of clear guidance on the exercise of discretion, combined with institutional pressures that reward measurable enforcement outcomes, leaves officers without a coherent framework for balancing formal compliance with substantive fairness. This study seeks to fill that gap by treating police discretion as the point of convergence and contestation between legal certainty and justice, and by proposing a normative framework for evaluating discretionary decisions in the Indonesian context.

RESEARCH METHODOLOGY

This study uses normative legal research, which treats law as a system of norms consisting of principles, rules, and doctrines. This method is appropriate because the study examines how legal certainty and justice are reconciled within

[10] Yahman, "UNDERSTANDING LAW ENFORCEMENT IN THE PERSPECTIVE OF EXPEDIENCY AND JUSTICE."
[11] Putra and Sholehuddin, "LEGAL REVIEW OF INFRINGEMENT PROSECUTION UNDER GOVERNMENT REGULATION OF INDONESIA NO. 80/2012 THROUGH TELEGRAM LETTER OF THE HEAD OF INDONESIAN NATIONAL POLICE NO. ST/2264/X/HUM.3.4.5./2022."
[12] Yahman et al., "DISCIPLINARY ACTIONS UNDER THE POLICE CODE OF ETHICS FOR OFFICERS INVOLVED IN ADULTERY."
[13] Undang-undang (UU) Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia.

the normative framework of Indonesian police law enforcement. It focuses on the content, coherence, and interrelation of legal norms. Although the study does not collect field data, it uses empirical findings from the Indonesian policing literature as factual premises to analyse why Article 18 of Law Number 2 of 2002 requires a more operational evaluative framework. The study therefore analyses legal materials to assess whether existing norms provide sufficient guidance for police discretion.

The study employs three approaches. The statutory approach examines legislation and regulations, including the 1945 Constitution, Law Number 2 of 2002 on the Indonesian National Police, Law Number 30 of 2014 on Government Administration, and the Criminal Procedure Code. The conceptual approach analyses legal doctrines and theories on legal certainty, justice, and discretion. The analytical approach examines the relationship between these norms and principles, particularly how Article 18 of Law Number 2 of 2002 functions as a legal basis for discretion. To assess whether a discretionary action is lawful, this study uses a three pillar evaluation framework. The first pillar is legality proportionality, which requires a clear legal basis and a three-stage proportionality test, namely relevance, necessity, and proportionality in the strict sense.[14] The second pillar is transparency documentation, which requires standard recording of reasons, legal basis, alternatives considered, and impact. The third pillar is accountability-oversight, which requires both internal and external review.[15]

Legal materials consist of primary and secondary sources. Primary legal materials include legislation and judicial decisions, such as Constitutional Court Decision Number 21/PUU-XII/2014 and Constitutional Court Decision Number 84/PUU-XXIII/2025. Secondary legal materials include scholarly books, journal articles, and legal doctrines on certainty, justice, and discretion. The materials were collected through a literature review and analysed normatively using a descriptive analytical method. The analysis first describes the relevant norms and then evaluates them against the three pillar framework to determine whether they reconcile legal certainty and justice in police law enforcement.[16]

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[14] Nahwan, Ilyas, and Ihlas, "PENERAPAN DISKRESI KEPOLISIAN DALAM PENEGAKAN HUKUM PIDANA: TINJAUAN DARI UNDANG-UNDANG KEPOLISIAN DAN PERATURAN KAPOLRI," *GOVERNANCE: Jurnal Ilmiah Kajian Politik Lokal Dan Pembangunan* 13, no. 7 (2026): 67–68.

[15] Bambang Slamet Riyadi et al., "Discretion of Power of the Indonesian National Police Impacts the Abuse of Power in the Case of Letter Forgery of Red Notice 'Fugitive Djoko Tjandra,'" *International Journal of Criminology and Sociology* 9 (April 5, 2022): 1292–1300, https://doi.org/10.6000/1929-4409.2020.09.148.

[16] Marzuki Peter Mahmud, *Penelitian Hukum*, 19th ed. (Jakarta: Kencana, 2019), https://opac.perpusnas.go.id/DetailOpac.aspx?id=1409842.

RESULT AND DISCUSSION

The Dialectical Relationship Between Legal Certainty and Justice in the Normative Framework of Indonesian Law

Legal certainty and justice are two fundamental principles that shape the theory and practice of law enforcement. Legal certainty requires legal norms to be clear, consistent, and predictable so that they can guide both citizens and state authorities. Justice, however, concerns the fairness of legal processes and outcomes and requires attention to equality, proportionality, human dignity, and the circumstances of each case. The legitimacy of law enforcement cannot rest on formal compliance alone. A legal system needs certainty to prevent arbitrary exercises of power, and it also needs justice to ensure that the application of legal rules does not produce disproportionate or substantively unfair outcomes. The relationship between these principles is dialectical, namely certainty provides stability and limits state authority, while justice guides the proper and legitimate application of that authority.[17]

Within the Indonesian constitutional order, this relationship is reflected in the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (3) establishes Indonesia as a state based on law, while Article 28D paragraph (1) guarantees every person recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law.[18] The phrase "fair legal certainty" shows that legal certainty is not conceived as a purely formal value detached from justice. State action must have a clear legal basis and must be exercised consistently with constitutional guarantees. This principle is especially important in police law enforcement because police powers may directly affect personal liberty, property, privacy, and other fundamental rights. The Constitutional Court, through Decision Number 21/PUU-XII/2014, strengthened procedural safeguards by expanding the scope of pretrial review to include suspect designation, searches, and seizures, thereby reinforcing judicial control over investigative authority.[19]

The same normative balance appears in Law Number 2 of 2002 on the Indonesian National Police. The statutory framework defines policing as encompassing the maintenance of public security and order, law enforcement, protection, guidance, and public service. The police are therefore not merely an institution responsible for coercive enforcement. Their legal mandate requires the simultaneous pursuit of public order, the enforcement of law, and the protection of society. Articles 2, 4, and 13 demonstrate that the exercise of police authority must preserve legal order while remaining connected to the broader objectives of

[17] Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)."
[18] Undang-undang Dasar (UUD) Tahun 1945 dan Amandemen Nomor - tentang UUD 1945 dan Amandemen.
[19] "Constitutional Court of the Republic of Indonesia, Decision No. 21/PUU-XII/2014." (2014), https://www.mkri.id/public/content/persidangan/putusan/21_PUU-XII_2014.pdf.

protection, public service, and respect for human rights.[20] Police law enforcement must consequently be conducted within clear statutory limits while taking account of the rights and legitimate interests affected by the exercise of state authority.

Police Discretion as the Point of Convergence and Contestation

Article 18 of Law Number 2 of 2002 provides the legal basis for police discretion, yet its formulation contains serious ambiguity. Paragraph (1) states that police officers may "act according to their own judgment" for the public interest, while paragraph (2) requires that such action be "accountable in accordance with statutory provisions." The phrase "according to their own judgment" raises a lex certa problem because it provides no objective parameters for what constitutes "public interest" and to what extent "own judgment" can be justified.[21] The Constitutional Court, in Decision Number 84/PUU-XXIII/2025, rejected the petition for judicial review of Article 18 paragraph (1), reasoning that the norm does not stand alone and is limited by paragraph (2) and its elucidation. The Court emphasized that discretion may only be exercised in "highly necessary circumstances" and must adhere to statutory legislation and the Police Code of Ethics.[22] However, the Court's reasoning actually confirms that Article 18 contains an internal tension between the grant of authority and limitations that are not entirely clear.

The issue becomes more complex when Article 18 is connected to Law Number 30 of 2014 on Government Administration. Article 24 of that Law requires that discretion by government officials comply with the General Principles of Good Governance, be based on objective reasons, and not create conflicts of interest.[23] However, Law Number 30 of 2014 does not explicitly regulate how these principles apply in the context of police discretion, which operates in the distinct realm of criminal law enforcement and public security. The absence of a normative bridge creates a gap: on one hand, the police are bound by the General Principles of Good Governance, yet on the other hand, there are no operational standards that translate these principles into tactical situations in the field. As a result, assessing whether a discretionary action has met these principles often depends on subjective interpretation, both by individual officers and by existing oversight mechanisms.

Critical analysis of Article 18 must also consider that police discretion does not operate in a vacuum. It is shaped by organizational dynamics, public pressure, and institutional culture. A study by Erlyn shows that discretion at the sub-district police level is often poorly documented, making evaluation and accountability

[20] Undang-undang (UU) Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia.
[21] Pujianti Sri, "Police Officer's Acts 'According to Their Own Judgment' Prone to Abuse," 2025, https://en.mkri.id/news/details/2025-06-18/Police_Officer's_Acts_'According_to_Their_Own_Judgment'_Prone_to_Abuse.
[22] Argawati Utami, "Court Rejects Petition on Police's Discretion," 2025, https://en.mkri.id/news/details/2025-07-03/Court_Rejects_Petition_on_Police's_Discretion.
[23] "Undang-Undang (UU) Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan" (2014), https://peraturan.bpk.go.id/Details/38695/uu-no-30-tahun-2014.

difficult.[24] This finding reinforces the argument that normative ambiguity at the statutory level is compounded by weak documentation and oversight practices at the implementation level. Therefore, analysis of Article 18 cannot rely solely on reading its text. It must encompass how the norm is brought to life within institutional practices that are subject to significant constraints.

The Implementation of Police Discretion in Practice

Police discretion constitutes an essential mechanism for reconciling legal certainty with substantive justice in the practical enforcement of law. Its necessity derives from the inherent limitations of statutory rules, which cannot anticipate every factual circumstance encountered by police officers. In practice, discretion may arise in traffic enforcement, the handling of minor offences, public assemblies, and cases involving vulnerable persons. In such circumstances, police officers must determine whether formal enforcement is necessary or whether a proportionate and less coercive response would better serve the circumstances of the case. This authority, however, cannot be understood as an unrestricted power to depart from the law. Article 18 of Law Number 2 of 2002 provides the legal basis for police discretion while requiring the exercise of police authority to remain directed toward the public interest and consistent with law and justice.

The practical significance of discretion can be observed particularly in traffic enforcement and the handling of minor offences. A traffic officer may encounter a violation that formally satisfies the elements of an offence but, in light of the particular circumstances, may reasonably be addressed through a warning instead of an immediate formal sanction. Similarly, in criminal cases involving minor harm or vulnerable offenders, a strictly punitive approach may produce consequences disproportionate to the interests that criminal law seeks to protect. In cases involving children, this consideration is reinforced by Law Number 11 of 2012 on the Juvenile Criminal Justice System, which requires diversion to be pursued in accordance with the statutory framework.[25] Such practices demonstrate that discretion may function as a means of adapting general legal rules to particular circumstances without abandoning the normative authority of law.

A similar tension arises in the policing of public assemblies. Police officers must protect public order while simultaneously respecting constitutional rights to peaceful assembly and expression. Accordingly, the legality of police intervention cannot be assessed solely by reference to the existence of formal authority. The necessity, proportionality, and manner of intervention must also be considered. Excessive intervention may transform lawful law enforcement into an unjustified restriction of individual rights, whereas excessive tolerance in circumstances

[24] Erlyn Indarti, "Strengthen Security and Public Order: Accountability Management in Improving the Quality of Law Enforcement," *Academic Journal of Interdisciplinary Studies* 9, no. 2 (March 10, 2020): 82, https://doi.org/10.36941/ajis-2020-0025.
[25] "Undang-Undang (UU) Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak" (2012), https://peraturan.bpk.go.id/Details/39061/uu-no-11-tahun-2012.

involving a genuine threat to public safety may undermine the state's obligation to maintain public order. Discretion therefore constitutes a practical point at which formal legality and contextual judgment intersect.

Case Studies in the Exercise and Abuse of Police Discretion

Normative analysis of Article 18 of Law Number 2 of 2002 becomes more meaningful when tested against concrete cases. The following three cases illustrate how police discretion operates in practice and reveal the points at which discretion can either strengthen or weaken legal certainty and justice.

First case: the handling of the August 2025 protests. During the wave of protests triggered by rising prices and government policies, the police named four activists as suspects for allegedly inciting riots. However, the Central Jakarta District Court in its February 2026 ruling acquitted the four activists after finding no causal link between their social media calls and the violence that occurred.[26] The panel of judges also criticised the police for using excessive force against protesters. National Commission on Human Rights *(Komnas HAM),* in its statement, appreciated the ruling and emphasised the importance of proportionate discretion in handling demonstrations.[27] This case shows that when discretion is used to criminalise peaceful expression, it violates the principles of legal certainty and justice. Conversely, when discretion is exercised proportionately, it can protect the constitutional rights of citizens. When analyzed using the threepillar framework, police discretion in this case failed to meet the legality-proportionality pillar, specifically the necessity test. Arresting the activist was not the least burdensome option among the available alternatives. The police could have chosen more proportionate measures, such as issuing a warning, conducting mediation, or dispersing the crowd without making arrests. This failure to meet the necessity test indicates that discretion which is supposed to protect the public interest was instead used to criminalize peaceful expression, thereby violating the principles of legal certainty and justice.

Second case: electronic ticketing and the black box problem. The implementation of Electronic Traffic Law Enforcement (ETLE) in Indonesia faces serious criticism regarding algorithmic transparency. The ETLE system operates on a deep learning model that functions as a black box, making its decision-making process impossible to audit by external parties.[28] Detection errors have occurred in various jurisdictions, including Indonesia, where innocent violators were still

[26] "Indonesia: Acquittal of Activists Brings New Hope for Right to Protest," 2026, https://www.amnesty.org.uk/latest/indonesia-acquittal-of-activists-brings-new-hope-for-right-to-protest/.

[27] Komnas HAM, "Putusan Bebas Sdr. Delpedro Marhaen Rismansyah, Dkk Sebagai Preseden Dalam Upaya Perlindungan Kebebasan Berpendapat Dan Berekspresi," 2026.

[28] Husada Angka, Parmono Budi, and Hidayati Rahmatul, "Ensuring Fairness in Automated Traffic Enforcement: Examining Algorithmic Justice and Due Process in Malang's ETLE System," *Bulletin of Community Engagement* 6, no. 2 (2026): 214–27, https://attractivejournal.com/index.php/bce//index.

sanctioned. In this context, police discretion actually narrows because enforcement decisions are delegated to the algorithm. Yet Article 18 of the Police Law provides space for officers to humanely assess whether a violation warrants formal action or merely a warning. This tension between automation and discretion shows that legal certainty produced by technology does not automatically guarantee substantive justice. When case analyzed using the three pillar framework, this case fails to meet the transparency documentation pillar. Algorithm decisions cannot be audited, the grounds for enforcement cannot be verified, and there is no adequate appeal mechanism for violators who feel they have been wronged. The failure of this pillar demonstrates that legal certainty generated by technology does not in and of itself guarantee substantive justice. On the contrary, the lack of transparency actually creates new uncertainties for citizens.

Third case: juvenile diversion at the Surakarta District Court. Ruling No. 1/Pen.Pid.Diversi/2020/PN Skt of the Surakarta District Court offers a different picture. In this case, police investigators exercised principled discretion to choose a legal basis that allowed diversion, even though alternative provisions with harsher criminal penalties were available.[29] Diversion was successfully achieved through synergy between the police, the Correctional Services Office, the Social Services Agency, and the active participation of the victim and family. This case demonstrates that when discretion is exercised within a clear framework oriented toward the best interests of the child, it can become an effective instrument for realising restorative justice without disregarding legal certainty. When analyzed using the three pillar framework, this case meets all three pillars. The legality proportionality pillar is met because diversion is based on Law No. 11 of 2012 and is the least onerous option for the child. The transparency documentation pillar is met because the diversion process is documented in the court's ruling. The accountability oversight pillar is met because diversion involves oversight by the Correctional Institution and the judge. Successfully meeting these three pillars demonstrates that discretion exercised within a clear framework can be an effective instrument for achieving restorative justice without neglecting legal certainty.

These three cases show that police discretion is not merely a normative concept. It lives in concrete decisions that directly affect the rights of citizens. Analysis of these cases confirms that the quality of discretion is not determined by the breadth of freedom granted to officers, but by the extent to which that freedom is exercised within clear legal boundaries and with justifiable considerations.

Challenges in the Exercise of Police Discretion

Institutional pressure toward quantitative enforcement targets is an empirical condition that has been documented in the Indonesian policing literature. A study of East Java Regional Police personnel identified three forms of normative

[29] Andik Prasetyo, "Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana," *Mizan: Jurnal Ilmu Hukum* 9, no. 1 (2020): 51, https://doi.org/10.32503/mizan.v9i1.1054.

pressure, namely demands for optimal service, obligations to meet organisational targets, and requirements for formal and informal education.[30] The study noted that pressure to meet targets drove some personnel to commit ethical violations, including abuse of authority. Another study at the investigative level showed that organisational demands to achieve clearance rates created incentives for investigators to use all means, including violence, to obtain confessions.[31] These findings demonstrate that institutional pressure is not merely a theoretical assumption but a documented condition in Indonesian policing practice.

Weak oversight mechanisms over police discretion are also a recurring finding in empirical literature. A study of discretion practices at the sub-district police level found that the high frequency of discretion use was inversely related to the intensity of direct supervision, thereby expanding the space for subjective judgment and increasing the risk of abuse of authority.[32] Research on the dominance of investigative authority shows that internal oversight is often constrained by an organisational culture emphasising esprit de corps, where procedural violations are more often resolved internally without adequate public accountability.[33] External oversight through the National Police Commission also has limitations because its authority is confined to issuing recommendations without enforcement power. It is within this context that the present normative study uses these empirical findings as factual premises to analyse why Article 18 of the Police Law requires a more operational evaluative framework.

Public Trust and Institutional Legitimacy

The consequences of such an imbalance extend directly to the legitimacy of the police and the willingness of citizens to comply with the law. Tom R. Tyler's theory of legal legitimacy demonstrates that compliance is not determined exclusively by the threat of sanctions. Citizens are also influenced by whether legal authorities are perceived as legitimate and whether decision-making processes are experienced as fair, respectful, and trustworthy.[34] Accordingly, police discretion that is exercised consistently, proportionately, and transparently may strengthen institutional legitimacy even where the immediate decision is unfavorable to an

[30] Hendra Wirawan, Toetik Koesbardiati, and Sutinah, "Institutional and Social Pressure in Violating the Police Code of Ethics," *Jurnal Ilmu Kepolisian* 18, no. 3 (December 18, 2024): 331–52, https://doi.org/10.35879/jik.v18i3.470.
[31] Nurdin Sembiring et al., "The Effects of Emotional Intelligence and Organizational Justice on Job Satisfaction, Caring Climate, and Criminal Investigation Officers' Performance," *International Journal of Organizational Analysis* 28, no. 5 (June 18, 2020): 1113–30, https://doi.org/10.1108/IJOA-10-2019-1908.
[32] Riyadi et al., "Discretion of Power of the Indonesian National Police Impacts the Abuse of Power in the Case of Letter Forgery of Red Notice 'Fugitive Djoko Tjandra.'"
[33] Bari Candramedi, "The Dominance of Law Enforcement Authority in the Investigation Stage: A Critical Analysis of Law Enforcement Effectiveness and Abuse of Power," *International Journal of Law, Crime and Justice* 3, no. 1 (January 27, 2026): 01–09, https://doi.org/10.62951/ijlcj.v3i1.872.
[34] Tom R. Tyler, "Why People Obey the Law," *Why People Obey the Law*, 2021, 1–302, https://doi.org/10.2307/j.ctv1j66769.

individual. Conversely, arbitrary or discriminatory discretion may encourage the perception that legal rules are applied selectively, thereby reducing voluntary compliance and public cooperation.

The relationship between discretion and public trust is particularly significant because effective policing depends substantially on cooperation between the police and the community. Citizens who perceive police decisions as fair are more likely to report offences, provide information, cooperate as witnesses, and comply voluntarily with lawful directions. Conversely, perceptions of arbitrary or discriminatory enforcement may discourage cooperation and encourage resistance to police authority. The problem therefore extends beyond the legality of individual discretionary decisions. Repeated experiences of unfair treatment can gradually weaken the institutional legitimacy upon which effective law enforcement depends.

Toward a Legally Accountable Exercise of Police Discretion

The effective reconciliation of legal certainty and justice further depends on professional ethics, supervision, and accountability. Clear institutional guidance and review mechanisms are necessary to ensure that discretion does not produce inconsistency, unequal treatment, or abuse of authority. Internal supervision promotes compliance with legal and professional standards, while external oversight provides an additional safeguard against maladministration and improper exercises of police authority. Accountability should not be understood solely as a mechanism for imposing sanctions after misconduct has occurred. It also performs a preventive function by requiring significant exercises of authority to be reasoned, documented, and capable of review. A policing system that focuses exclusively on formal or quantitative enforcement outcomes may encourage mechanical implementation of the law, whereas unrestricted discretion may undermine predictability and public confidence.

Accordingly, legal certainty and justice should be understood as complementary principles within the normative framework of Indonesian police law enforcement. Legal certainty requires police authority to be exercised on an identifiable legal basis, in accordance with established procedures, and within defined institutional limits. Justice requires that the implementation of such authority remain proportionate, non-discriminatory, respectful of human dignity, and responsive to legally relevant circumstances. Police discretion occupies a central position in reconciling these principles because it enables general legal norms to be applied to circumstances that cannot be exhaustively regulated in advance. Its exercise, however, must remain subject to statutory limits, the General Principles of Good Governance, procedural safeguards, professional ethics, supervision, and effective accountability.

The appropriate balance requires three conditions. First, discretionary authority must possess a clear legal basis and identifiable limits, particularly under Article 18 of Law Number 2 of 2002. Second, its exercise must be guided by

proportionality, equality, human rights, and the circumstances of the individual case. Third, significant discretionary decisions must remain subject to supervision, documentation, and accountability. Under these conditions, discretion becomes a point of convergence between legal certainty and justice because it enables general legal rules to be applied without losing sight of substantive circumstances.

Ultimately, the implementation of police discretion represents both a point of convergence and a point of contestation between legal certainty and justice. It constitutes a point of convergence when discretion allows police officers to apply the law proportionately, consistently, and humanely in circumstances that cannot be exhaustively regulated by legislation. It becomes a point of contestation when discretionary authority is exercised without adequate legal justification, inconsistently, discriminatorily, or under personal and institutional pressures. The quality of police discretion should therefore not be measured by the breadth of freedom granted to officers, but by the extent to which that freedom is exercised within legally defined boundaries while remaining sufficiently flexible to accommodate justice in concrete cases. Properly regulated discretion thus serves to reconcile the predictability required by law with the substantive justice demanded by its application. The proper implementation of police law enforcement therefore does not require a choice between legal certainty and justice. It requires a legally accountable exercise of authority in which legal certainty is implemented fairly and justice is pursued within the boundaries of law.

CONCLUSION

This study has examined how police discretion functions as the point of convergence and contestation between legal certainty and justice in Indonesian law enforcement. The main finding is that the normative relationship between legal certainty and justice is complementary, not antagonistic. Legal certainty provides the limits of authority, while justice guides the substantive orientation of its exercise. Article 18 of Law Number 2 of 2002 provides the legal basis for discretion, while Law Number 30 of 2014 and the General Principles of Good Governance establish the normative limits within which discretion must be exercised. When discretion is grounded in clear legal authority, guided by proportionality, and subject to accountability, it enables officers to apply general rules to concrete situations without undermining the rule of law.

Based on these findings, the study recommends strengthening guidelines for police discretion, improving professional training, enhancing oversight mechanisms, and harmonizing legal certainty with substantive justice. The three pillar framework proposed in this study, namely legality-proportionality, transparency-documentation, and accountability-oversight, offers operational criteria for evaluating whether discretionary actions are lawful and just. Such measures would allow discretion to function as a controlled legal instrument that

reconciles predictability with fairness. The study contributes to a more coherent understanding of how Indonesian police officers can enforce the law in a manner that is both legally certain and substantively just, thereby reinforcing public trust and the rule of law.

This study acknowledges several limitations that open directions for future research. It is normative in nature and does not empirically test how police discretion is exercised in the field. It focuses on the national normative framework and does not incorporate regional variations or comparisons with other jurisdictions. Future research could address these gaps through empirical studies on the implementation of the three pillar framework, comparative research with countries that have more established models of police discretion regulation, and investigations into the role of technology in law enforcement decision-making. Such research would further enrich understanding of how Indonesian police officers can enforce the law in a manner that is both legally certain and substantively just.

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