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**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**

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ABSTRACT

The issuance of the telegram letter of the Head of Indonesian National Police No. ST/2264/X/HUM.3.4.5./2022, on 18 October 2022, has an impact on traffic law enforcement. The letter prohibits police officers from manually ticketing traffic violators. After the issuance of the letter, there was a norm conflict with Government Regulation No. 80/2012. This research aims to determine the legal authority between policies and regulations and legal protection for police officers who are proven to use the manual ticketing system after the issuance of the National Police Chief's telegram letter. This research is a normative legal research, which is a type of research that examines documents with various secondary data such as court decisions, legal theories, laws, and regulations. The findings of this research indicate that the Government Regulation has a higher position than the Chief of Police's telegram letter. Therefore, members of the Indonesian National Police who are still detected conducting manual ticketing can obtain legal protection because National Police Chief Regulation No. 14/2011 explains that every member of Indonesian National Police who is a subordinate is obliged to refuse superior orders that are contrary to legal norms.

Keywords: *Infringement, Manual Traffic Ticketing, Telegram Letter*

INTRODUCTION

The legal basis of Indonesia consists of criminal law, which establishes rules regarding acts that should not be committed and certain criminal sanctions for violators of these prohibitions, as regulated in the Criminal Code. Many rules related to the criminal offense can be obtained from the Criminal Code, from minor offenses to serious offenses. A traffic offense that leads to a traffic ticket is one of the offenses regulated in the Criminal Code. The implementation of the Road Traffic and Transportation Law regarding proving violations is a social phenomenon and legal problem that requires management for efficiency and effectiveness.

According to the Road Traffic and Transportation Law, traffic is the movement of vehicles in road traffic. Therefore, the criminal regulations stipulated in the law cover any offenses related to the movement of vehicles or people within the scope of road traffic.¹ Most traffic offenses are traffic markings, traffic signs, traffic control lights, stopping restrictions, not complying with driving requirements such as not having a driver's license or vehicle registration, and others. During peak hours, when people's activities on the road increase, these violations often occur. The amount of traffic offenses increases along with the growth of motorized vehicles.² Due to the increase in traffic offenses, traffic police routinely conduct motor vehicle inspections every month. Therefore, the high rates of road accidents cannot be only blamed on traffic police officers. This is because traffic accidents can also occur without the awareness of traffic compliance from motorists and road users. Therefore, the police impose electronic ticketing regulations through the e-Tilang application program to handle traffic offenses and illegal extortion that are increasing along with the development of transportation modes in recent times. The e-Tilang application system is quite effective in minimizing traffic offenses. However, this system must be complemented with awareness from road users in order to create order on the streets. The implementation of the e-Tilang application program is considered successful because the rate of traffic offenses tends to decrease. The e-Tilang application is also more agile than ordinary traffic tickets, fast and easy to operate, with proven server security. Instead of the conventional on-the-spot ticketing method, the e-Tilang application system can provide convenience, speed, and transparency in the ticketing process, especially in the police department. The implementation of the e-Tilang application system is also

¹ Komang Sastrini and I Nyoman Surata, "Efektifitas Tilang Elektronik (E-Tilang) Bagi Pelanggar Berkendaraan Bermotor Di Kabupaten Buleleng (Studi Di Pengadilan Negeri Singaraja Kelas IB)," *Kertha Widya: Jurnal Fakultas Hukum Unipas* 6, no. 2 (2018): 44–63, <https://doi.org/https://doi.org/10.37637/kw.v6i2.501>.

² Setiyanto, Gunarto, and Sri Endah Wahyuningsih, "Efektivitas Penerapan Sanksi Denda E-Tilang Bagi Pelanggar Lalu Lintas Berdasarkan Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan (Studi Di Polres Rembang)," *Jurnal Hukum Khaira Ummah* 12, no. 4 (2017): 213–25, <https://doi.org/http://dx.doi.org/10.26532/khaum.v12i4.2293>.

one of the purposes of the Head of Indonesian National Police program to create an honest, professional, and trusted police force.

The e-Tilang application program can handle news reports in the electronic media and social media regarding the deviant behavior of some police officers who commit illegal extortion to offenders. Therefore, the Head of Indonesian National Police, General Listiyo Sigit Prabowo, decided to stop the practice of manual ticketing. After the instruction was issued, several police stations immediately concentrated on conducting electronic ticketing through Electronic Traffic Law Enforcement or E-TLE. Although, there are still many infringements of the electronic ticketing regulations in Indonesia, for example in Probolinggo. According to the Traffic unit of Probolinggo Resort Police, the amount of traffic offenses has increased. For example, a motorcyclist purposely removed his license plate to avoid an electronic ticket. Several measures have been taken against traffic offenders so far, including giving written reprimands while expressing sympathy.³

Based on the previous background, this research was conducted to determine the legal force between policy regulations and statutory regulations. In addition, this research also aims to find out the protection of police officers who are detected still using the manual ticketing system after the issuance of the telegram letter of the Head of Indonesian National Police No: ST/2264/X/HUM.3.4.5./2022.

LITERATURE REVIEW

Legal Theory

Legal theory is concerned with exploring the legal bases. There are various theories of legal development that define the important elements of law enactment and enforcement. These are some important types of legal theories and their definitions such following below:

1. Natural Law Theory

According to natural law theory, law comes from nature, and God granted universal rights to humans. Natural law is law that existed before man-made law. People believe that natural law is stronger than man-made law. This theory states that man-made laws must not deviate from natural laws to be legal.⁴

2. Legal Positivism Theory

According to the theory of legal positivism, law comes from a source recognized by the state or government. This theory emphasizes the importance of laws made by the government as a legitimate power, as it

³ Ahmad Faisol, "Hindari Tilang Elektronik, Pengendara Motor Di Probolinggo Copot Dan Tekuk Pelat Nomor," Kompas.com, 2022, <https://amp.kompas.com/surabaya/read/2022/11/02/130917878/hindari-tilang-elektronik-pengendara-motor-di-probolinggo-copot-dan-tekuk>.

⁴ Tom Angier, *Natural Law Theory (Elements in Ethics)* (Cambridge: Cambridge University Press, 2021), <https://doi.org/10.1017/9781108580793>.

is the only legally recognized source of law. This theory argues that the existence of a law does not depend on whether the law is equitable or not, but depends on whether the state or government enacts the law.⁵

3. Legal Realism Theory

According to legal realism theory, the law is not immutable; it changes according to the way judges and lawyers implement it.⁶ This theory emphasizes that the social, political, and economic context is crucial to creating and enforcing the law. It states that court decisions are based not only on the law, but also on social norms, public policies, and political interests.

4. Critical Legal Theory

According to critical legal theory, the law is not always pure and straightforward; ideology and power both affect it. Considering legal policy and the underlying social, political, and economic interests is crucial for this theory. The theory argues that the law should promote justice and equality rather than maintaining circumstances that are favorable to certain groups.⁷

5. Utilitarian Legal Theory

According to utilitarian legal theory, laws should be made with the aim of maximizing social welfare. According to this theory, balancing the interests of individuals and society as a whole is essential. This theory argues that the law should be legislated in order to help society.⁸

6. Feminist Legal Theory

According to feminist legal theory, gender and hidden patriarchy frequently affect the law. This theory emphasizes the importance of considering gender roles and promoting gender equality in law enforcement and lawmaking processes. It argues that law must be conceived from a broader perspective than solely relying on traditional legal concepts.⁹

7. Constitutional Law Theory

According to constitutional law theory, the law must always be related to the Constitution. This theory emphasizes the importance of freedom, human rights, and the protection of individual rights. It argues that the

⁵ Amy Salyzyn, "Positivist Legal Ethics Theory and the Law Governing Lawyers: A Few Puzzles Worth Solving," *Hofstra Law Review* 42, no. 4 (2014): 2–14, <https://scholarlycommons.law.hofstra.edu/hlr/vol42/iss4/2/>.

⁶ Hanoah Dagan and Roy Kreitner, "The New Legal Realism and The Realist View of Law," *Law & Social Inquiry* 43, no. 2 (2018): 528–553, <https://doi.org/10.1111/lsi.12319>.

⁷ Emmanuel Melissaris, "Perspective, Critique, and Pluralism in Legal Theory," *Northern Ireland Legal Quarterly* 57, no. 4 (August 11, 2020): 597–609, <https://doi.org/10.53386/nllq.v57i4.849>.

⁸ Joao Paulo Martinelli, "An Utilitarianist Reading of Criminal Law," *SSRN Electronic Journal*, 2014, <https://doi.org/10.2139/ssrn.2383410>.

⁹ Lezelle Jacobs, "Legal Feminism and Insolvency Theory: A Woman's Touch," *Wolverhampton Law Journal* 3 (2019): 49–58, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3494577.

law should be based on constitutional principles, encompassing the principles embodied in the Constitution.¹⁰

8. Existentialist Legal Theory

According to existentialist legal theory, law should consider human life as a whole rather than just for individuals. It emphasizes the fact that it is crucial to maintain the connection between the individual and the larger world and that the law should address more significant social and ecological issues rather than small ones.¹¹

Theory of Criminal Punishment

The term criminal law is derived from the Dutch word *strafrecht*, where *straf* in Indonesian means sanction, punishment, or penalty, while *recht* can be interpreted as law.¹² According to Muchsin, criminal law is the overall regulations that determine which behaviors are illegal, qualify as crimes, and are subject to appropriate punishment.¹³ Criminal law is a component of the entire legal entity that governs a country and serves as both a foundation and a set of rules as stated such following below:

1. Determine which actions are permitted or not, with specific sanctions or penalties for offenders.
2. Determine the right time when a person who violates this regulation can be punished in accordance with the provisions of the law.
3. Determine the procedure where criminal penalties will be applied in the cases where a person is deemed to have violated the prohibition.¹⁴

The punishments present a complex choice between retribution for culpability and the legitimate aim of the criminal process, which is to suppress criminal activity. If this is not achieved, the system or purpose of punishment in criminal law needs to be reorganized to identify the intersection between the two perspectives.

¹⁰ Maurice Adams, Anne Meuwese, and Ernst Hirsch Ballin, *Constitutionalism and the Rule of Law*, ed. Maurice Adams, Anne Meuwese, and Ernst Hirsch Ballin (Cambridge University Press, 2017), <https://doi.org/10.1017/9781316585221>.

¹¹ Ronnie Lippens and James Hardie-Bick, "Existential Dimensions in the Socio-Legal Sphere," *Oñati Socio-Legal Series* 5, no. 3 (2015), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2654146_code1485531.pdf?abstractid=2619387&mirid=1&type=2.

¹² Ahmad Zul Azmi, "Tinjauan Hukum Pidana Terhadap Perbuatan Laki-Laki Yang Menghamili Perempuan Di Luar Ikatan Perkawinan" (Universitas Islam Indonesia, 2016).

¹³ Samuel Agustinus, Eko Soponyono, and Rahayu, "Pelaksanaan Pidana Mati Di Indonesia Pasca Reformasi Dari Perspektif Hak Asasi Manusia," *Diponegoro Law Journal* 5, no. 4 (2016): 1–16, <http://www.ejournal-s1.undip.ac.id/index.php/dlr/>.

¹⁴ Fitri Wahyuni, *Dasar-Dasar Hukum Pidana Di Indonesia* (Tangerang: PT Nusantara Persada Utama, 2017), [https://jdih.situbondokab.go.id/barang/buku/Dasar-Dasar Hukum Pidana di Indonesia by Dr. Fitri Wahyuni., S.H., M.H. \(z-lib.org\).pdf](https://jdih.situbondokab.go.id/barang/buku/Dasar-Dasar Hukum Pidana di Indonesia by Dr. Fitri Wahyuni., S.H., M.H. (z-lib.org).pdf).

Theory of Law Enforcement

The behavior of law enforcement officers includes law enforcement behavior. The discipline and certainty of law are things that are aspired to by law enforcers. Law enforcement occurs before and after violations by the community. The law enforcement system consists of many members of the government who serve as law enforcers which aim to correct, prevent, and punish offenders. Although often referred to as part of the powers in the courts, legal orders are generally used for unauthorized members of the police, for example, those directly involved in taking action and monitoring crime prevention and response, and those investigating crimes. Lawbreakers are often incarcerated and punished after arrest. Law enforcement is the effort to enforce the law or the application of norms that form the basis of lawful behavior in society and the state.

Theory of Crime and Offenses

The theory of crime and offenses is one of the perspectives in distinguishing crimes from offenses. A crime is defined as *rechtsdeliten*, which means an act that, although not expressly defined as a criminal offense by law, is still considered unlawful. *Wetsdeliktern*, or activities that violate the law and deviate from the rule of law is the opposite of an offense. Therefore, the difference between the two can only be determined once the law establishing the requirements has been passed. According to the second point of view, the difference between crimes and offenses in terms of the severity or leniency of punishment is purely quantitative. The prospect of punishment for a dominant crime is more severe than for the actual offense. Offenses and crimes can be distinguished from each other as follows:

1. Since violations are defined in the law, they are considered criminal offenses. According to Articles 489-569 of Book III of the Criminal Code, for example, public drunkenness (Article 492 of the Criminal Code/Article 536 of the Criminal Code), entering a restricted area (Article 551 of the Criminal Code).
2. Crimes are termed delicts even though they are not defined as criminal offenses by law, according to Articles 104-488 of Book II of the Criminal Code, for example, theft (Article 362 of the Criminal Code), murder (Article 338 of the Criminal Code), and rape (Article 285 of the Criminal Code).

Meanwhile, according to Moeljatno, the differences between crimes and offenses are as follows:

1. Crimes are punishable by imprisonment.
2. Prosecutors shall prove the specific type of wrongdoing (both intentional and unintentional) required in the case of a crime but not in the case of an offense. Therefore, crimes are classified into *culpa* and *dolus*.

3. Attempt to commit an offense is not punishable under Article 54 of the Criminal Code. In addition, aiding and abetting an offense is not punishable under Article 60 of the Criminal Code.
4. The waiting period for the right to determine and the right to serve a sentence for the offense is shorter than the waiting period for the crime, one year and two years.
5. Sentencing for offenses and crimes differs in terms of concurrence (*concurcus*).¹⁵

Theory of Liability

Responsibility, according to the *Kamus Besar Bahasa Indonesia* means the state of being obliged to bear everything; in case anything happens, one can be sued, blamed, sued, and so forth.¹⁶ In practice, responsibility often refers to political accountability, whereas liability refers to legal accountability, i.e., liability for the wrongdoing of a legal subject.¹⁷ In addition, responsibility means that a person has the freedom to do as asked of them, they cannot avoid the possible outcomes and consequences of their actions, and they can be required to do as asked of them. Responsibility is a metaphor for a person's behavior when they have control over their soul. In addition, responsibility is also a component of intellectual and mental concern. A person must make decisions and bear the consequences of those decisions, whether they are accepted or rejected. According to the law, responsibilities are matters of rights and not unintended outcomes. Responsibility is a person's capacity to take ownership of their judgment, talents, abilities, and capacities regarding tasks.

Theory of Legal Protection

Everyone has legal rights to uphold. Simorangkir asserts that law is a system of coercive rules set by the authorities who are tasked with regulating how people behave in society, and violations of these rules have consequences, including punishment.¹⁸ Basically, legal protection is an effort to defend human rights that have been violated or infringed by other parties. People are protected so they can

¹⁵ Fepi Patriani, "Perbedaan Pelanggaran Dengan Kejahatan," Firma Hukum Konspirasi Keadilan, 2023, <https://konspirasikeadilan.id/artikel/perbedaan-pelanggaran-dengan-kejahatan0645#:~:text=Perbedaan antara kejahatan dan pelanggaran,pelanggaran hal itu tidak usah.>

¹⁶ Kamus Besar Bahasa Indonesia (KBBI), "Arti Kata Tanggung Jawab - Kamus Besar Bahasa Indonesia (KBBI) Online," Kamus Besar Bahasa Indonesia (KBBI), 2023, <https://kbbi.web.id/tanggung-jawab>.

¹⁷ Yuliana Silvy Rosadi Zega and Fatma Ulfatun Najicha, "Tanggung Jawab Hukum Terhadap Kerusakan Lingkungan Dalam Kasus Lumpur Lapindo Menurut Undang-Undang Nomor 11 Tahun 2020 (UU Ciptaker)," *Indonesian State Law Review* 4, no. 1 (2021): 89–102, <https://journal.unnes.ac.id/sju/index.php/islrev/article/view/46528/20152>.

¹⁸ Yulisa Laili Zahro, "Pengetahuan Hukum Masyarakat Tentang Penyelesaian Masalah Pelanggaran Atas Layanan Ojek Online Berbasis Aplikasi (Studi Pada Go-Jek Dan Grab Di Wilayah Kabupaten Cilacap)" (Universitas Islam Indonesia, 2019).

use all their legal rights. Therefore, the law is able to realize justice, pleasure, certainty, expediency, and harmony is the way of law is able to guarantee legal protection.

RESEARCH METHODOLOGY

The simplest definition of a research method is the procedure for conducting research. This research uses a normative juridical approach by examining secondary data derived from legal materials. In normative legal research, several approaches are used, such as historical, statutory, conceptual, and comparative approaches. This research requires primary data and secondary data. Primary data is the main information used in research obtained directly from legal texts or books, articles, and online newspapers that discuss Electronic Traffic Law Enforcement or ETLE in detail. Meanwhile, secondary data is data obtained by conducting library research, official documents, and scientific works related to the topics discussed.

RESULT AND DISCUSSION

The Legal Force Between the Head of Indonesian National Police Telegram Letter: ST/2264/X/HUM.3.4.5./2022 under Government Regulation No. 80/2012

The issuance of a telegram letter issued by the Chief of the Indonesian National Police No. ST/2264/X/HUM.3.4.5./2022 on 18 October 2022, affects traffic law enforcement, which is only conducted through Electronic Traffic Law Enforcement (ETLE). The telegram letter in question contains a prohibition on traffic police officers to take action against traffic violators. When viewed in terms of other legal norms, the telegram letter indeed leads to norm conflicts with other regulations, specifically Government Regulation No. 80/2012. Therefore, in this case, a dilemma occurs from traffic police officers regarding whether they should follow the existing law or comply with the policy letter issued by the Head of Indonesian National Police.

Basis for the Establishment of Legislation

Formal laws are established when the government and parliament decide to do so according to the proper channels. Meanwhile, the meaning of law in the material sense is when a bureau authorized to decide on regulations makes a decision binding on the entire society.¹⁹ Article 5 of Law No. 12/2011 on the establishment of laws and regulations states that the principles that must exist in the

¹⁹ Ni Luh Gede Astariyani and Bagus Hermanto, "Paradigma Keilmuan Dalam Menyoal Eksistensi Peraturan Kebijakan Dan Peraturan Perundang-Undangan Tafsir Putusan Mahkamah Agung," *Jurnal Legislasi Indonesia* 16, no. 4 (2019): 436–37, <https://udayanetworking.unud.ac.id/lecturer/publication/1709-ni-luh-gede-astariyani/paradigma-keilmuan-dalam-menyoal-eksistensi-peraturan-kebijakan-dan-peraturan-perundang-undangan-tafsir-putusan-mahkamah-agung-4649>.

establishment of laws and regulations must be the basis for the establishment of laws and regulations. These formal principles of the establishment of laws and regulations are as follows:

1. The principle of clarity of purpose means that there must be a justification for the provisions that are made to be precise.
2. The principle of proper institution or forming official states that every type of regulatory provision is required to be created by a state institution or vetted politician. If an unauthorized entity creates the law, then the law is considered illegal and invalid.
3. The principle of conformity between the type, hierarchy, and content means that appropriate content must be considered in lawmaking in accordance with the type and hierarchy of the desired law.
4. The principle of enforceability means that the philosophical, sociological, or legal effects on society must be considered in making laws.
5. The principle of utilization and efficiency means that every law is made to control how the state and society operate to advance the objectives of the state.
6. The principle of clarity of formulation intends to avoid different interpretations in its application. Every legislative policy is expected to follow certain technical standards for drafting laws, systematics, word choice, and legal terminology.
7. The principle of openness means that planning, writing, discussion, stipulation, and ratification are the first steps in creating transparent and open laws and regulations. Therefore, the community as a whole has the most significant capacity to influence the creation of laws and regulations.²⁰

While the material principles of the formation of laws and regulations include:

1. The principle of correct terminology and systematics (*het beginsel van duidelijke terminologie en duidelijke systematik*): every regulation and provision that exists for the people must be understandable.
2. The principle of recognizable (*het beginsel van de kenbaarheid*).
3. The principle of equal treatment under the law (*het rechtscgelijkheidsbeginsel*): to prevent injustice in obtaining legal equality.

²⁰ Muhammad Fadli, "Pembentukan Undang-Undang Yang Mengikuti Perkembangan Masyarakat," *Jurnal Legislasi Indonesia* 15, no. 1 (2018): 49–58, <https://doi.org/https://doi.org/10.54629/jli.v15i1.12>.

4. The principle of legal certainty (*het rechtszekerheidsbeginsel*): provisions created shall have a consistent aspect even though they are implemented in different times and places.
5. The principle of law implementation in accordance with the objective of the principle of individual rights consideration (*het beginsel van de individuelel rechtsbedelinge*): a specific solution to a particular problem or circumstance that affects the interests of the individual shall be provided.²¹

Legal Position Between Government Regulation No. 80/2012 and Telegram Letter of the Head of Indonesian National Police ST/2264/X/HUM.3.4.5./2022

Government Regulations are laws and regulations established by the President that aim to implement the law, as stipulated in Article 5 Paragraph 2 of the 1945 Constitution. Specifically, Government Regulations have also been regulated in the law on the Establishment of Laws and Regulations, which is confirmed through the provisions of Article 7 Paragraph 1 of Law No. 12/2011, stating the type and hierarchy of Laws and Regulations consisting of

1. The 1945 Constitution of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Law/Government Regulation in Lieu of Law;
4. Government Regulation;
5. Presidential Regulation;
6. Provincial Regulation;
7. Regency/City Regional Regulation.²²

Establishing Government Regulations is relatively easier than establishing Government Regulations in Lieu of Laws because the establishment of Government Regulations is the authority of the President without the involvement of the House of Representatives.²³ This law also recognizes other types of laws and regulations, as specified in Article 8 Paragraph 1, which essentially explains that regulations issued by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, ministers, agencies, institutions, or commissions at the same level established by law or government by order of law, provinces, and other bodies are examples of laws and regulations other than those referred to in Article 7 Paragraph 1.

²¹ Nurul Qamar and Farah Syah Rezah, *Ilmu Dan Teknik Pembentukan Peraturan Perundang-Undangan* (Makassar: CV Social Politic Genius (SIGn), 2020), <http://repository.umi.ac.id/2678/1/9786025522369.pdf>.

²² Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan" (Jakarta, 2011), <https://peraturan.bpk.go.id/Details/39188/uu-no-12-tahun-2011>.

²³ Zakaria Anshori, "Keberlakuan Peraturan Pemerintah Pengganti Undang-Undang (PERPU)" (Universitas Airlangga, 2015), <http://repository.unair.ac.id/id/eprint/33762>.

As long as it is stipulated by a higher regulation, this regulation is binding. Article 7 Paragraph 1 of the Law on the Establishment of Legislation refers to the type of legislation. From a hierarchical aspect, types of laws and regulations that are different from the types of regulations stipulated in Article 8 Paragraph 1 of the Law on the Establishment of Laws and Regulations are called types of laws and regulations outside the hierarchy. The binding force of the aforementioned laws depends on their structure (Article 7 Paragraph 2 of Law No. 12/2011). Hierarchy, in the sense of this article, is the differentiation of types of law based on the principle that lower laws should not contradict higher laws.²⁴ In this case, laws and regulations are different from policy letters. In this context, what is meant by laws and regulations are:

1. Laws and regulations are made by the House of Representatives with the approval of the President.
2. The formed laws and regulations are the laws and regulations that amend the ones that have already been passed to address the current needs.
3. Laws are made by the central or regional government.

Meanwhile, the definition of a policy or circular letter, such following below:

- a. Circular letters are typically addressed to everyone within certain restrictions.
- b. In general, circulars are only applicable within the limits of the scope of the led.
- c. A circular letter is a letter in which the notification is official and must be acknowledged by the recipient or members of the issuing institution.
- d. There are two types of circulars: restricted circulars and unrestricted circulars. Restricted circulars are usually addressed to members of an organization or institution, while unrestricted circulars are generally accessible to the general public.
- e. Circular letters serve to convey information or announcements to a wide range of people.

The position of Government Regulation No. 80/2012 in Article 23 letter a outlines the enforcement of traffic violations through the finding of violations on the road commonly referred to as manual ticketing contrary to the letter ST/2264/X/HUM.3.4.5/2022 instructed by the Chief of the Indonesian National Police, General Listyo Sigit Prabowo, to all ranks of the Indonesian National Police Traffic Corps not to carry out manual ticketing. Article 8 Paragraph 1 of Law No. 12/2011 on the Establishment of Laws and Regulations includes regulations stipulated by the People's Consultative Assembly, the House of Representatives,

²⁴ Simon Butt and Nicholas Parsons, "Judicial Review and the Supreme Court in Indonesia: A New Space for Law?," *Indonesia*, no. 97 (October 2, 2014): 55–85, <https://doi.org/10.5728/indonesia.97.0055>.

the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, ministers, agencies, institutions, or commissions of the same level established by Law or the Government by order of Law, Provincial Regional Representative Council, Governor, Regency/City Regional Representative Council, Regent/Mayor, Village Head, or equivalent.²⁵ Indonesian National Police telegrams are internal service protocols used by the Indonesian National Police officials. However, not all telegram letters are allowed to be acknowledged by parties other than those concerned. Meanwhile, Government Regulations are regulated in Article 7 Paragraph 1 Letter d of Law No. 12/2011 on the Formation of Legislation. Thus, Government Regulation No. 80/2012 is superior as it covers more matters and serves as the basis for the entire society of the Republic of Indonesia to inspect and prosecute traffic violations.

Legal Protection for Traffic Police Who Are Found to Have Continued to Issue Manual Tickets

Legal protection is the defense of one's dignity and the recognition of the rights inherent in those subject to the law. Fitzgerald states that the purpose of legal protection is to limit the interests and integrate the various interests of society.²⁶ Meanwhile, according to Rahardjo, legal protection is an effort to protect a person's interests by giving them the human right to act in the context of their interests.²⁷ Furthermore, Setiono explains that legal protection is an effort to protect the public or legal subjects from arbitrary actions of the authorities that violate the law.²⁸ The legal subject referred to in this case is the bearer of rights and obligations and a citizen entitled to legal protection from the government. From the concept of legal protection, a question arises regarding the police who persist in ticketing manually after issuing the Chief of the Indonesian National Police Telegram letter No. ST/2264/X/HUM.3.4.5/2022. The letter omitted manual ticketing as the ticketing system has switched entirely to the ETLE system.

1. Legal Protection Under the Laws and Regulations

In the context being discussed, the police force in question is the Traffic Corps (Korlantas), as referred to in Article 21 of Presidential Regulation No. 52/2010, which is an implementing element in the field of security,

²⁵ Indonesia, "Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan."

²⁶ Luthvi Febryka Nola, "Upaya Perlindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (TKI)," *Negara Hukum* 7, no. 1 (2016): 35–52, <https://dprexternal3.dpr.go.id/index.php/hukum/article/view/949/560>.

²⁷ Gde Oka Dharmawan Carma, "Pelaksanaan Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme Di Bali" (Universitas Atma Jaya Yogyakarta, 2018), <http://e-journal.uajy.ac.id/id/eprint/16725>.

²⁸ Zahro, "Pengetahuan Hukum Masyarakat Tentang Penyelesaian Masalah Pelanggaran Atas Layanan Ojek Online Berbasis Aplikasi (Studi Pada Go-Jek Dan Grab Di Wilayah Kabupaten Cilacap)."

safety, order, and smoothness of traffic under the Indonesian National Police. The Traffic Corps is tasked with promoting and carrying out traffic tasks, such as road patrols, registration, driver identification, law enforcement, evaluation of traffic problems, and public education. If there are still traffic police officers who practice manual ticketing, the Traffic Corps of the Indonesian National Police urges the public to report it. Suppose there are traffic police officers who are later found to have practiced manual ticketing. In that case, the institution will punish the perpetrators of manual ticketing for violating the Indonesian National Police Chief Regulation No. 14/2011 concerning the Code of Ethics of the Indonesian National Police Profession Article 7 Paragraph 3 letter b which explains that every member of the Indonesian National Police in a subordinate position is obliged to carry out superior orders related to the implementation of their duties, functions, and authorities. Thus, police officers suspected of violating the obligations or prohibitions as referred to in Article 6 through Article 16 are declared as suspected violators after an examination and a decision through the Police Professional Code of Ethics (KEPP).

However, in this case, the police officers who are still caught conducting manual ticketing may obtain legal protection as stipulated in the National Police Chief Regulation No. 14/2011 Article 7 Paragraph 3 letter c, which also explains that every police officer of the Indonesian National Police with subordinate position is obliged to oppose the orders of superiors that are contrary to the law, religious principles, and principles of decency.²⁹ The policy letter issued by the Chief of the Indonesian National Police also contradicts other higher legal norms, such as Government Regulation No. 80/2012 concerning Procedures for Inspection of Motor Vehicles on the Road and Enforcement of Traffic Violations and Road Transportation, which is contained in Article 23 which explains that one of the conditions for prosecuting traffic violations is based on the findings of a motor vehicle inspection on the road.³⁰

2. Police Discretion

Discretion is when a person has the freedom to make their own decisions based on their circumstances.³¹ However, the police force has the

²⁹ Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, “Peraturan Kapolri Nomor 14 Tahun 2011 Tentang Kode Etik Profesi Kepolisian Negara Republik Indonesia” (Jakarta, 2011), <https://drive.google.com/file/d/0BzfTp-2YIRmoenV4N2FMdVRYMU0/view?resourcekey=0-0uaIk0iYVJixLDlhUG-SCw>.

³⁰ Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, “Peraturan Pemerintah (PP) Nomor 80 Tahun 2012 Tentang Tata Cara Pemeriksaan Kendaraan Bermotor Di Jalan Dan Penindakan Pelanggaran Lalu Lintas Dan Angkutan Jalan” (Jakarta, 2012), <https://peraturan.bpk.go.id/Details/5294/pp-no-80-tahun-2012>.

³¹ Juanda Syahputra et al., “Analisis Yuridis Diskresi Kepala Daerah Dalam Penyelenggaraan Pemerintah (Studi Atas Keputusan Bupati Gayo Lues No. 900/206/2021 Tentang Pembekuan

authority to choose how to act when carrying out its duties, which allows the police to choose to maintain order, enforce the law, and protect the public. Selective enforcement and directed patrols are two ideas commonly associated with discretion.³² However, in everyday life, the discretionary system concentrates more on selective enforcement, a form of administrative discretion where a policymaker or leader decides what should be prioritized by various organizations under them. In the case of directed patrols, the chief has the authority to ask their staff to supervise certain activities or areas closely. In this case, police discretion has several concepts as follows:

- a. Conceptual laws are very general and cannot clarify many of the circumstances in which violations occur, making it impossible to use as a guide for the behavior of the members.
- b. Most police officers are of the opinion that the provisions of the criminal law are not an end in themselves but rather a means to achieve justice and order.
- c. There are limited resources for police officers, resulting in officers who handle minor offenses or routine tasks being forced to leave their duties to handle more important ones.

In fact, the principle of proceeding according to the law is contrary to giving the police more freedom. In this case, discretion removes the existing legal conviction regarding the occurred event. On the contrary, the law's own function is to provide conviction. The law can only regulate life very strictly, yet such rules would be disruptive to society. Therefore, discretion, which is the completion of the regulatory system by the law itself, is necessary. The problem of discretion arises because of a lack of guidelines or because the guidelines are quite abstract or inapplicable, depending on the events that occur. Therefore, the application of discretion by the government is heavily dependent on the subjectivity of the individuals involved. If law enforcers adhere to the principles of norms or ethics, the application of discretion will create a sense of justice and tranquility in society.

Conversely, if the police do not adhere to the principles of norms or ethics, then arbitrariness may occur. Therefore, the implementation of discretion is highly dependent on the personal opinion aspect of law enforcers. LaFave argues that in this regard, discretion essentially exists between ethics and law.³³ These moral

Sementara Unsur Pimpinan Majelis Adat Aceh Kabupaten Gayo Lues Periode 2020-2024),” *Locus: Jurnal Konsep Ilmu Hukum* 2, no. 1 (2022): 123–35, <https://jurnal.locusmedia.id/index.php/jkih/article/download/29/26>.

³² Guntur Priyantoko, “Penerapan Diskresi Kepolisian Dalam Penanganan Unjuk Rasa,” *De Lega Latta* 1, no. 1 (2016): 109–36, <https://osf.io/vydqa/download>.

³³ Atang Hermawan Usman, “Kesadaran Hukum Masyarakat Dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum Di Indonesia,” *Jurnal Wawasan Hukum* 30, no. 1 (2014): 26–53, <https://core.ac.uk/download/pdf/287307509.pdf>.

values are formulated as norms that must be adhered to by law enforcement officers in a code of ethics, which is used as a guideline for implementing discretion.

CONCLUSION AND SUGGESTION

Conclusion

Laws and regulations have binding legal force and are recognized as long as they are directed by higher laws and regulations or made in proportion to their authority. In the context of the police force, a telegram letter is an internal communication of an official that may take the form of an announcement, request, or information to another authority. The Indonesian National Police is the only party that has access to telegrams in this circumstance. However, not all telegrams are accessible to anyone other than interested parties.

The Indonesian National Police's exercise of discretion is fundamentally at odds with the idea of law enforcement. According to the Chief of the Indonesian National Police Regulation No. 14/2011, it is mandated for every member of the Indonesian National Police who is a subordinate to oppose superior orders that are contrary to the law. However, the rule of law would then become a shackle on the lives of the community. As a result, discretion is required that complements the regulatory framework of the legal system. Given the actual situation, it is evident that discretionary issues arise when there is no explicit provision or if there is a clear rule yet it is not easy to comprehend or implement.

Suggestion

Before issuing a policy letter, policymakers should look at existing legal norms to identify whether there are any conflicts with existing legal norms so as not to create norm conflicts. In future implementation, further examination of the effectiveness of the norms should also be conducted first. Police officers need to receive guidance from superiors through further socialization and police discretion seminars to avoid mistakes in making decisions in doing their duties and consider violations more wisely.

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