

## The Rights of Police Discretion in Law-Based Enforcement of Local Culture in South Kalimantan

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**Abstract:** The purpose of this study is to analyze and find the nature of police discretion in law enforcement based on local cultural wisdom of South Kalimantan, local cultural values of South Kalimantan that can be applied in law enforcement and factors that influence the use of police discretion in law enforcement based on the wisdom of local culture in South Kalimantan. This research is an empirical legal research related to the discretion of the police in law enforcement based on local wisdom of South Kalimantan.

**Keywords:** Law Enforcement, Local Cultural Wisdom, Police Discretion, South Kalimantan.

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### I. INTRODUCTION

The existence of the State Police of the Republic of Indonesia is emphasized in Article 30 section (4) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which regulates that “*the Indonesian National Police, as an instrument of the state that safeguards public order and security, has the duty to protect, guard, serve the people, and to enforce the law*”. Furthermore, based on Article 5 section (1) of Law of the Republic of Indonesia Number 2 of 2002 on the State Police of the Republic of Indonesia (hereinafter referred to as Law No. 2 of 2002), regulates that:

*“The State Police of the Republic of Indonesia shall be the state’s tool that has the role for maintaining public orderliness and safety, law enforcement and providing protection, safeguard and services to public in the context of national security defense.”*

Meanwhile, on the one hand, the function of the police in Indonesia today is influenced by the variety and political configuration applied in the practice of state life. On the other hand, as part of society, the police are also influenced by the values that live in the midst of society. This means that the normative environment which is formed from the values adopted as the views of the community and the values of local wisdom greatly affects the efforts to realize the function of the police in a democratic rule of law. In South Kalimantan the cultural values and customs of the Dayak people actually form the basis for an assessment of the use of police discretion.

Each country has differences in the occupation and functioning of its police institution. For Indonesia, the role of the police has characteristics in accordance with the history of the nation. The position of the police has experienced ups and downs in line with the ebb and flow of the history of the nation’s struggle, because the police are indeed part of the struggle for the Indonesian nation (Rajab, 2004:15).

The cultural values of the Dayak people, especially in Kota Baru, South Kalimantan, have been normalized in Regional Regulations, namely the Regional Regulation of Kotabaru Regency Number 17 of 2017 on Institutional of the Dayak Indigenous. In this regional regulation it is stated that the Dayak Adat Institution is an identity that shows the existence of the Dayak customary law community unit. Thus, for the function of the police in the South Kalimantan Regional Police Legal Area, in the implementation of the police function, it should always pay attention to the cultural values and customs of the Dayak customary law community, especially in the use of police discretion.

### II. STATEMENT OF THE PROBLEM

1. What is the essence of police discretion in law enforcement based on local cultural wisdom of South Kalimantan?
2. To what extent can the local cultural values of South Kalimantan be applied to the use of police discretion in law enforcement?
3. What factors influence the use of police discretion in law enforcement based on local cultural wisdom of South Kalimantan?

### III. THEORETICAL FRAMEWORK

#### A. Theoretical Basis

##### 1. Rule of Law Theory

The rule of law theory in this study is used as a grand theory to analyze the use of police discretion based on local wisdom. The use of police discretion must not conflict with rule of law principles, as based on Article 1 section (3) of the 1945 Constitution regulates that “Indonesia is a law-based state”, where in Indonesian literature it is very common to use the term “rule of law”, as a translation of the Dutch term “*rechtsstaat*” (Notohamidjojo, 1970:27; Azhary, 1995:30).

In Indonesia, the term the rule of law is also very commonly equated with “rule of law”. Djokosoetono in Wahyono (1984:67) said that “*democratic law state*” (*demokratische rechtsstaat*), in fact this term is wrong, it should be used the term *rechtsstaat*. Yamin (1982:72) used the same word rule of law as *rechtsstaat* or government of law, he explained that “*the Republic of Indonesia is a state of law (rechtsstaat, rule of law) ... , not a police state or a military state, ... nor a power state (machtsstaat) ... (cursive-writer)*”.

Notohamidjojo (1970:27) uses the term “rule of law or *rechtsstaat*”, what is meant by *rechtsstaat* is translated as “rule of law state”. Hartono (1976:35), using the term rule of law, which means that “... *in order to create a rule of law that brings justice to all people... enforcement of the rule of law must be in a material sense.*”

The concept of “*rechtsstaat*” and “*the rule of law*” used by the 1945 Constitution and the terms used in Indonesian literature are “State based on law (*rechtsstaat*)”, often used in literature in Indonesia. In an effort to show the power of “*Indonesianness*”, the term rule of law is also known by adding the attributes of “Pancasila” so that it becomes “the constitutional state of Pancasila” (Basah, 1997:4; Hadjon, 1997:24). The characteristic of a rule of law is that the state provides protection to its citizens in different ways. The rule of law is a definition that develops and manifests as a reaction from the past, because of that the rule of law element is rooted in the history and development of a nation. Every nation or country has a different history, therefore the definition and content of the rule of law of different nations will be different (Scheltema, 1989:16; Azhary, 1995:49-50).

The ultimate goal of law is order. Obedience to this order is a fundamental condition of an orderly society. Another goal of law is to achieve justice. To achieve order, it requires legal certainty in the interactions between people in society (Kusumaatmadja, 1970:2). The law must be enforced and enforced. Everyone expects the stipulation of law in the event of a concrete event. That is what legal certainty wants. Legal certainty is justifiable protection against arbitrary action, which means that someone will be able to get something that is expected in certain circumstances. The public expects certainty, because with legal certainty, the community will be more orderly. The duty of law is to create legal certainty, thereby achieving another legal goal, namely public order. Law enforcement must provide benefits to society, in addition to aiming at creating justice. In the concept of a modern law state or a social law state, the state has the obligation to create welfare for all people, both social and economic welfare. The characteristic of a welfare state or social law state (*sociale rechtsstaat*) is that the state aims to improve the lives of its people, and the state is required to provide the best and widest possible service to its people.

##### 2. Theory of Legal Functions

Kusumaatmadja (2002:3) said that to find out what the meaning and function of law in society is, “*it can be returned to the basic question: what is the purpose of law*”. The ultimate goal of law is order (Kusumaatmadja & Sidharta, 2000:49). This need for order is a fundamental condition for the existence of an orderly society. Apart from order, another goal of law is the attainment of justice which varies in content and size, according to society and era.

In connection with the above opinion, it appears that apart from order and security, another legal task is to create justice. Rawls (1971) in Rahardjo (2006:97-98; 2009:131) says that justice is a major social institutional virtue, as is truth in systems of thought. This opinion is in accordance with Soediman in Sidharta (2009:14) opinion that in every provision in the field of law there is an element of justice. Law aims to create an orderly and just society. In this case Rawls and Soediman indicate that justice is an essential element in law.

This opinion is also in accordance with the opinion of Rahardjo (2007:152) who said that the law must provide justice. It can be said that the most important task of law is to create order, security and justice. Through order, security and justice legal certainty will be achieved. Thus, order, security and justice are the three pillars that support the law, and are the spirit of law. This is very important to understand not only for an orderly community life, but is an absolute condition for an organization that transcends the limits of time today. Without order, security and justice, humans will not be able to carry out their activities properly. Based on this understanding, order, security and justice are the three pillars that sustain human life in the country. With the creation of order, security and justice, humans can freely act and work. These three pillars must be applied in carrying out activities in order to create prosperity in the country. Notohamidjojo (1970) went on to say that in

all duties, law aims to provide protection to all those who seek social order and who seek justice. It is further stated that:

- a. law brings balance and peace;
- b. the law gives freedom;
- c. the law gives rights and responsibilities;
- d. the law is criminalizing.

The ideals of Pancasila law as described above will serve as a guiding principle in the implementation of development, the life of the nation and state in Indonesia. Making the ideals of Pancasila law as a guiding principle in the implementation of development, and the life of the nation and state is in line with the state objectives based on the 1945 Constitution, namely creating a just and prosperous society.

### **3. Theory of Justice**

Justice in English is used several terms such as equity, fairness, and justice. Justice as equity can be defined as fairness, impartiality, evenhanded deadling. Garner (1999:869) In the Black's Law Dictionary, fairness means "the fair and proper administration of laws".

Justice can only be understood if it is positioned as a condition that the law intends to bring about. The pursuit of justice in law is a dynamic process that takes a long time. These efforts are often also dominated by forces fighting within the general framework of the political order to actualize it (Friedrich, 2004:239).

Basically, justice can be fulfilled in two ways, namely (Mas'udi, 2005:153):

- a. law enforcement based on facts found in the judicial process;
- b. public policy oriented towards protection, fulfillment of the rights of the weak and marginalized.

The first justice is often called legal justice, while the second is called social justice. The theory of justice by Rawls (1971:3), who as an American philosopher is considered one of the foremost political philosophers of the 20<sup>th</sup> century, argues that "*justice is the first virtue of social institutions, as well as truth in systems of thought*". Furthermore, according to Rawls (1971) in Pangaribuan (2009:27) it is stated that:

*"Justice is called fairness, because in building his theory, Rawls departs from a hypothesis where when each individual enters a social contract, he has freedom (liberty). This hypothetical position is called the "original position". The original position is an initial status quo which confirms that the fundamental agreement reached in the social contract is fair. Based on the fact that there is an "original position" this then gave birth to the term "justice as fairness"."*

Based on the above concept, justice requires distribution for social benefits and sanctions for the parties involved, justice requires legitimate power to mediate conflicts to implement these social benefits, justice requires equality and balance; and justice must be done by respecting the children that should be accepted by others, especially when there is a problem (conflict).

### **4. Law Enforcement Theory**

Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid and embodied rules and attitudes as a series of final-stage value descriptions, to create, maintain and maintain a peaceful social life (Soekanto, 2003:3).

According to Rahardjo (2001:81), law enforcement is a form of concrete implementation of law in everyday people's lives. Meanwhile, according to Syahrani (1991:191), law enforcement is the implementation of the law with the help of state officials due to law violations.

According to Asshiddiqie (2009:22), law enforcement in a broad sense includes activities to implement and apply the law and take legal action against any violations or irregularities of the law committed by legal subjects, either through judicial procedures or through arbitration procedures and dispute resolution mechanisms. other (alternative disputes or conflicts resolution).

According to Rahardjo (2011:12) in the context of law enforcement, in essence law contains ideas/concepts that are still abstract. This abstract concept includes ideas about justice, benefit and legal certainty. To realize these ideas/concepts, it is necessary to enforce these abstract ideas and concepts. So, law enforcement is an attempt to make these ideas into reality.

### **5. Historical Legal Theory**

The Theory of Law which was born from the School of History was a reaction against the two powerful powers of his era (Friedmann, 1990:60; Rasjidi& Putra, 1993:77):

- a. The rationalism of the eighteenth century with its belief in natural law, the power of reason and first principles, all of which combined to lay down a theory of law by way of deduction and without regard to historical facts, national characteristics and social conditions;
- b. The belief and spirit of the French revolution with its rebellion against power and tradition, its belief in reason and the power of the human will over circumstances.

In this regard, according to Waluyadi (2001:79) from a historical perspective, that “*the law grows and develops according to the community and regional environment, in the sense that in different communities and regions different laws will apply*”.

## **6. Sociological Legal Theory**

Socio-logical legal theory was born from the thought of Ehrlich (1913) as a pioneer of sociological jurisprudence in Europe, according to him in Morris (1979:437), that:

*“The center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself. (contained in law, not also in legal science nor in court decisions, but in society itself).”*

Furthermore, Ehrlich (1913) in Darmodihardjo&Shidarta (2000:112) argues that:

*“Law is subject to certain social forces. Law alone would not be possible, therefore order in society was based on social recognition of law and not because it was formally enforced by the state. For him, social order is based on the fact that law is accepted which is based on social rules and norms that are reflected in the legal system.”*

The opinion of Ehrlich is similar to that of Savigny. It’s just that Ehrlich (1913) prefers to use social reality rather than the term “*volksgeist*” as used by Savigny (1867); (Huijbers, 1993:213). Anormative social realities can become normative, as general facts (facts of law) or living law (living law or *rechtsnormen*) in 4 (four) ways, namely:

- 1) habit (*uebung*);
- 2) effective power;
- 3) effective possession; and
- 4) statement of personal will.

## **7. Police Function**

The structural, instrumental, and cultural reforms of the Indonesian National Police do not necessarily make the Indonesian National Police a professional and create a civilian police. It takes a series of long processes at the same time simultaneously, not only partially. Several cases of irregularities committed by members of the Indonesian National Police, starting at the non-commissioned officer level, mid-level officers to high-ranking officers, particularly the issue of billions of fat accounts, worsened the image of the Police, as well as illustrated problems in the internal management of the Police. It also asks many parties to reflect on whether the reform of the Indonesian National Police, including all its derivatives, for example the Grand Strategy or the ‘Grand Strategy’ of the Indonesian National Police, which is translated into the stages of trust building, partnership and strive for excellence, has progressed as expected..

Efforts to create a professional Polri in a democratic constitutional state are still faced with various important issues relating to policing problems, such as limited resources, weak professionalism, abuse of authority, discriminatory law enforcement, and inappropriate use of police discretion. This shows that These various issues are not easy tasks to solve in the context of Polri reform. Although policing in democratic societies is primarily an attempt to manage conflict, it needs to be further developed through enhanced police-community relations programs. This can only be done, of course, with the support of the community and all related parties. This support is very influential, especially in the context of the function and role of the National Police in the criminal justice system. This is in line with the theory of LaPatra (1978:97-99) which states that “*the crime rate is influenced and simultaneously affects the ecological environment, so that the criminal justice system as a form of public service will also be affected*”.

## **8. Police Discretion**

Discretion is a power or authority exercised based on law based on considerations and beliefs and emphasizes moral considerations more than legal considerations. Discretion concerns decision-making that is not strictly bound by law, in which personal judgment also plays a role. Police discretion is an authority regarding the making of a decision under certain conditions based on the personal considerations and convictions of a member of the police.

The implementation of discretion by the police seems to be against the law, but it is a way out that is provided by law to the police in order to provide efficiency and effectiveness for the greater public interest, furthermore discretion should not be eliminated. Discretion cannot be removed and should not be eliminated. Discretion is an integral part of the role of the institution or organization. However, discretion can be limited and controlled, for example by tightening written orders and the existence of programmed decisions that are least able to compose and demand discretionary action. The problem is, unprogrammed decisions often arise and open the door wide for discretionary making.

Discretion can be said as a freedom in making decisions, but it is not something the police can do arbitrarily. Discretion is simply equated with arbitrariness to act or do the police's will. According to Abdussalam (2009:51), the actions taken by the police are based on considerations based on moral principles and institutional principles, namely the moral principle, that the moral conception will allow a person, even though he or she has committed a crime and institutional principles, that the institutional aims of the police will be more secure if the law is not enforced rigidly, which creates resentment among ordinary citizens who obey the law.

Based on Article 4 of Law No. 2 of 2002, regulates that:

*"The State Police of the Republic of Indonesia aims to establish national security including the defense of public orderliness and safety, orderliness and law enforcement, protection, safeguard and services to public, and the establishment of peace for public with holding high human rights."*

In carrying out their duties in the field, Polri members are often faced with urgent situations, conditions or problems that require violence in police action. The use of force in police actions must be carried out without contradicting the rule of law, in line with legal obligations and upholding human rights.

Protection and assistance in the discretion of the police, as based on Article 12 of Regulation of the Head of the State Police of the Republic of Indonesia Number 1 of 2009 on the Use of Force in Police Action, regulates that:

- (1) Members of the police who use power in implementing police actions in accordance with applicable procedures are entitled to legal protection and assistance by the police in accordance with laws and regulations.
- (2) The rights of members of the police as referred to in section (1) must be granted by the National Police institution.

#### **IV. DISCUSSION**

##### **A. The Essence of Police Discretion in Law Enforcement Based on Local Cultural Wisdom**

The existence of the Polri institution at its inception was based on the community's need for order, security, peace in the midst of community life. This has since expanded, where the existence of the National Police Institution has become an instrument of the state and is at the forefront of the criminal, as based on Article 5 section (1) of Law No. 2 of 2002, regulates that:

*"The State Police of the Republic of Indonesia shall be the state's tool that has the role for maintaining public orderliness and safety, law enforcement and providing protection, safeguard and services to public in the context of national security defense."*

Discretion can be said to be a freedom in making decisions, but it is not something the police can do arbitrarily. Discretion is simply equated with arbitrariness to act or do the police's will. According to Abdussalam (2009:51), the actions taken by the police are based on considerations based on moral principles and institutional principles, as follows:

1. The moral principle, that the moral conception will provide concessions to someone, even though he has committed a crime.
2. The institutional principle is that the constitutional objectives of the police will be more secure if the law is not enforced rigidly so as to create resentment among ordinary citizens who obey the law.

Reform of the State Police of the Republic of Indonesia is carried out through efforts to change structural, instrumental and cultural aspects. Reform in structural aspects includes changes in the police institution (institution) in the state administration as well as changes in the organization, composition and position of the Indonesian National Police. This has started from its discharge. The National Police of the Republic of Indonesia from the Indonesian National Army to changes in the structure of the Regional Police, also recently the abolition of the Regional Police and the Big City Police. Changes in instrumental aspects include philosophy (vision, mission, and objectives), doctrine, authority, competence, functional ability, and knowledge. knowledge and technology. The reform of the State Police of the Republic of Indonesia in the cultural aspect includes the development of a police culture that recognizes the rule of law, is democratic, upholds human rights, and has a global perspective but has a local perspective, this is in accordance with the principles of the rule of law. In this regard, it also includes changes in operational management and supervision systems that are nuanced in cultural changes manifested in the prime service of the Indonesian National Police to the public.

The National Police Grand Strategy is described in the form of Decree of the Head of the State Police of the Republic of Indonesia Number Pol. SKEP/360/VI/2005 on Grand Strategy of the State Police of the Republic of Indonesia 2005-2025. The target of development and development of the Indonesian National Police is directed at the following stages:

1. Phase I Trust Building (2005-2010)

This stage builds the internal trust of the Police, an important factor, because it is the beginning of a change towards strengthening internal trust (trust building) which includes: leadership, funding sources, human resources, consistent pilot projects in the Hi-Tech field, legal capacity and infrastructure. support the vision - mission of the Police.

2. Phase II Partnership Building (2011-2015)

Building close cooperation with various parties related to the function of the police in law enforcement, order, as well as services, protection and protection to create a sense of security.

3. Stage III Strive for Excellence (2016-2025)

Building superior public service capabilities, realizing good government, National Police best practices, HR professionalism, implementing technology, infrastructure, in order to build credible Polri capacity (capacity building) in the eyes of national, regional and international communities

Efforts to create a professional Indonesian National Police in a democratic constitutional state are still faced with various important issues relating to policing problems, such as limited resources, weak professionalism, abuse of authority, discriminatory application of laws, and inappropriate use of police discretion. Shows that these various issues are not easy tasks to solve in the context of reforming the Indonesian National Police. Even so, policing in a democratic society is basically an effort to manage conflict, it needs to be further developed through the improvement of police-community relations programs. This can only be done of course with the support of the community and all related parties. This support is very influential, especially in the context of the functions and roles of the Indonesian Police in the criminal justice system. This is in line with the theory of LaPatra (1978:97-99) which states that *“the crime rate is influenced and simultaneously affects the ecological environment, so that the criminal justice system as a form of public service will also be affected”*.

This description shows that the state of Indonesia to be built is a country based on law, not a state based on power. Even though the state is an organization of position and power, however strong the position/power is without being based on law, it will easily lose its legitimacy. Meanwhile, a state that is built on the principles of a rule of law has a stronger basis of legitimacy, because through the legal system it will provide guarantees to treat every citizen with respect, according to their dignity. In the effort to develop a rule of law, the constitution must stipulate (Martosoewigno, 1992:29-30):

1. There is a guarantee of human rights;
2. The basic constitutional structure of a country is established;
3. There is a division and limitation of basic administrative tasks.

The principles of a rule of law as stipulated in the 1945 Constitution, among others, are governance based on a constitutional system, independent judicial power, regardless of the influence of government power, equality before the law, guarantees in the constitution for the protection and respect of human rights, principles of legality, Enforcing judicial control over State Administrative Bodies or Officials. Realizing social justice for all people.

In brief, it can be stated that the essence of a rule of law is the realization of the rule of law as one of the pillars of the life of the community, nation and state. Kusumah (1986:29) argued *“in a law-based country, law must show its fundamental role as a central point in the entire life of an individual, community life, as well as the life of the nation and state”*. Manan & Magnar (1993:128), state that *“in a rule of law, it means that power is limited by law and at the same time states that law is supreme compared to existing instruments of power”*.

In order to realize the principles of a rule of law as stated above, in addition to the need for legal norms and legislation and legal norms that are responsive and fair, it is also necessary to have law enforcement officials who are professional and honest and authoritative, public legal awareness, a solid legal culture. and respect for human rights, supported by feelings and adequate means, as stated by Soekanto (2003:5) that the main problem of law enforcement lies in the factors that influence it, namely:

1. the legal factor;
2. law enforcement factors;
3. facility or facility factor;
4. community factors; and
5. cultural factors.

The five pillars of legal empowerment will always be interrelated, complementary and complementary (Interdependence), so that in legal empowerment it is impossible for one of the pillars to be left behind, even though there are priorities for the development of these pillars. The National Police of the Republic of Indonesia as the state tool of law enforcement, protector, protector, guide and public servant in realizing legal certainty and justice, plays an important role in realizing the principles of the rule of law. The good and bad image of a rule of law is largely determined by the performance system of the State Police Republic of Indonesia. As an instrument of the law enforcing state in carrying out its duties and authorities, it always uses the law as its main tool, which means that the police must always side with the law that has the core of justice and truth, both repressive in relation to the criminal justice process (Criminal Justice System) and preventive ones. in the form of tasks inherent in the state administration function starting from the initial stage in the form of guidance and regulation at the administrative stage of police action.

Thus, the police organ is an official institution that is mandated to carry out the police function, namely maintaining public order, protecting people and their property from danger or public disturbance and illegal acts. The mandate and philosophy of the police are always the starting point in making laws, law and police organization.

It is universally applicable in various countries that the objectives of the police are related to the essential need for guaranteeing order and upholding the law, maintaining public order, creating security and public order so that efforts to achieve community goals can be accomplished. In this connection the police as an institution does not only exercise social control, alone, but also provide concrete services and interpretation of the law through its actions.

#### **B. South Kalimantan's Local Cultural Values on the Use of Police Discretion in Law Enforcement**

South Kalimantan is a province in Indonesia which is located on the island of Kalimantan. Its capital is Banjarmasin. South Kalimantan Province has an area of 37,530.52 km with a population of nearly 4.2 million people (2019).

This province has 11 districts and 2 cities, the majority of the population of South Kalimantan is ethnic Banjar (74.34%) which consists of 3 main groups, namely Banjar Kuala, Banjar Pahuluan and Banjar Batang Banyu. The second largest ethnic group is Javanese (14.51%) who occupy the transmigration area.

The Banjar tribe (Banjar language: Urang Banjar) is an ethnic group that occupies the territory of South Kalimantan, as well as parts of Central Kalimantan and parts of East Kalimantan. Large populations of the Banjar tribe can also be found in the Riau, Jambi, North Sumatra and Peninsular Malaysia areas due to the migration of the Banjar people in the 19th century to the Malay Archipelago.

There are several elements of the Banjar tribe's life philosophy and values, both positive and negative, including:

1. Baiman. that is, every Urang Banjar believes in the existence of God/Allah. Every individual of the Banjar tribe is always told to learn about the five pillars of faith and diligently carry out the five pillars of Islam. If you have not studied the faith and pillars of Islam, it is considered that the Banjar people's diversity is not yet perfect.

2. Bauntun. Urang Banjar must have life skills. So Urang Banjar has been taught vocational skills from a young age, namely skills that are associated with certain jobs in his environment. This can be seen from the origin of Urang Banjar, for example the Kelua people have sewing skills, the Amuntai people have the expertise to make cabinets, the Alabio people have the expertise as cloth traders, the State has expertise as gold traders, making pottery, making boats/ships, the Mergasari people have expertise as weaving makers, the Martapura people have the expertise to trade stones. Urang Banjar has always been taught life skills or skills so that he can live independently. Urang Banjar had to work continuously, because every time he finished a task, another task was waiting.

3. Batuah. The meaning of blessings or benefits for the lives of others. Urang Banjar, as a Muslim, will certainly practice the teachings well, namely so that his life brings goodness to others. Because the best of humans is what is beneficial for others. So Urang Banjar in the past and present is always expected to make his life useful for himself, his family and many people. In order to be of use to society, Urang Banjar must have strong faith, useful knowledge and do good deeds.

4. Cangkal. Namely tenacious and diligent at work. Urang Banjar had to work hard to achieve their goals, so that in the past they liked to migrate. The nature of being ignorant at work is one of the identities of the Banjar people. In Urang Banjar's view, he must work optimally, pray and put trust in Allah SWT, so that his life will be happy in this world and the hereafter.

5. Good behavior. Namely, Urang Banjar in his daily interactions must show noble character so that he is liked by others. In other words, Urang Banjar must be good at adapting to the environment in which he lives.

6. Individual competitive. That is, the Banjar people are known to be hard workers in achieving their goals but work individually not collectively, so that Urang Banjar is unable to build an axis of economic or political power at the National Stage. Urang Banjar tends to have an individual character and a high ego so it is difficult to control

7. Pragmatic materialist. The current lifestyle of Urang Banjar is due to the influence of globalization with a materialist-pragmatic trend of life, so that the lifestyle of Urang Banjar is very consumptive. On the other hand, the Banjar youth lifestyle in choosing work, prioritizes office work with ties or supermarket employees rather than small traders with their own and independent capital.

8. An attitude of qanaah and resignation. Urang Banjar while young was a hard worker to achieve his goals, but when he is successful and he is old, his life is relaxed to enjoy life and worship Allah to pass the time.

9. Haram and wajawaja until kaputing. Namely, never give up and stand firm. Prince Antasari said the wisdom word above in order to strengthen the motivation of his troops to face the Dutch colonial forces. Urang Banjar has a strong stance to defend his beliefs or what he is fighting for, so that they are not easily swayed or

swayed by the situation and conditions at hand. This principle is used and used as the motto of South Kalimantan Province.

Banjar cultural values related to the relationship between humans and God, the relationship between humans and humans, human relations with oneself and humans with nature:

1. The conception of being willing is a value of sincerity and gratitude and solely for worship and obtaining the pleasure of Allah SWT.
2. In the kinship system, either because of heredity or because of social status and profession, there is the concept of affixing. In the conception of adding the value of “bedingsanakan” (brotherhood), “betutulungan” (please help) and willing to “hajakalahbamanang” (if you want to lose, win), it means giving and receiving. “Bubuhan” as a social unit has very strong ties to mutual cooperation. The living must be “betutulungan” (please help), do not live saurang-saurang (individually).
3. The value for self-development is the concept of “gawimanuntung”, that is, someone in doing something must be able to complete it well. As well as the conception of dalasbalangsar dada, it means that even if you have to surf the chest, it means someone has to fight seriously.
4. The value of the conception of “bisa-bisa maandakan awak” to adapt to the environment. This advice is usually given in order to conform to customs.

### **C. Use of Police Discretion Based on Local Cultural Wisdom of South Kalimantan in Realizing Legal Certainty, Justice and Benefit**

#### **1. Use of Discretion**

In essence, discretion is a power or use of authority based on law based on subjective considerations based on belief that emphasizes moral considerations rather than legal considerations. Discretion involves decision-making that is not strictly bound by law, in which personal judgment also plays a role. is an authority regarding the making of a decision under certain conditions based on the personal consideration and conviction of a member of the police.

In this connection, the discretionary power possessed by the police shows that the police have great power because the police can make decisions which are outside the provisions of the law, but are justified or permitted by law. This is as stated by Samuel Walker that one thing that can explain the power of the police or other institutions in carrying out their duties, namely the existence of discretion or authority given by law to act in special situations in accordance with the judgment and conscience of the agency or officers themselves. The implementation of discretion by the police seems to be against the law, but it is a way out that is provided by law to the police in order to provide efficiency and effectiveness for the greater public interest, furthermore discretion should not be eliminated. Discretion cannot be eliminated and should not be eliminated. Discretion is an integral part of the role of the institution or organization. However, discretion can be limited and controlled, for example by tightening written orders and programmed decisions that are least able to compose and demand discretionary action. The problem is, unprogrammed decisions often arise and open the door wide for discretionary making.

Discretion is an authority given by law to law enforcement officials, in this case especially the police to act in special situations in accordance with the judgment and conscience of the agency or officer itself. Discretion is actually a completeness of the regulatory system by the law itself. Discretion in the Black Law Dictionary comes from the Dutch language “Discretionary” which means wisdom in deciding an action based on the provisions of regulations, laws or applicable law but on the basis of wisdom, consideration or justice.

#### **2. Police Discretion in Handling Social Conflict**

The police are given authority or discretion by our criminal law to carry out a whole series of proceedings against anyone who is involved in a crime Tieger (1971:718). The police’s authority is not to influence the course of the criminal process, but to strengthen the law enforcement process.

In Indonesia, the authority of the police is generally regulated in Law No. 2 of 2002. Meanwhile, in the criminal law enforcement process, it is regulated separately based on Law of the Republic of Indonesia Number 8 of 1981 on the Code of Criminal Procedure. Meanwhile, if it is related to the authority of the police in handling conflict, it has been specifically regulated in Law of the Republic of Indonesia Number 7 of 2012 on Handling of Social Conflict, along with the internal POLRI regulations, namely Fixed Procedure of the Head of the State Police of the Republic of Indonesia Number PROTAP/1/X/2010 on Countermeasures Anarchy.

The results showed that in principle the National Police responded strongly to the principles of a rule of law and democracy and the enforcement of the rule of law. it has even guaranteed that every citizen who expresses his thoughts in writing and/or writing freely and responsibly in accordance with the provisions of the applicable laws must be provided with protection as regulated by Regulation of the Head of the State Police of the Republic of Indonesia Number 16 of 2006 on Guidelines for Mass Control, that services and controlling the masses in the context of dealing with demonstrations on the highway, in important buildings/structures and open



fields, whether carried out in an orderly or disorderly manner, need to be addressed wisely, wisely, firmly, consistently and legally. The aim of the issuance of the Guidelines for Mass Control is “to provide protection, protection and service to a group of people who are expressing their opinions or expressing their aspirations in public for the sake of maintaining public order”. This shows the seriousness of the Police in realizing Polri’s functions in a democratic law country.

**D. Influencing Factors in the Use of Police Discretion Based on Local Wisdom in South Kalimantan**

**1. Legal Substance Factors**

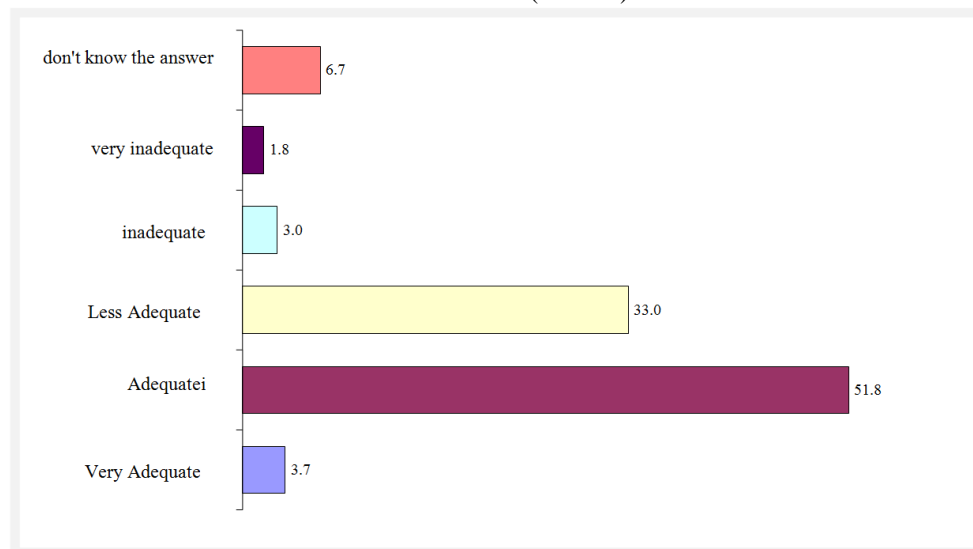
The legal substance factor (instrumental) is one of the factors affecting the function of the Police in maintaining security and public order. The instrumental aspect has been translated into the management of the multi-complex main tasks of the police. According to Vollenhoven (1934:271) that if a country wants to be developed and have a highly disciplined society, there is a need for a strong and resilient police force. This view develops the Montesquieu theory which divides state power into three powers, namely the legislature (lawmakers), the executive (law enforcement), and the judiciary (law courts) or better known as the trias-politica theory. However, this trias-politica theory tends to develop in simple societies which have not yet faced conflict and high social complexity. Therefore van Vollenhoven developed the trias-politica theory by adding one more state power to four state powers (chess praja), namely the police as (supervisors and enforcers of laws) so that laws are obeyed by all levels of society so that order and security are maintained, community discipline is realized and dynamics society is going well.

The function of the Police of the Republic of Indonesia is related to law enforcement functions in the criminal justice system, which consists of the police, prosecutors and judiciary. The three elements each have different tasks, therefore the organizational structure of the Criminal Justice System must have a line of cooperation (coordination). According to Atmasasmita (1998), the position of the police in the CJS framework is very vulnerable to the influence of factors in the government system adopted by a country.

From the legal substance aspect, the police’s function in maintaining security and public order is deemed adequate. This can be seen from the results of research which show the following:

**Graph 1.** Assessment of Legal Substance

Question: Is the legal substance that governs the current police sufficient to support the achievement of its duties and functions? (n = 100)



Source: Primary data processed: 2019

From these data, it shows that the legal substance governing the police function starting from the 1945 Constitution, Law No. 2 of 2002, which is further elaborated by Government Regulations, Presidential Regulations and Head of Police Regulations, are deemed adequate, reaching 70%. This understanding is cooled that the Police have made the socialization of laws and regulations carried out by the police force has been effective.

**2. Legal Structure Factors**

The real legal structure is not only the makers of legal regulations and law enforcement agencies but includes legal facilities and infrastructure. Factors that are very influential in the implementation of police functions,

especially in the South Kalimantan Regional Police are the factors of facilities and infrastructure, education, welfare, and career development.

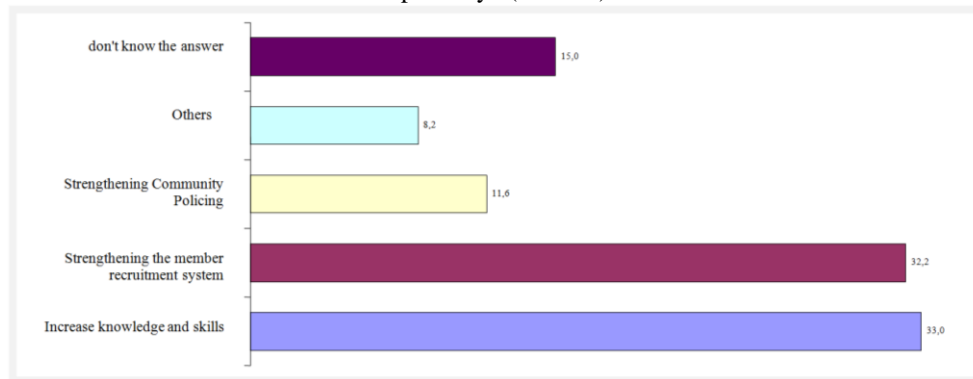
In other aspects, the implementation of Polri's functions must have the support of the community, this is as an appreciation and desire of the community so that every member of the Police is more professional and empowered. This carrying capacity is legitimized by the very rapid growth and development of science and technology, as well as government regulations that provide opportunities for the development of a professional police force.

Structural factors include the legal guidance system, especially for the community (judiciary), which apart from being less related, is also co-opted by the dominance of executive power. In addition, in order to anticipate the development of the global era which has encouraged the growth of relations between countries in various fields of life, including education, mass media, business and so on, intertwine in new centers of power that have the ability to link up widely.

From the aspect of the legal structure, what is very influential according to the public's view is related to the human resources (HR) of the Police.

**Graph 2.** Community Views on the Structure of the Police

Question: What should the police agency do with regard to human resources so that police functions can run optimally? (n = 100)



Source: Primary data processed: 2019

Support from the Indonesian National Police education institution and police (internal) educational institutions such as the School for the Formation of Officers, the Police Academy, the Police Science College, in addition to general education, are important pillars in improving the human resources of the police apparatus. The public is of the view that these educational institutions are sufficient to meet the demands of adequate human resources of the police apparatus to support the implementation of the police function in maintaining security and public order. The public also believes that various fields of knowledge such as law, social, mass psychology, and political knowledge are important and should be owned by the police to support their daily tasks.

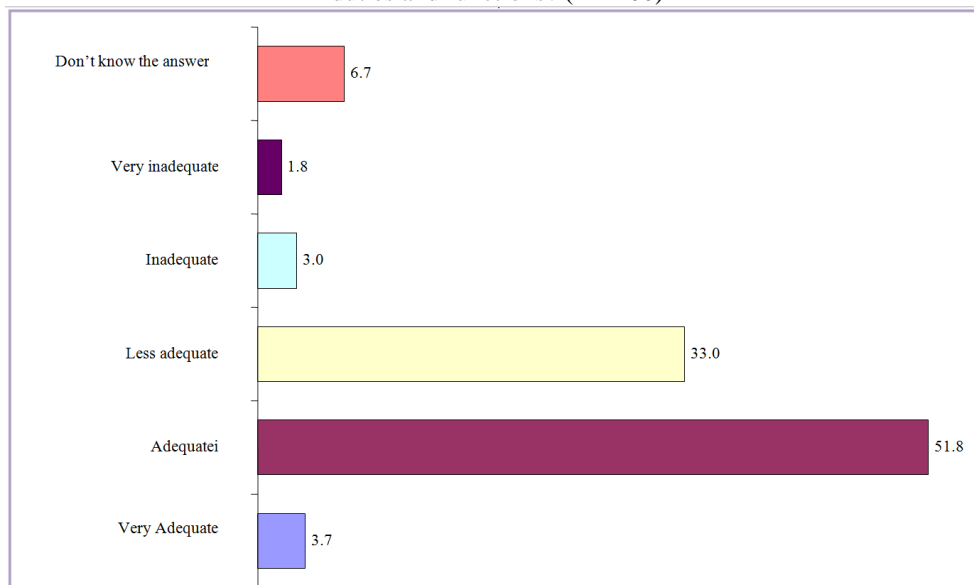
### 3. Legal Culture Factors

In the era of globalization, society has various complex and transparent demand dimensions in tune with the demands and insistence on progress, science and technology. Therefore, the implementation of the duties of the State Police of the Republic of Indonesia must be supported by the formation of a culture of each member of the police that is humane, supported by the capability and maturity of professionalism, namely those who have; conceptual abilities, human social abilities, and technical abilities.

The following describes the results of research that have greatly influenced the development of the culture of the police. The results of research that have been conducted have shown the quality of police officers. In general, the quality of police officers is considered adequate; as stated by a number of informants and corroborated by the following research results:

**Graph 3. Assessment of Police Resources**

Question: Are the human resources currently owned by the police adequate to support the achievement of its duties and functions? (n = 100)

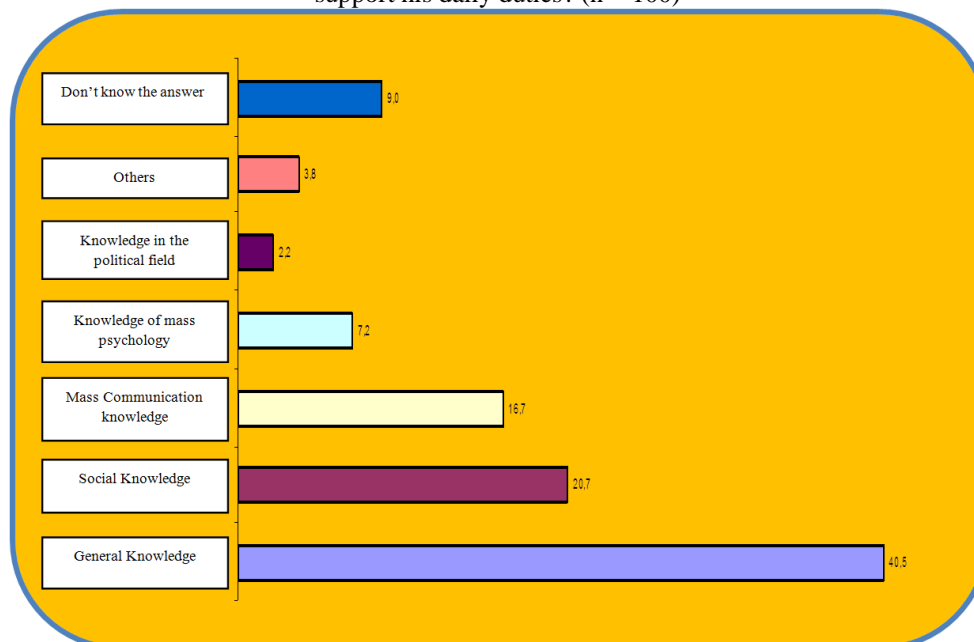


Source: Primary data processed: 2019

These results indicate that 51.8% indicate adequate, 33% insufficient, 3% insufficient and 1% very inadequate. But on the other hand, there is a generalist perspective of society; So that in measuring the quality of police human resources, there is a view that the police can do anything. So that there is an over-expectation of the police. In order to improve the quality of human resources of the police apparatus, the public views that “increasing the knowledge and skills of members” and “strengthening the recruitment system for members” are important things that police institutions need to do as shown in the following graph:

**Graph 4. Knowledge Level of Police Members**

Question: What knowledge in the field is important and should a police officer have in order to be able to support his daily duties? (n = 100)



Source: Primary data processed: 2019

The research data shows that the knowledge needed by members of the Indonesian National Police in carrying out the function of maintaining security and public order, shows that 45% state that members of the Indonesian National Police must have knowledge in the field of law, 20% so that members of the Indonesian National Police have knowledge of social and mass communication, 10%.

The conceptual ability of each Polri member is the ability to understand all the complexities of police problems, both those that arise within the police organization itself (within the job trouble) and problems related to the community in carrying out their duties (on the job trouble). The ability to understand the complexity of police problems, not only related to the internal organizational structure, but also to understand the police organization in the context of the police and state administration.

In relation to this, based on the Regulation of the Head of the State Police of the Republic of Indonesia Number 14 of 2011 on the Professional Code of Ethics for the State Police of the Republic of Indonesia, it is stated that the implementation of the duties, powers and responsibilities of members of the State Police of the Republic of Indonesia must be carried out in a professional, proportional, and procedural manner. supported by the basic values contained in Tribrata and Catur Prasetya which are described in the professional code of ethics of the State Police of the Republic of Indonesia as norms for proper and inappropriate behavior.

The enforcement of the professional code of ethics of the State Police of the Republic of Indonesia must be carried out objectively, accountably, upholding legal certainty and a sense of justice (legal and legitimate), as well as human rights by paying attention to the service of members of the Indonesian National Police who are suspected of violating the professional code of ethics of the Indonesian National Police.

Police Military Assistance is regulated in Article 10 section (3) point c of Law of the Republic of Indonesia Number 3 of 2002 on State Defense, regulates that "*the Indonesian National Army is tasked with implementing national defense policy to carry out Military Operations Other Than War*". What is meant by Military Operations other than war includes but is not limited to humanitarian assistance (civic mission), assistance to the State Police of the Republic of Indonesia in the context of security and public order tasks.

## V. CONCLUSION

1. Discretion by the police is a series of policies taken by the police as a way out based on their own judgment on issues that have not been regulated by law or that have been regulated by law, but if they are enforced rigidly, it creates inefficiency. Even though discretion by the police seems against the law, discretion It has a legal basis that guarantees it, so that discretion by the police is not arbitrary. Police discretion in law enforcement based on local cultural wisdom is essentially to realize and live up the values of local wisdom while maintaining the spirit of the rule of law to create legal certainty, justice and benefits.

2. Discretion is exercised by the police during investigations in order to improve efficiency and effectiveness in the criminal justice system. This authority is indeed given to the police, however, it remains within the boundaries determined by the law and is in the interests of the wider community, and does not harm and violate human rights and local cultural values of South Kalimantan which can be applied in law enforcement.

3. The use of police discretion based on local cultural wisdom of South Kalimantan is strongly influenced by factors of legal instruments, law enforcement officials, public legal awareness and legal culture. In addition to the implementation of discretionary powers that the police have, there are factors that encourage and hinder investigating officers to The driving factors consist of internal factors as well as external factors. Internal factors consist of adequate law substance, support from superiors, investigator factors and facilities factors. Meanwhile, external factors consist of community and support from community leaders and cultural factors.

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