Police Law Actions Based the Principle of Discretion against Suspects

Yuhelson

Abstract*: Among the law enforcement work in the criminal justice system, police are the most attractive, because in it there are many human involvement as decision makers. The police can in essence be seen as a living law, because it is in the hands of the police that the law is embodied, at least in the criminal law. If the law aims to create order in society, such as by fighting against evil, then in the end, it is the police who will determine what is concretely called ordering, who should be subdued, who should be protected and so on

Keywords: Discretion, law, and suspect.

I. INTRODUCTION

The debate on the concept of the rule of law is a classic debate that has not been completed until now. Despite the classical debates, this concept is worthy of continuous academic study, since this concept is always changing with the times. The state of law is the rechtsidee of a country that departs from the soul of a nation. Its characteristics depend on the values and norms of a nation that make up the nation's identity. The development of the meaning of this identity, demanding the elasticity of the concept of a legal state in order to be timeless. That the police action is done is the order of office and the implementation of a law and is based on the licensing factor, because not every police member is the Investigator, and supported by the authority of attrib. That is, if the phrase "justifiable actions", to postulate the police action based on "self-assessment" as contained in Article 5 paragraph (1) letter a number 4 KUHAP and Article 7 paragraph (1) letter j KUHAP , then it becomes inappropriate. Because, both "Reason Forgiving" (schulduitsluitingsgronden) and "Reason of Rejection" (rechtvaardigingsgronden), the essence of which is still an act that is not justified.

Thus, the meaning of the definition of law enforcement can also be viewed from the point of the object, namely in terms of law. In this sense, the meaning also includes a broad and narrow meaning. In a broad sense, law enforcement includes the values of justice contained in the sound of formal rules and values of justice living in society. But in a narrow sense, law enforcement only concerns the enforcement of formal and written rules. Therefore, the translation of the words " Law enforcement " into Indonesian in using the word "Law Enforcement" in the broadest sense can also be used the term "Enforcement of Regulations" in a narrow sense.

The distinction between the formalita rules of the written law and the scope of the value of justice it contains also even arises in the English language itself with the development of the term " the rule of law " or " the rule of law and not of a man " versus the term " the rule by law "which means" the rule of man by law. "In the term" the rule of law "contains the meaning of government by law, but not in its formal meaning, but includes also the values of justice contained therein. Therefore, the term " the rule of just law " is used. In the term " the rule of law and not of man ", it is intended to affirm that in essence the government of a modern legal state is done by law, not by persons. The opposite term is " the rule by law " which is intended as a government by people who use the law merely as a tool of power alone. In the context of the rule of law, law enforcement regulates an attempt to realize ideas and concepts into reality. Law enforcement is a process for realizing legal desires into reality. The so-called legal desires here are none other than the minds of the legislatures formulated in these laws. Talks of this law enforcement process extend to law-making. The formulation of the lawmakers' minds (laws) set forth in the rule of law will also determine how law enforcement is carried out. (Muchamad Iksan, 2018)

The operation of a law enforcement process is, in principle, identical to the operation of a Criminal Legal System. Simply put, Lawrence M. Friedmann (2017) describes the elements that must exist within a legal system. However, Indirectly, his explanation of the workings of the legal system characterizes the workings of the law enforcement process. Lawrence M. Friedmann explained that the legal system consists of three (3) components, namely the structure, substance and legal culture. In relation to the component, Romli Atmasasmita (2018) criticized Lawrence M. Friedmann's opinion because Lawrence M. Friedmann neglected the strategic role of the bureaucracy especially the law enforcement apparatus in the context of the Indonesian system of government. Duly if the opinion of Lawrence M. Friedmann corrected in the context of the development of law in Indonesia that Indonesian Legal System include the substance of the law, legal structures, legal culture and legal apparatus.

Where Soerjono Soekanto explained about the principal issue of law enforcement that moved from factors that might influence it. These factors have a neutral meaning, so the positive or negative impact lies on the content of these factors. These factors are:

First, Factors of law enforcement . Since the law has been transformed into a form of text, language takes on a major role. Law is something in the form of language or a language game .

Revised Manuscript Received on November 15, 2019.
* Correspondence Author
Yuhelson, Lecturers Law Science University of Jayabaya Jakarta Indonesia yuhelson2870@gmail.com

Unconsciously or consciously, the way punishment has entered a new dimension, namely punish with or through the scheme. If the punishment was originally related to justice or justice, then we are faced with the text, the reading of the text, and so on. Therefore, Satjipto Rahardjo explained that at the time the concept of punishment became a text punishment, then there was one passage that became closed or at least narrowed. The alley is punishable by reason (fairness , reasonableness, common sense). The punishment based on the text has a strong tendency to punish rigidly and regimentatively .

What is revealed by Satjipto Rahardjo is a concept of punishment embraced by countries with civil law system or continental europe countries. Although Indonesia is not part of continental European country, but based on the principle of concordance contained in Article 2 RO, the culture of punishment is applied by Belada through the mechanism of colonialism to Indonesia. Therefore, according to Teguh Prasetyo (2013) , that Law is the most important source of law for continental European countries that embraces civil law . In general, the Law is defined as a general rule established by the competent authorities for it, the Parliament with the President. Thus, the development of legal thought in Indonesia, much influenced by the Continental legal tradition or civil law - which entered through the Dutch colonial - developed under the shadow of a positivist paradigm that became a mainstream paradigm in the land of origin of Continental Europe. This paradigm is basically derived from the philosophy of positivism developed August Comte , which later developed in the field of law. Positivism paradigm sees law as the result of positivization of norms that have been negotiated among the citizens, as a system of rules that are autonomous and neutral. (Khudzaifah Dimyati, 2017).

So according to the author , the application of the principle of concordance that makes the marginalization of the soul of the nation (volkgeist) contained in the Pancasila and Proklamasi. By adopting colonial law which is full of nuances of positivism and the teachings of legism by force by marginalizing customary law and Islamic law, which is the living law . Although, according to Mr. Modderman and Van Bemmelen , that the criminal penalty must remain an ultimum remedium, but due to its application in the colonies, the criminal threat is a premium remedium .

Although the concept of the Welfare State is believed by some experts of the State Administration Law as a concept adopted by Indonesia, it becomes a justification for the application of law by the law enforcement apparatus to discretion in the process of applying its law based on freies ermessen . However, since the Law curriculum is always introduced to prospective Bachelor Hukm as a system of legislation that is structured in a logical and consistent. In addition to this logical and consistent understanding is usually still added to the notion of a closed system, because the fact is that learned is only within the framework of positive law rules only. The science of law is a deductive science . The aim is to apply these laws of law to everyday events in society. Therefore, the law enforcement apparatus always positions itself as "the enforcement of the law" and will never convey to the meaning of "the applicant of the law".

This is certainly very different if we observe the development of law and law enforcement behavior in countries that adhere to common law concepts . Where in common law system known equity institution , which is bridging between the general provisions and the typical circumstances of an event. Police in the field are discretionary, because if the general provisions are forced to be applied against always unique incidents, then the law is at risk for social upheaval. Mala is actually in the hands of police behavior that the law finds its meaning. Of course the lawmakers do not plan to make the noise, which is why discretion is required. On the other hand, according to Satjipto Rahardjo , it is also known that the practice of "refinement of the law" (rechtsverfijning) which also aims to use the general provisions more precisely and fairly.

An interesting development is in the Netherlands, as a country that transmits civil law system to Indonesia, in reality it has begun to shift its view of the law through the out of court settlement. Through the 2013 amendment to Wetboek van Strafvordering (KUHAP Netherlands), by adding Article 51H, which asserts the following: " Het openbaar ministerie bevordert dat de politie in een zo vroeg mogelijk stadium het slachtoffer en de verdachte mededeling doet van de mogelijkheden tot bemiddeling ." The provision explains that the Prosecutor who has the principle of opportunism and the dominant principle of Litis has authorized him, partly, to the Police to take the necessary actions at a certain level with certain conditions to enable mediation between the victim and the suspect.

Similarly affirmed by Sudargo Gautama that every state action must be based on law. The legislation that has been held in advance, is the limit of state acting power. The Constitution which contains legal principles and rules of law must be obeyed, as well as by the government or its own agencies. Meanwhile, according to Philipus M. Hadjon that in a State of Law, requires the existence of normative and empirical recognition of the principle of rule of law, namely that all problems solved by law as the highest guidance. Thus in a state the law of all life, the life of the state, the life of the nation, and the life of the society must be based on the law. That is, all actions should be based on legitimate and written legislation. The legislation must exist and apply in advance or precede the deed done. (Rachmat Trijono.2014). Thus, law enforcement is a process of applying discretion by law enforcement officials based on the laws and views on living values in a given period and region.

Second, factors means or facilities that support law enforcement. Improvement of Law Facility and Infrastructure is intended to support the workings of national legal system capable of maintaining order in the life of society, nation and controlling the activities of state administration in order to realize the purpose of the state. Improvement of legal facilities and infrastructures, both in terms of quantity and quality, is carried out on various legal functional facilities and infrastructures which include police buildings, prosecutors, judiciary, prisons and detention centers, as well as various other functional equipment.

The Law Facility and Infrastructure Program aims to support the realization and operation of a robust national legal system and is able to play a role in maintaining order and acting as an instrument of development. The Law Facility and Infrastructure Program covers, among other things, development activities, improvements, rehabilitation of

various legal services such as police, prosecutors, judiciary, prisons, detention centers, temporary storage houses, correctional centers, immigration offices, immigration posts and immigration quarantine; as well as other legal services offices. In addition, procurement, improvement of various other legal functional equipment, such as improving network system documentation and legal information, publication of legal information materials, and various instruments of legal services and other equipment.

Based on the Results of National Legal Seminar VI which was held in Jakarta, 25-29 June 1994 with the theme: "Application of Archipelagic Insight and Legal Development in Indonesian Waters", issued recommendations related to Facilities and Infrastructure, as follows: (Barda Nawawi Arief. 2011) 1) To modernize legal facilities and infrastructures; 2) Increasing the function and role of Library and Library in the field of law; 3) In connection with the improvement of Legal Documentation and Information Network System (SJDIH) is mandated to improve the quality of legal information services for all perpetrators of community legal development in general easily, quickly, accurately and up to date and can reach all corners of the country; 4) In order to support the development of legal facilities and infrastructure, all of these must be supported by the necessary budget and legislation.

Third, f actors of society. Society, is the part that will determine whether or not to enforce the law in a country. This is much forgotten by many parties. In fact, society is regarded as the object of law enforcement and not the subject of the law enforcement process. The fact that the development of society is always faster than the development of legislation. This often causes the rule of law to be made solely because of a deviation of the norm in society. Development in society is the starting point of the existence of a rule. (Eva Achjani Zulfa, 2019).

The community in this case does not play directly in the process of law enforcement, but the community functions as a social control both against the emergence of a behavioral aberration and the law enforcement process by other elements. Thus, awareness programs, campaigns, education, whatever the name, must be continuously encouraged by participatory methods. Because, it is the right of citizens to obtain information and knowledge of the right and true of the things that are important and useful for survival. Thus, as Sjachran Basah affirmed , that in the period of development of the function of law is broader than the function of law that is known traditionally, so that the sensitivity of the law is an absolute requirement. Therefore, there is a close relationship between law and society. In the same way, society also influences the law itself, so there is a functional interdependent relationship. (Heru Susetyo, 2019).

II. ANALYSIS METHOD

Montesquieu once explained that the law is a social phenomenon and that legal differences are caused by differences in nature, history, ethnicity, politics and other factors of the social order. Therefore, BA Sidharta explains that the object of study of Law Science is the prevailing law, namely the conceptual system of rule of law and the judgment of the law that the important parts are positively encouraged by the legal authorities in the society or state in which the Law Science is embodied, so the whole of the authoritative text contains legal rules comprising products of legislation, treaties, bureaucratic stipulations, judgments, unwritten laws and doctrines. Bernard Arief Sidharta (2019). As a result of the influence of legal relationships that have occurred extensively, even beyond the borders of the state, or better known as the term globalization, the influence of legal philosophy in shaping legal politics and legal system of a country, can also be said as one element that affects mindset in the formation of the law. As explained by CFG. Sunaryati Hartono , that there are legal philosophies that affect the development of national law both past and present. Therefore, it is appropriate that Purnadi Purbacaraka and Soerjono Soekanto provide guidance on the punishment method by making a good understanding of the various notions of the law because it is very important, in order to avoid confusion in the study of the law. Where such differences of meaning are always taken into account and used as a guide, conclusions and misunderstandings may actually be avoided in the study of the law, including its application.

Thus, in the face of concrete cases that have characteristic characteristics, where the punishment with the text is no longer able to reach. Then welfare state has provided the solution that is through freies ermessen . To produce the most acceptable proposition, the rechtsbeoefening activity needs to be done philosophical reflection on the Law Science itself. According to Bernard Arief Sidharat bringing philosophical reflections on the full range of Law will question aspects of ontology, epistemology (understanding / theory) and the axiology aspect (benefit) of Law Science. The examination of these three aspects will determine the existence and the scientific character of the Law Science which will have implications on the way of law science and practical law science (the introduction of the law / rechtsbeoefening) in the reality of community life. Therefore, the view of the Law will affect the form and way of education (high) law, and ways of thinking and how the law experts produced it.

So in conducting the activities of Law Science, normative study will not be able to stand alone, in the level of external systematization that is to systematize the law in order to integrate it into the ever-evolving society order, and into the public life view. This systematization may lead to a reinterpretation of existing notions and the creation of new legal concepts, as a result of the need for intervention from the Theory of Law Science in a broad sense as classified by Meuwissen and Bruggink . These descriptions become very important to be studied further by the observers of the law. This is because the principal problem of Legal Sciences is to answer the question or to solve the problem caused by the emergence of doubt that is always related to the implementation of the positive law (way of punishment through text). Thus, the object of the study of Law Science there are only 2 (two) types namely the existence of social facts that arise and kaedah-kaedah law. Here are two facts that appear in the writing of this scientific paper, which will be a debate related to the police action that should be self-conscious, that the Criminal Procedure Law as a formal law always intersects with the Law of State Administration. So the Police Investigator must realize he is the Government Official.

III. RESULT AND DISCUSSION

The intent of the investigator pursuant to Law Number 8 Year 1981 regarding the Criminal Procedure Code (Criminal Code) in Article 1 point (1) is a police officer of the Republic of Indonesia or a certain Civil Service Investigator who is given special authority by law to conduct an investigation. In the general provisions of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia stated that the investigator is an officer of the State Police of the Republic of Indonesia authorized by the Act to conduct an investigation, while the entitled to become an investigator according to the Government Regulation of the Republic of Indonesia Year 1983 on the implementation of KUHAP is: a) A certain Police officer of the State of the Republic of Indonesia who is at least of the rank of Second Police Lieutenant Police; b) A certain Civil Service Official who is at least of the rank of the Level I Youth Regulator (Group II / b or equivalent).

The above provision is with the exception, in the case where there is no official investigator as intended then the Sector Commander because of his position is the police investigator of the rank of Bintara under the Assistant Second Lieutenant Police. Investigators from the Police who are authorized to conduct the investigation must have at least a police officer with the minimum rank of the Second Superintendent of Police Force (AIPDA), while for a police officer serving as an investigator auxiliary comes from the police officers with the minimum rank of Police Brigadier Two (BRIPDA), Brigadier Polisi Satu (BRIPTU), Brigadier or Brigadier Head (BRIPKA).

In the Criminal Procedure Code and Law No. 2 of 2002 on the Police of the Republic of Indonesia (UU Polri) to ease the burden of investigators has also arranged the presence of auxiliary investigators. Auxiliary investigator is an officer of the State Police of the Republic of Indonesia appointed by the head of the Police of the Republic of Indonesia by virtue of the rank of a certain authority in carrying out the investigation tasks stipulated in law. The term investigation was used as a legal term in 1961 since the term was contained in the Basic Law of the Police (Law No. 13 of 1961). Before use the term "investigation" which is a translation of Dutch opsporing.

In the framework of the criminal justice system the police duties, especially as the investigative officer, are contained in the provisions of the Criminal Procedure Code. As an investigator, the police are tasked to overcome the violation of the provisions of the criminal code, both listed within and outside the provisions of the Criminal Code. This is among other things the police duty as a tool of law enforcement state. The provisions on the definition of investigation are contained in Article 1 point (2) of KUHAP that:

"The investigation shall be a series of investigative actions in respect of and in accordance with the manner laid down in this Act to seek and collect evidence which with such evidence makes light of the criminal offense and to find the suspect ."

If you look at this work has juridical aspects, because the whole work is aimed at the work in court. Investigations are conducted for the interest of the judiciary, particularly for the purpose of prosecution, namely to determine whether an action or deed can be prosecuted.

Investigations are conducted after investigation, so the investigation has a foundation or basis for doing so. In other words, the investigation is done not on the presumption of someone according to the investigator that he is guilty. This is stated by Gerson W. Bawengan that: "The investigation is carried out not merely based on mere assumptions, but a principle used is that the investigation aims to make a case light by collecting evidences about the occurrence of a criminal case. In other words, the investigation is done when there is sufficient clues that a person or suspects have committed a punishable event. "

With thereby, the decision to make someone a suspect is closely related to the transparency of the evidence collection process used as the basis for the suspension's decision to be issued.

In practice, the investigation requires several attempts to make the disclosure of the case can be obtained quickly and accurately. These investigative efforts ranged from summons, searches, to arrests and foreclosures. In the event that the investigator has commenced an investigation of a criminal matter, the investigator notifies the matter to the Prosecutor (daily known as SPDP or Notice of Commencement of Investigation) in accordance with the Criminal Procedure Code 109 paragraph (1).

After the evidence is collected and the suspect has been found, the investigator judges carefully whether there is sufficient evidence to be delegated to the Prosecutor (Prosecutor) or is not a crime. If the investigator is of the opinion that the event is not a criminal offense then the investigation shall be terminated by law. The dismissal of this investigation is notified to the Prosecutor and to the suspect or his or her family. What is of concern to us is the legal action of the Police Investigator relating to the assessment of the power of evidence held by the Investigator during the investigation process. In KUHAP, the type of evidence power is divided into 3 (three), namely: a. Assessment of initial evidence ; b. Assessment of sufficient initial evidence ; and c. Assessment of sufficient evidence . The three types of assessment are crucial to all legal actions to be taken by the Police Investigator. Where the status of a Reported Party in this case is highly dependent on the assessment of the Investigator in assessing the preliminary evidence on which the Investigator has the belief that the Reported Party is reasonably suspected as a criminal offender, so it is worth to increase his status. Similarly, an assessment of sufficient evidence , which then for the interest of the investigation, authorizes the Investigator to take legal action in the form of various forced measures.

However, in exercising that judgment, which is a form of a decision based on the authority to act in its own judgment (freies ermessen : discretionary power), may be made under the following circumstances: a. A very necessary situation; b. Not contrary to legislation; c. Not contrary to the code of ethics of the Police profession. Upon completion of the investigation, the file is submitted to the Prosecutor (KUHAP Article 8 paragraph (2)). This submission is done two stages: The first stage, the investigator only submits the case file; In case the investigator is deemed to be completed, the investigator hands over the responsibility of the suspect and the evidence to the Prosecutor. If at the first stage of submission, the Prosecution is of the opinion that the file is incomplete then he can return the case file to the investigator

to be accompanied by instructions and the second to complete itself. According to the Criminal Procedure Code, the investigation is completed or considered completed in the case of: a).Within 14 days the public prosecutor does not return the case file, or if the deadline before the expiration of the deadline the prosecutor informs the investigator that the result of the investigation is complete; b) In accordance with the provision of Article 110 paragraph (4) of KUHAP jo article 8 paragraph (3) letter b, with the assignment of suspects and evidence from the investigator to the public prosecutor; In the event that an investigation is suspended in accordance with the provisions of Article 109 paragraph (2), that is, because there is not sufficient evidence, or the event is not a criminal offense, or the investigation is terminated by law. The completion of the investigation in this sense is transient, because if one finds new evidence, then the discontinued investigation must be reopened. The reopening of the suspended investigation may also occur in a Pretrial ruling stating that the suspension of the investigation is illegal and instructing the investigator to re-investigate the incident. Based on Article 110 paragraph (4) of the Criminal Procedure Code, if within 14 days the Public Prosecutor does not return the file (the result of investigation) then the investigation shall be deemed to have been completed. Based on the above description, an investigation and investigation process is heavily loaded with discretionary (freies ermessen, discretinary power) assessments, directed at "investigative interest" to reveal a crime that has occurred.

Related to the provisions of Article 5 paragraph (1) letter a number 4 KUHAP and Article 7 paragraph (1) letter j The Criminal Procedure Code and its explanation are interesting to observe the views of Abdussalam , where he interprets the content of Article 7 of the Criminal Procedure Code. According to Abdussalam that the 5 (five) terms contained in the explanation have not been formulated in the Mahkejapol forum and the Police Headquarters has not compiled either the implementation instructions nor technical guidance on such terms. Then he tried to propose some postulates that are as follows:

1. Not contrary to a rule of law

Decision of the Supreme Court Number: 42 K / Kr / 1966 dated January 8, 1966 on behalf of the defendant Machroes Effendi, followed by the Supreme Court of the Republic of Indonesia No. 71 / K / 1970 dated 27 May 1972, Supreme Court Decision Number 81 / K / Kr / 1973 dated May 30, 1977, is one example of the jurisprudence of the Supreme Court of the Republic of Indonesia which implements the unlawful nature of the law with a negative function aimed at eliminating the excuse of an offense (unwritten) where the Supreme Court is of the opinion that there are 3 (three) the element (bestandellen) against the material law as the reason for the offender (unwritten) in the form of (1). Ne factor is not disadvantaged; (2). Common interests are served; and (3). The defendant did not make a profit.. (PAF. Lamintang.2013) If we refer to the Criminal Law relating to these provisions, then we come to the views of the PAF. Lamintang, that Article 48 of the Criminal Code, Article 49 paragraph (1) and paragraph (2) of the Criminal Code, and Article 50 of the Criminal Code constitute "strafuitsluitingsgronden" (the grounds that eliminate the punishment). [26] While Eddy OS Hiariej uses the term "Crime Removal", it is further explained that the reason for Crime Eraser is in principle the reason for the eradication of criminal liability.(Eddy OS Hiariej.2014). As well as strafuitsluitingsgronden, then in the Criminal Law Sciences is also known as "vervolgingsuitstingsgorden" (the basis for the elimination of prosecution). Based on Memorie van Toelichting, "strafuitsluitingsgronden" (the basis of the elimination of punishment) to the perpetrator is divided into two, namely first, the reason within the perpetrator (inwendige orrzaken van ontoerekenbaarheid) as contained in Article 44 of the Criminal Code; secondly, secondly, the reasons that are outside the perpetrator (uitwendige orrzaken van ontoerekarbaarheid) as set forth in Article 48 of the Criminal Code up to Article 51 of the Criminal Code.

Therefore, the Criminal Procedure Code has provided formal requirements for every Police Investigator in conducting police actions to meet those requirements. Where, every Police Investigator and Investigator, or equivalent, in carrying out a police action requires an instrument of permission, at least is the need for permission from his superiors. This means that the attribution authority of the law can not be unilaterally attached, because it requires the authority of the delegate and the mandate authority. Where the legislator generally does not prohibit an act, but still permits it to be originally set out for each concrete matter, the decision of the state administration which permits the act is a license (vergunning). While the permit in the broad sense means an event of a ruler under the Legislation to allow the conduct of certain actions or deeds that are generally prohibited.

2. In line with the legal obligations that require the conduct of office

That other acts, Article 5 paragraph (1) a of item 4 of the Criminal Procedure Code and Article 7 paragraph (1) letter j KUHAP, interpreted as other actions not regulated either by the Criminal Procedure Code or Polri Law should remain within the corridor of the concept of legal protection for citizens . In connection with the run tupoksinya a Police Investigators are required to understand the essence of the office that embannya. The position placed on his shoulders not only makes an Investigator of the Police as the most important part in a Criminal Justice System, but also a part of the power in performing the functions of government within the domain of State Administration Law (HAN). Understanding of the "Position" owned by a Police Investigator raises the authority and authority that will not be discussed in the realm of both Criminal Law and Formal Criminal Law, because it is a genus of problems Position, authority and authority is the scope of HAN. This is not explored by Abdussalam in his book. This study is not to discredit the results of his understanding, it should be appreciated that only Abdussalam is trying to extract into the realm of Criminal Procedure Law concretely. But it was not followed by the Police Law Writers in general.

According to Bagir Manan, that Position is a permanent job environment that contains certain functions that overall reflect the purpose and work of an organization. The position is permanent, while the amb- trager may alternate, for example, the presidency, vice-president, minister, governor and others, relatively fixed, while the holder of office or officer has alternated. Ridwan HR further explains that when the public legal entity (Police of the Republic of Indonesia, Pen.)

Performs public acts such as regulation, issuing the policy (beleid), decision (besluit), and determination (beschikking), the position is as position or organization of position (ambtenorganisatie), and handed over public authority (publiekbevoegdheid), then according to the authors of the public legal entity, in this case is the Police of the Republic of Indonesia, shall submit themselves to public law. Between positions with officials have a close relationship, but between them actually have a different legal status or separate and governed by different laws. Offices and officials are subject to different laws. Occupation is governed by the Constitution Law and the Law of State Administration, whereas officials are governed and subject to employment law.

Therefore, every member of the Police must have a complete understanding and totality of Law No. 5 of 2014 on State Civil Apparatus (UU ASN) and Law Number 30 Year 2014 on Government Administration (AP Act). Both ASN and UUAP laws are material laws for every police action.

3. Such action shall be reasonable and reasonable and shall be included in its official

Environment Every member of the Police, particularly the Investigator should understand the word "law" which is not only interpreted by law, but also the attitudes that the public guides in daily life. Thus the actions of the police, as has been described by Abdussalam, which will influence the life of nation, state and society in the goal to reach the goal constituted, that is bestuurzorg. It is a logical and rational consequence of the term "Law Enforcement" that the Police, as one component of the Criminal Justice System, is required to know the law. Not even knowing but must have the ability to control the law in all its aspects. In addition, the police in carrying out their duties must always be based on law so that every action can be said, in addition to rechtmatige also doelmatige. This means that in the police punishment is not supported to the rigidity of the law that has been transformed into texts.To achieve what the Article 5 Paragraph (1) Sub-Paragraph a of Article 4 of the Criminal Procedure Code and Article 7 Paragraph (1) Sub-Paragraph j of the Criminal Procedure Code is required, each Police Member shall be able to apply a systematized problematic method of thinking in order to make a logical, rational proposition and measurable, resulting in the most acceptable legal propositions in society. That maintaining harmony within the community is more important than the fulfillment of elements of criminal acts, therefore, Abdussalam indirectly tries to explain that the Police Member as the instrument of the state has a constitutional purpose that is based on the purpose of law, in this case is peace, and the purpose of the state , in this case is bestuurzorg.

4. On Due Consideration Under Circumstances Of Force

In the face of resistance from the suspect it is sometimes the Police use a deadly force of force, by shooting dead suspects perpetrators of criminal acts. The act of causing the dead to enter a criminal qualification that results in the death of a person. Such a crime deliberately deprives a person's life or a crime of persecution that results in the death of a person. In order to guarantee the implementation of this condition, any police action resulting in the death of the Suspects, even the wound, the Police shall conduct a code of ethics inspection to ensure that such acts of violence are necessary, and as a form of juridical and sociological accountability. The aim is no. The aim is not to bring up brutal images in the society's view of Polri's performance.

In connection with the description, Djoko Prakoso explained that the Police itself in practice experience especially in the prevention of crimes, especially in the field of preventive, in the absence or lack of firmness, the lack of complete provisions of the law, then in determining and taking steps, vague or doubtful, whether the action taken is justified by law or not. Doubt here is meant when viewed in terms of formal juridical. Furthermore JW. Haarman explains that although the Police themselves are aware that based on the general authority that it exists to carry out the functions of the police, in a functional sense, it is legal to take actions / steps it takes for the performance of its obligations even without being authorized / given the special authority for that by law. (Djoko Prakoso 2017)

Responding to the description and explanation from Djoko Prakoso and JW. Haarman mentioned above, on the one hand the authors agree, but on the other hand, the authors argue that the general authority (algemeen bevoegheid) will only be considered valid (rechtmatige) when it has clear elements with the concept of the rule of law, especially the State of Pancasila Law. In the context of the Criminal Law, that general authority (algemeen bevoegheid) is not necessarily rechtmatige based on formal teaching alone, but also must accommodate material teachings, from unlawful nature.

IV. CONCLUSION

From the above descriptions, it has been demonstrated basically that law enforcement is a process of applying legislation to a concrete case based on the mastery of the Dogmatic Law of the Law through a hermeneutical point of view, thus generating the most acceptable propositions (acceptable) by each party involved. The attempt to describe, analyze, systematize, and interpret the sollen-sein das is a hermeneutical circle to shift the prejudices that have shaped the horizon of view. This is certainly not something easy, just as difficult as shifting the legal positivism paradigm in the Criminal Law, which is the legacy of colonialism. In the end, the success or failure of rechtsbeoefening will always be attributed to the effort with the good will of the legislators, the President with the People's Legislative Assembly, who through the power to change the political viewpoint of the criminal law and the criminal law system based on the system of values of the Indonesian Nation. This is in fact almost similar to the difficulty of changing legal culture among law enforcement agencies. The principle of presumption of guilty, although not recognized in the principles of criminal procedure law, is practiced in the investigation and investigation process both in the Police and at the Attorney, in order to find valid evidence and the person suspected of being a perpetrator of a crime (Suspect). This principle grows and develops in the concept of inquisitive inspection through the legislation of colonialism. In line with the concept of respect for Human Rights and volkgeist of the Nation of Indonesia, there was a shift to the accusatoir.

However, the legal culture that has been built up to this day is inquisatoir, while the accusatoir is more pronounced in the examination process before the trial through the simmilius principle of simmilius and equality before the law principle and the principle of audi et alteram partem.

Thus, in order to shift the viewing horizon as a result of the presumption of guilty principle, law enforcement institutions in the pre adjudication domain must move on the basis of open system theory, accept and understand das sein as input in units of legal thought / thinking based on the concept of exposing and understood in a unity of das sollen as a knife of analysis, which has been placed in the philosophical reflection activity. Understanding of das sein should not be limited by what is perceived by the senses, but capturing the meaning of that hidden das sein. Thus, the law enforcement apparatus has shifted initial prejudices and has a new horizon of concrete cases that make an output a legal proposition. Whether then the proposition is in conformity with the existing system of values or not, then the feedback must then be re-placed into a hermeneutic interpretation circle, to re-search for a fusion of the horizon, the terminal ending up predictability and equity.

REFERENCES

1. Barda Nawawi Arief. 2011. *Collection of National Seminar Result I to VIII and National Law Convention 2008 on 1945 Constitution as the Constitutional Platform of Grand Design System and Politics of National Law*, Semarang: Badan Penerbit UNDIP, 2011
2. Bernard Arief Sidharta (2019), *Reflection on the Structure of Legal Science*, Bandung: Mandar Maju.
3. Bernard Arief Sidharta, *Indonesian Legal Science Structure*, (Unpublish Materials), Bandung: Faculty of Law Univer sitas Parahyangan, 2008
4. Bevoegheid der Politie Staatsblad (Ordinance) 1918 No. 125
5. Djoko Prakoso 2017., *The Development of Special Delik In Indonesia*, Jakarta: P ersada Indonesia.
6. Eddy OS Hiariej.2014. *Principles of Criminal Law*, Yogyakarta: Light Atma Pustaka.
7. Eva Achjani Zulfa, 2019. When the Age Leaves the Law, source: www.pemantauperadilan.com/opini
8. Gerson W. Bawengan, Criminal Crime Investigation and Interrogation Technique, Jakarta: Paramita's Par, 1977
9. Heru Susetyo, 2019. Law Enforcement That Creates Justice, Source: http://herususetyo.multiply.com/journal/item/9/
10. Khudzaifah Dimyati, 2017. The Dominance of Positivistic Legal Thought: Otokritik and Otensitas and Poverty Indonesia, Paper presented at the 3rd National Conference of the Association of Indonesian Philosophy of Law (AFHI), with the theme: Beyond the Debate of Legal Positivism and Natural Law Theory, AFHI and Epistema Institute in collaboration with the Faculty of Law Airlan University, 27-28 August 2017
11. Lawrence M. Friedman. 2017, The Legal System. A Social Science Perspective, [Pent. M. Khozim], Bandung: Nusamedia
12. Moeljatno, Criminal Code, Jakarta: Earth Script, 2003, p. 23; which translates as follows: "Whoever commits acts by force of influence, is not punished." Or See: R. Soesilo, The Criminal Code (KUHP) as well as his Complete Comments Article By Article, Bogor: Politeia, 1996, pp. . 63; which translates as follows: "Whoever commits an act by being forced by any unavoidable power shall not be punished."
13. Muchamad Iksan, 2018. Witness Protection Law, Surakarta: Universitas Muhammadiyah Surakarta.
14. PAF. Lamintang.2013. Indonesian Criminal Law Basics, Bandung: Cit ra Aditya Bakti.
15. Article 1 number 14 KUHAP jo Article 17 KUHAP jo Article 21 paragraph (1) KUHAP.
16. Purnadi Purbacaraka & Soerjono Soekanto, About Legal Reason, Bandung: Cit ra Aditya Bakti, 1993
17. Rachmat Trijono.2014, Basics of Legal Sciences, Jakarta: Pap as Sinar Sinanti
18. Romli Atmasasmita. 2018. Three Paradigms of Law in National Development, Paper presented at the Meeting / Discussion of Political Working Group of Criminal Law and Funding System at BPHN
19. Suryono Sutarto, Criminal Procedure Code Volume I, Semarang: Badan Penerbit Universitas Diponegoro, 2003
20. Teguh Prasetyo. 2013, Law and Legal System Based on Pancasila, Yogyakarta: Media Perkasa
21. Yoyok Ucuk Suyono, Police Law. Position of Police in Indonesian State System After the Amendment of UUD 1945, Yogyakarta: Laksbang Grafika, 2013

AUTHORS PROFILE

Yuhelson, Lecturers Law Science University of Jayabaya Jakarta Indonesia
yuhelson2870@gmail.com