

Discretion of Power of the Indonesian National Police Impacts the Abuse of Power in the Case of Letter Forgery of Red Notice "Fugitive Djoko Tjandra"

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Abstract: This research was a case study presenting a red notice that was suspected of being false against fugitive Djoko Tjandra by two police generals at the State Police of the Republic of Indonesia. This was a case study research and the research approach method was qualitative. Creswell defines the qualitative method as a research method based on a constructive perspective, that is various meanings; meanings that are constructed socially and historically to develop a theory or pattern. The researchers collected and developed open data, intending to develop themes from the data obtained. The results of the study, based on the exposure to the case analysis, it is suspected that there has been an abuse of power against the power and authority of the state institution of the Indonesian National Police. The researchers suggested that it is better if the legislators of the laws and regulations of the Police of the Republic of Indonesia think about it whether operational accountability is appropriate to the executive of the President of the Republic of Indonesia. Therefore, there is a check and balance of law enforcement behavior carried out by the police.

Keywords: Power and Authority Owned by the Police, Abuse of Power, Red Notice, Indonesian National Police, fugitive Djoko Tjandra.

1. INTRODUCTION

The Republic of Indonesia National Police, Attorney General's Office, Supreme Court of the Republic of Indonesia, are state institutions in constitutional law in Indonesia. The South Jakarta District Prosecutor's Office submitted the case files and evidence for the removal of red notice fugitive Djoko Tjandra to the Central Jakarta Corruption Court. The suspects, including the two generals involved in the case, will be tried on Friday, 23th October 2020 at around 14.³⁰ Western Indonesian Time. The public prosecutor has submitted the case of fugitive Djoko Tjandra's red notice to the Corruption Court at the Central Jakarta District Court. The case files and evidence submitted included 3 suspects who were involved in the deletion of Djoko Tjandra's red notice. The suspects were former Head of the National Police's International Relations Division, Inspector General of Police Napoleon Bonaparte, former Head of the PPNS Supervision Bureau of the Indonesian National Police's Criminal Investigation Bureau Brigadier General Police Prasetijo Utomo, and businessman Tommy Sumardi.¹

The case of a pass that was owned by fugitive Djoko Tjandra was initially exposed because of a report from IACC (the Indonesian anti-corruption community). (IACC (Boyamin Saiman) reported the photo of the travel document to the Ombudsman of the Republic of Indonesia and Commission III of the Indonesian House of Representatives.¹² The pass was signed by the Head of the Coordinating and Supervision Bureau of the Indonesian National Police, Brigadier General Prasetijo Utomo. The travel letter stated that Djoko departed from Jakarta on June 19th, 2020 to Pontianak and would return on June 22th 2020.³ It was also stated in the letter that Djoko as a consultant had an interest in consultation and coordination⁴.

A pass is a letter that can only be used by members of the Police of the Republic of Indonesia when they

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¹Wilda Hayatun Nufus – detikNews (2020) Two Generals Immediately Trial Regarding the Red Notice Case of Djoko Tjandra. https://news.detik.com/berita/d-5226017/dua-jjen-segara-disidang-terkait-kasus-red-notice-djoko-tjandra?_ga=2.256709954.819161790.160420747-708857928.1604207476. accessed on 30 October 2020

²Norberty Arya DM, et al. (2020), "Chief of Police: Remove Brigadier General Prasetyo and conduct an examination", <https://kompas.id/baca/polhuk/2020/07/15/kapolri-copot-brigjen-prasetyo-dan-do-check/> accessed on 30 October 2020

³Norberty Arya DM, et al. (2020) *Ibid*

⁴Devina Halim (2020) Questioned, Jalan Djoko Tjandra Apparently Special For the Police, <https://nasional.kompas.com/read/2020/07/15/215913711-dipersoalkan-surat-jalan-djoko-tjandra-rupanyak-khusus-untuk-police?page=all>, accessed on 30 October 2020

are on duty outside the city or are carrying out orders from their superiors. This letter should only be issued by the Head of the National Police-Criminal Investigation Agency or the Deputy Head of the Police Criminal Investigation Agency⁵. However, Brigadier General Prasetyo as the Head of the Coordinating and Supervision Bureau has no authority over it. Administratively, the action can be called maladministration. Based on Article 1 point 3 of Law No. 37 of 2008 on the Indonesian Ombudsman: Maladministration is behavior or actions against the law, exceeding authority, using authority for purposes other than those of the said authority, including negligence or neglect of legal obligations in the administration of public services carried out by State Administrators and the government which cause material and/or immaterial losses to the community and individuals⁶.

Law, in this governance perspective, is conceived as instrumental: its legitimacy rests on the ability to create or strengthen effective tools of governance. Therefore, if decision-makers (in the specific case, almost all the domestic police forces of the world) agree about the ends to pursue and the means to employ, then the law becomes a secondary concern, superfluous and perhaps even damaging. Moreover, the law is perceived as rigid, legal requirements as cumbersome, formalism as deleterious to the achievement of shared goals. In short, when a law is not necessary to lead into the purposes of a certain institution, there is no reason to "legalize" that institution⁷. Discretion is always associated with decision making, power, or authority exercised by a person regarding the problems at hand⁸. The discretion of the Indonesian Police is a policy based on the power to do something based on considerations and beliefs in the framework of law enforcement.

The Indonesian National Police is one of the state's apparatus which has the most problematic position. Following its function and role, the position of the Indonesian Police must be in an independent position. But on the other hand, if the independence of the

Indonesian Police makes a mistake in managing the system, the Indonesian Police can become an institution with superpower because of its extensive duties and powers.

In Article 30 paragraph 5 of the 1945 Constitution of the Republic of Indonesia, it is not explained and confirmed the institutional position of the Indonesian Police in command under the President. However, this article stipulates the position of the Indonesian National Police and the Indonesian National Army.⁹ Law Number 2 of 2002 on the Indonesian National Police, places the Republican Police at the position of the President. Referring to the TAP MPR RI No. VI / MPR / 2000 on the Separation of the National Army and Police of the Republic of Indonesia and TAP MPR RI No. VII / MPR / 2000 on the Role of the Indonesian National Armed Forces and the Indonesian National Police, it is stated that the Police is an instrument of the state, and is affirmed to be under the President.¹⁰ The police, with their strategic position, has resulted in the Indonesian Police becoming an institution that has always been in the spotlight on its successes and mistakes. The National Police is often misinterpreted by the Police, for the state is only defined as the government, even though the State consists of the government, the people, the territory, and the sovereignty so that the service of the Police is not only for the government but the most important thing is serving the people.

Weaknesses in Law Number 2 of 2002 on the State Police of the Republic of Indonesia, the possibility of conflicts of interest and abuse of power due to the law does not explain and confirms that the Police budget originates from public funds or state revenue and expenditure budgets.¹¹ Based on the weaknesses of the aforementioned statutory regulations, the behavior of members of the Indonesian National Police often occurs with conflicts of interest resulting in abuse of power such as committing violence against people suspected of being guilty, human rights violations, mistakes in the law enforcement process, bribery to release people who have been convicted of imprisonment by the court.

Conflicts of interest between public duties and personal interests cause many scandals involving public officials with very serious consequences. Conflict

⁵Yakub Pryatama Wijayaatmaja (2020) "What Should the Procedure for Issuance of Polri Road Letters?", <https://mediaindonesia.com/read/detail/328781-bimana-sehiliki-pros-Procedure-penerbitan-surat-jalan-polri>, accessed on 30 October 2020

⁶Devina Halim (2020) *Op.Cit*

⁷Mario Savino (2011) Global Administrative E-Law Meets Soft Power: The Uncomfortable Case Interpol Red Notice . International Law and Politics Vol 43 Page 166

⁸Djoko Prakoso (1987), Police as Investigators in Law Enforcement, Jakarta: PT. Bina Aksara p. 182

⁹Constitution of the Republic of Indonesia of 1945

¹⁰Law Number 2 of 2002 on the Indonesian National Police

¹¹Law Number 2 of 2002 on the Indonesian National Police

of interest contains three important elements. First, there are economic and financial interests of individuals and their parties, and this can happen to other types of interests, for example, guaranteeing benefits for family members. There is nothing wrong with pursuing personal interests. The problem arises when these personal interests conflict with the second element, which is the, "public duties."¹² Abuse of power as a public official to make public policy is only seen as procedural and administrative errors, but if it is done to benefit yourself or others or corporations that results in economic losses and state finance, then in fact, it is a social deviation and white-collar crime behavior, as regulated in Law Number 31 of 1999, amended by Law Number 20 of 2001 on the Eradication of Corruption¹³

The abuse of power or unreasonableness, both of which are the main parameters of whether there is a deviation in the use of government authority, in addition to the principles of other administrative law indeed. If there is an element of abuse of authority and arbitrariness, then there is an element of maladministration, and of course, there is an element of unlawful conduct, and the act becomes the personal responsibility of the official who commits it. Abuse of power is broader in understanding than unreasonableness, but in the study of administrative law, both are necessary to determine the presence or absence of corruption, collusion, and nepotism of public officials.¹⁴ The issue of the authority and duties of the Indonesian National Police is too broad and discretionary which results in abuse of power, so that such irregularities of opportunities for bribery and corruption can be monitored.

2. RESEARCH METHODS

This research clarifies a case study of giving fake red notice passport to fugitive Djoko Tjandra, who involved two police generals in the state agency of the Indonesian National Police. This abuse of power and authority is detrimental to the state, through mutually recognized norms and values as the basis for the interaction built by the two police generals in an organized crime.

The case study method certainly has its advantages. According to Shover and Hochstetler in Wim Huisman and Gudrun Vande Walle, "case study findings can be used to generate hypotheses or to cast doubt on theory-based hypotheses." Case studies also enable the researchers to study the 'actual thing', and gain a better understanding of what corruption means in the social environment in which it is committed.¹⁵ The distinguishing feature of corruption is seen as an abuse of power, the next important question concerns the breadth of abuses of power to be regarded as corrupt. One definition would restrict the scope of the concept to the unlawful use of power for personal gain or other personal objectives, thus limiting corruption to the venal and self-serving acts which are the archetypical illustrations of graft and bribery.¹⁶

Pierre Bourdieu on Habitus views power as a tendency to corrupt in the context of societal theory, where he sees power as a corruption being continually re-legitimized through the interaction of agents and structures. The primary way is through what he calls 'habitus' or socialized norms.¹⁷ Habitus is a habit of power attached to a person in the form of an eternal disposition, or a trained capacity and a structured tendency to think, feel and act in a determinant way, which then guides them. So, the habitus grows naturally in power through a very long social process, internalized and acculturated in power into a habit that is structured by itself.

This research approach is a qualitative method. Creswell defines the qualitative method as a research method based on a constructivist perspective, that is various meanings; meanings that are constructed socially and historically to develop a theory or pattern. The researchers collected and developed open data, intending to develop themes from the data. The reason for choosing a qualitative approach is because this research focuses more on answering the research problems through formal and argumentative thinking. In other words, qualitative data processing and analysis emphasize the analysis of deductive and inductive inference processes as well as the dynamics of the relationship between observed phenomena using scientific logic. In this regard, the researchers looked

¹²Bambang Slamet Riyadi (2020), Culture of Abuse of Power Due to Conflict of Interest to Corruption for Too Long on The Management form Resources of Oil and Gas in Indonesia, *International Journal of Criminology and Sociology*, Volume 9 page :248

¹³Bambang Slamet Riyadi (2020), Culture of Abuse of Power in Indonesia from the Perspective of Criminology and Law, *International Journal of Criminology and Sociology*, Volume 9 page: 277

¹⁴Bambang Slamet Riyadi (2020), Culture of Abuse of Power Due to Conflict of Interest to Corruption for Too Long on The Management form Resources of Oil and Gas in Indonesia, *International Journal of Criminology and Sociology*, Volume 9 page :248

¹⁵Wim Huisman dan Gudrun Vande Walle (2006) *Theoretical Perspectives on Corruption*, God Cases, Verlag Barbara Budrich hlm 142 <http://www.jstor.com/stable/j.ctvb7k5p.12>

¹⁶Franklin E. Zimring and David T. Johnson (2005), *On The Comparative Study of Corruption*, The British Journal of Criminology, Oxford University Press, Vol. 45 No.6 , page 796

¹⁷Ampy Kali, (2013) *Discourse on Sexuality*, Ledalero Yogyakarta, page. 13

for reasons for the abuse of power to issue red notice letters allegedly fake by two police generals in the Indonesian National Police. The qualitative approach used in this study aims to analyze the misuse of red notice power and the tendency of the alleged criminal act of accepting bribes from fugitive Djoko Tjandra.

The technique of analysis, according to Bogdan and Biklen in Lexy J. Moleong, data analysis is an effort made by using data, organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, finding what is important and what is learned and decide what to explain to others.¹⁸

3. DISCUSSION AND ANALYSIS

The main objective of a rule of law is to have a constitution that guarantees protection of human rights, as well as limitations on the power and authority of state institutions.

The criminal phenomenon from time to time shows the increasing trend, in terms of quantity and quality as well, but the increase in crime is not comparable with the ability in resolving criminal cases. It is due to the average ability of police/ investigators in solving crimes. Law enforcement against various types of crimes or offenses is generally resolved through the mechanisms or procedures that have been set in the criminal procedural law, in other words through the Criminal Justice System.¹⁹ The use of the criminal justice system in processing criminal cases by the police is due to the position of the police in the system. Police are an integral part of a functioning criminal justice system in the investigation of the criminal case. As a logical consequence of the position of the police in the system, therefore any criminal cases which are processed by the police will use the instruments of criminal law. Even though sometimes the police resolve a criminal case outside the criminal justice system

The findings indicate that the reality of law enforcement against contextual crime by conventional police bureaucracy often deadlocked (deadlock formal legality), as a result of law enforcement that is simply using the paradigm of positivism. The implications of the use of the paradigm of positivism in law enforcement, requiring law enforcement which is not

required to interpret the law more than what is read textually and the impossibility of application of discretion. Interpreting the law as what is written in the books, the rules that apply generally positive is known as *Ius Constitutum*²⁰. The norms that govern the handling of contextual crimes that can be completed outside the Criminal Justice System are not accommodated into a regulation Indonesia police chief of the Crime Investigation Management, as the effect of the Internal Legal Culture, in this case, the police, who understand the law *Rechts Dogmatik*. Also, there is also a concern if the model settlement outside the Criminal Justice System is set into the Regulation that it will be used as justification for the completion of the crime outside the context of the existing procedures to meet the personal interests of individuals police. So it is feared causing abuse of power.

The description of the powers of the Indonesian National Police in the criminal law enforcement process has generally been regulated in statutory provisions. However, the measure of the discretion of the Police is based on the public interest or the public interest, where in practice, it is still very abstract to apply, even the tendency of members of the Police to abuse power for personal gain.

So, the discretionary power of the Indonesian National Police has an impact on the abuse of power in the case of corruptor "Fugitive Djoko Tjandra". The history of this case is as follows²¹:

1. Djoko Tjandra, a fugitive in the Bank Bali collection rights (cessie) corruption case, was successfully arrested and arrived in Indonesia, Thursday, July 30, 2020. He was arrested in Malaysia under the cooperation of the Indonesian National Police and the Malaysian Police, ending an 11 year search period.
2. Djoko Tjandra is the Director of PT Era Giat Prima. In 1999, he was caught for the corruption case over the transfer of receivables from Bank Bali and National Commercial Banks amounting to Rp. 789 billion. From this transfer of accounts receivable, Djoko obtained IDR 546.1 billion profit.

¹⁸Lexy J Moleong, (2006) Qualitative Research Methodology, Bandung: PT Remaja Rosdakarya, page 248

¹⁹Hadi Utomo (2015) Police Bureaucratic Reform in Law Enforcement Based on Progressive Law, Manuscript Journal Online University of Dipenogoro, Semarang, Central Java, Indonesia., page 4

²⁰Hadi Utomo (2015) Police Bureaucratic Reform in Law Enforcement Based on Progressive Law, *ibid*

²¹CNN Indonesia (2020) 11 Years of Winding Chronology of the Hunt of Djoko Tjandra. <https://www.cnnindonesia.com/nasional/20200731090542-12-530910/kronologi-11-tahun-berliku-perburuan-djoko-tjandra>

3. This case emerged after allegations of bribery and corruption in the process of disbursement of the accounts. At that time, Pande Lubis was the Deputy Chairman of IBRA, Syahril Sabirin was the Governor of Bank Indonesia, and Djoko Tjandra was the owner of PT Era Giat Prima.
4. However, the Panel of Judges at the South Jakarta District Court acquitted Djoko Tjandra on August 28th, 2000. The reason for the acquittal was because his actions were not criminal but civil.
5. After Djoko Tjandra enjoyed eight years of freedom, the Attorney General's Office of the Republic of Indonesia submitted a Review of Djoko's acquittal decision to the Supreme Court of the Republic of Indonesia in 2008.
6. The review submitted by the Attorney General of the Republic of Indonesia at the Supreme Court of the Republic of Indonesia was "accepted", Djoko Tjandra was found guilty and he was sentenced to two years in prison. His money amounting to Rp 546.1 billion will be confiscated to be handed over to the state.
7. Since then, Djoko Tjandra's hunting drama began.
8. Djoko reportedly fled abroad. In 2015, he reportedly fled to Papua New Guinea.
9. However, the extradition treaty with Papua New Guinea has yet to bear fruit.
10. After losing track of a long time, in June 2020, Djoko's name then appeared. Djoko Tjandra was in Indonesia without being detected by law enforcement and immigration officials.
11. He had made an E-KTP (new Indonesian citizen identity) and submitted an application for Reconsideration at the South Jakarta District Court on June 8th, 2020.
12. However, Djoko was not present at the review hearing. Djoko's attorney, Andi Putra Kusuma, said that his client was sick. Happy four trials. Djoko never attended.
13. Djoko could not attend because he was not feeling well. "We have a letter, the statement, we will submit it to the assembly", Andi told reporters at the South Jakarta District Court, Monday, June 29, 2020.
14. As a result, the South Jakarta District Court did not accept Djoko Tjandra's request for reconsideration. His application was not continued to the Supreme Court
15. However, Djoko's absence from the trial seemed to bring lights to Djoko's whereabouts. Little by little, Djoko Tjandra's footsteps were exposed.
16. Starting from making Indonesian citizenship Identity Card in South Grogol, to sick letters from clinics in Malaysia. The immigration authorities who failed to record Djoko Tjandra's name were also kidnapped.
17. Several high-ranking police officials who were suspected of being involved in smoothing Djoko's road while in Indonesia were also arrested.
18. The Indonesian National Police have also recently named Djoko Tjandra's lawyer, Anita Kolopaking, as a suspect. He is suspected of having played a role in Djoko Tjandra's escape while being a fugitive.
19. Finally, the President of the Republic of Indonesia, Joko Widodo, gave the order to arrest Djoko Tjandra to the Chief of the Indonesian National Police, General Idham Azis. This was followed up by the formation of a special team to look for Djoko Tjandra. After an intensive search, the team detected Djoko Tjandra's whereabouts in Malaysia.
20. The Chief of Police of the Republic of Indonesia sends a letter to the Malaysian Police to conduct search activities together. "From the search, we got information that the person was in Malaysia and followed up with police to police activities", said the Head of the Criminal Investigation Agency, Commissioner General Police Listyo Sigit.
21. On Thursday, July 30th, 2020, the 70 years-old man was arrested in Kuala Lumpur, Malaysia. He arrived at Halim Perdanakusuma Airport in Jakarta, Indonesia along with the echo of the Eid al-Adha takbir. Djoko was silent, looking down while being handcuffed, wearing a mask and an orange shirt.

The Indonesian National Police's Criminal Investigation Agency has appointed two police generals, Inspector General Napoleon Bonaparte and Brigadier General Prasetyo Utomo, the latest suspect regarding the abuse of power of the Indonesian National Police as the corruption convict of Djoko Soegiarto Tjandra²². According to the spokesman of the Head of the Public Relations Division of the Indonesian National Police, Inspector General of Police Argo Yuwono, Police Brigadier General Prasetyo Utomo and Police Inspector General Napoleon Bonaparte have been named as the suspects for abusing power by receiving bribes from Djoko Tjandra.²³

The Inspector-General Napoleon was previously removed from his position as the head of the international relations division of the National Police for alleged abuse of power in his involvement in revoking convict Djoko Tjandra's red notification status, which allowed corruption convict to freely enter the country despite being on the most wanted list since 2009.²⁴ The Indonesian National Police Chief Gen, Idham Azis was also removed Brigadier General Nugroho Wibowo from his position as the Secretary of the National Central Bureau (NCB) - Interpol Indonesia regarding the revocation of red notice status. However, General Nugroho has not been named a suspect in the case.²⁵

Meanwhile, Police Brigadier General Prasetyo Utomo, who serves as the Head of the Bureau of Supervision and Coordination of Civil Service Investigators, is accused of abusing the power of the Indonesian National Police, thus issuing a letter allowing corruption convict Djoko Tjandra to travel into the country while still on the run. The Indonesian National Police seized a total of US \$ 20,000, letters, and several digital evidence from the two generals during the investigation²⁶. The Indonesian National Police's Criminal Investigation Agency also named Djoko Tjandra and businessman Tommy Sumardi as the suspects in the bribery of the two police generals. They are charged with Article 5 paragraph (1) and Article 13 of the Corruption Eradication Law with a maximum sentence of five years in prison.²⁷

His actions certainly caused immaterial losses in the form of difficulties in the law enforcement process. Then, as the superior of the National Police, Brigadier General Prasetyo abused his authority. He violated the institutional ethics of the National Police, which is abusing the authority in carrying out official duties as stated in Article 13 paragraph (1) letter e of the Regulation of the Head of the National 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.⁷⁵ On 15 July 2020, the National Police Chief removed Prasetyo from his position with a telegram numbered ST/1980/VII/KEP/2020.⁷⁶ For 14 days he was detained by the Police Professional and Security Division (Propam) in a special room at the Police Headquarters.⁷⁷ Moreover, Prasetyo's actions led him to become entangled in various articles in the Criminal Code, including Article 55 paragraph 1, 221 paragraphs 1 and 2, 263 paragraph 1 and 2, and 426.⁷⁸ a government official can't carry out maladministration accidentally. Practically speaking, the usual maladministration is caused by corruption. The investigators who investigated the case proved this after a fairly long process of investigation. The Head of the National Police's Public Information Bureau, Brigadier General Awi Setiyono, revealed that Prasetyo admitted to receiving money from Djoko.⁷⁹ Apart from Prasetyo there was also the Head of the National Police's International Relations Division.²⁸

Based on positive law, Police Brigadier General Prasetyo's actions are in the form of participating/inclusion, hiding criminal perpetrator, making false letters or documents, and also helping to escape a criminal. Regarding the participation (Article 55 paragraph 1) by Prasetyo, he is someone who participates in the act or medeleger. There is a postulate which states that a person can be said to be a criminal when that person commits or assists and participates in a crime²⁹. This is because Prasetyo as the Head of the PPNS Coordination and Supervision Bureau facilitated fugitive Djoko Tjandra in making fake travel documents. Furthermore, Brigadier General Prasetyo is said to be a mediator because those involved in it include fugitive Djoko Tjandra and his lawyer, Anita Kolopaking so that the number of suspects in the fake pass was three people.

²²The Jakarta Post (2020), Napoleon Bonaparte among two police generals named graft suspects in Djoko Tjandra case <https://www.thejakartapost.com/news/2020/08/16/napoleon-bonaparte-among-two-police-generals-named-graft-suspects-in-djoko-tjandra-case.html>

²³The Jakarta Post (2020), *ibid*

²⁴The Jakarta Post (2020), *ibid*.

²⁵The Jakarta Post (2020), *ibid*.

²⁶The Jakarta Post (2020), *ibid*.

²⁷The Jakarta Post (2020), *ibid*.

²⁸Devina Halim (2020 *Op.Cit*)

²⁹Eddy O.S Hiariej, (2016) Principles of Criminal Law, Cahaya Atma Pustaka, Yogyakarta, page. 354.

Based on the valid data above on the case of fugitive corruptor Djoko Tjandra, the Indonesian National Police have the authority so that superpower tends to commit acts of corruption that harm the state.

The definition of a criminal act of corruption contained in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on Eradication of Corruption is all forms of illegal acts or abuse of authority carried out by public servants, state or private administrators to enrich or benefit themselves, others, or corporations that harm or can harm state financials³⁰ Through these two definitions, it is known that corruption is an act against the law or an act of abusing authority (which is generally carried out by unscrupulous public officials). Both actions cannot be carried out if someone does not have public authority. Therefore, corruption can also be explained as a dishonest and distorted behavior of public officials as those who have power.³¹

A broader definition of corruption and covering aspects of corrupt human behavior is contained in the Black's Law Dictionary. According to the Black's Law Dictionary, the meaning of corruption is more emphasized on immorality or despicable acts. The types of misconduct include³² Depravity, perversion, or taint: impairment of integrity, virtue, or a moral principle; the impairment of a public official's duties by Bribery. The act of doing something to give some inconsistent advantages with official duties and the rights of others; a fiduciary's or official's use of a station or office to procure some benefits either personally or for someone else, contrary to the rights of others The characteristics of a kleptocracy state include: the level of corruption committed by the bureaucracy is very high. What is meant by bureaucracy here is not only government (executive) bureaucracy, but also includes legislative and judicial bureaucracy.³³

Another word used as an equivalent of kleptocracy is the high level of corruption (heavy corruption). The

term kleptocracy is an improvement from the term kleptomaniac, which means the habit of stealing from someone who is not done for a living. It is a kind of psychological disorder that is relatively settled. Perpetrators are people who do not experience economic hardship, even frequently those who are known to the public, such as celebrities. When the level of corruption in Indonesia is felt very seriously and occurs in almost all sectors of life, especially those related to bureaucracy, it can be said that kleptocracy is a hallmark of corruption in Indonesia. With the characteristic of kleptocracy, acts of corruption are either entrenched or seen as commonplace by some people. Therefore, corruption is not easy to overcome³⁴.

One way to justify the existence of corruption is to use the argument "cultural relativism". In developed countries, it is often said that in many developing countries, corruption is part of culture because it is closely related to human mentality. The mentality is a cultural spirit that is adopted by someone. In this context, there are several mentalities that are very detrimental to the state, one of which is pervasive. This mentality always sees goals as shortcuts regardless of the process towards achieving them. When this becomes a mentality, it means that what needs to be addressed is a system that works as a control for "the running of culture". To fix this system, it must be done by revamping the government system that covers other systems³⁵.

Personalistic values and feudalism are firmly embedded in a particular culture or society, so the consequence of a culture of corruption that exists in that society will be deeply rooted and difficult to eradicate. The family and kinship values become very thick values in the culture of Indonesian society. A high sense of kinship will produce corrupt cultural behavior. Policy on settlement arrangements contextual crimes outside the Criminal Justice System, in this case through the Restorative Justice System is inconsistent. It is seen from disharmony between the legal norms governing the settlement of contextual crime outside the legal system, on the Regulation of the Crime Investigation Management that does not provide space

³⁰Bambang Slamet Riyadi et al. (2020) Culture of Corruption Politicians Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study), *International Journal of Criminology and Sociology*, Volume 9 page:55

³¹Bambang Slamet Riyadi et al. (2020) Culture of Corruption Politicians Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study), *ibid*, page 55

³²Bambang Slamet Riyadi et al. (2020) Culture of Corruption Politicians Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study), *ibid*, page 55

³³Bambang Slamet Riyadi et al. (2020) Culture of Corruption Politicians Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study), *ibid*, page 56

³⁴Bambang Slamet Riyadi et al. (2020) Culture of Corruption Politicians Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study), *ibid*, page 56

³⁵Bambang Slamet Riyadi et al. (2020) Culture of Corruption Politicians Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study), *ibid*, page 56

for settlement contextual crimes outside the Criminal Justice System. While on the Regulation governing Community Policing Program, it provides space for settlement contextual crime through restorative justice on Police and Community Partnership Forum

Therefore, although it is an administrative authority, the police can do rule breaking against the Indonesian police chief regulation No. 14 of 2012 on the management of criminal investigations. Rule-breaking such as (1) harmonization clauses that exist in the Indonesia police chief regulations with equal legal norms, in this case, the Indonesia police chief regulation No: Perkap/3/V/2015 on Community Policing; (2) To harmonize the legal norms which rank higher, in this case, the Law of the Republic of Indonesia No. 8 of 1981 on Criminal Procedural Law, the Law of the Republic of Indonesia No. 2 of 2002 on the Indonesian National Police.

Therefore the use of this treatment paradigm contextual crime will always end up in the criminal justice system. Through this process, the justice which is earned by the people who are seeking justice is only in the form of justice given by the State and delegated to law enforcement officials, such as the police, prosecutors, courts, and prisons. Essentially, embodied justice is justice that is restitutive and retributive. While justice is required based on an understanding of the perpetrators, witnesses and victims affected communities from crime cannot be realized, so that substantive justice become the hope of those seeking justice to be ignored.

Several factors cause the handling of contextual crime by conventional police bureaucracy, substantive justice cannot be realized, the factors are:³⁶

1. Essentially, the police is not a legislative body, but within the scope of administrative authority which has the authority to make the police internal regulations, such as regulations of the Indonesian police chief of criminal investigation management and regulations of the Indonesian police chief of community policing programs.
2. Legal norms stated in the regulations of the Indonesian police chief, indicating the absence of harmonization with the legal norms which equal nature and the legal norms of higher

nature, so it is not aligned with stufenbau theory. This can be seen from the Indonesian police chief regulations of management investigation of criminal offenses which do not give space for contextual crimes settlement resolved outside the criminal justice system. While the Indonesian police chief regulation on community policing programs, provides space for contextual crimes that can be resolved outside the criminal justice system through the restorative justice system.

3. Due to the lack of harmonization between the two regulations of the Indonesian police with legal norms that equals or is higher nature, at the level of practice often causes misunderstanding among the personnel in charge of law enforcement personnel in charge of the community policing program.
4. The absence of pressure groups, in this case, groups of academics, non-governmental organizations, and others as private social forces which influence when Indonesian police chief regulations of criminal investigations management were made, failing to apply legal norms governing the handling of contextual crime can be settled out of the criminal justice system.
5. Provision of space arrangement for the settlement of contextual crime through Restorative Justice in the Indonesia police chief regulation of the Crime Investigation Management actually does not need to be a concern, if it lacks clarity about the terms, limits, mechanisms, and models of supervision.

4. CONCLUSIONS AND SUGGESTIONS

Accountability for discretionary power and authority in Indonesia is the constitutional law to the President of the Republic of Indonesia. In internal supervision, the Indonesian Police Agency is carried out which is assisted by internal supervision by the Division of Professional and Security at the State Police of the Republic of Indonesia as well as by the National Police Commission. However, the legal accountability system of the Indonesian National Police is not yet completely correct due to multiple interpretations and legal uncertainty regarding the extent to which the Indonesian Police are accountable if there are allegations that police officers have committed an abuse of power which resulted in losses to the state to

³⁶Hadi Utomo (2015), *op.cit*

the President of the Republic of Indonesia. As was done by two police generals who allegedly committed an abuse of power and authority to falsify red notices. The suspects were the former Head of the National Police's International Relations Division, Inspector General of Police Napoleon Bonaparte, former Head of the PPNS Supervision Bureau of the Indonesian National Police's Criminal Investigation Bureau Brigadier General Police Prasetyo Utomo.

It is better if the legislators of the laws and regulations of the Police of the Republic of Indonesia think about whether operational accountability is appropriate to the executive of the President of the Republic of Indonesia or not. So, there is a check and balance of law enforcement carried out by the police.

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Received on 19-08-2020

Accepted on 20-11-2020

Published on 04-12-2020

DOI: <https://doi.org/10.6000/1929-4409.2020.09.148>© 2020 Riyadi *et al.*; Licensee Lifescience Global.

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