

Abstract

Police discretion is regulated in Article 18 Paragraph (1) of Law Number 2 of 2002 concerning the Indonesian Police which states that in the public interest, NRI Police officials in carrying out their duties and authorities can act according to their own judgement. This article defines 'acting according to his own judgement' as an action that can be taken by members of the police who in acting must consider the benefits and risks of their actions and are truly in the public interest. However, the insufficiency of rules causes the police to interpret discretion broadly and freely. There are no guidelines regarding discretionary authority, so there is a need for reformulation of legal reforms. So far, the interpretation of discretion has only been based on the beliefs of individual members of the police. This is due to a lack of understanding regarding the essence of discretionary authority. Therefore, it is necessary to have rules related to the concept of discretionary authority so that its implementation can be oriented towards legal objectives and avoid arbitrary actions. In addition, the police must pay attention to the applicable laws and regulations as well as the Police Professional Code of Ethics.

Key word : Police – Discretion – Legal Reformulation

Abstrak

Diskresi kepolisian diatur dalam Pasal 18 Ayat (1) Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian RI yang menyatakan bahwa untuk kepentingan umum, pejabat Kepolisian NRI dalam melaksanakan tugas dan wewenangnya dapat bertindak menurut penilaiannya sendiri. Pasal tersebut mengartikan 'bertindak menurut penilaiannya sendiri' sebagai suatu tindakan yang dapat dilakukan oleh anggota kepolisian yang dalam bertindak harus mempertimbangkan manfaat serta resiko dari tindakannya dan betul-betul untuk kepentingan umum. Namun, ketidakcukupan aturan menyebabkan kepolisian mengartikan diskresi secara luas dan bebas. Tidak adanya pedoman terkait wewenang diskresi maka, perlu adanya reformulasi pembaruan hukum. Selama ini, penafsiran diskresi hanya didasarkan pada keyakinan individu anggota kepolisian saja. Hal ini dikarenakan kurangnya pemahaman terkait esensi wewenang diskresi. Oleh karena itu, perlu adanya aturan terkait konsep pada wewenang diskresi agar pelaksanaannya dapat berorientasi pada tujuan hukum dan menghindari tindakan sewenang-wenang. Selain itu, kepolisian wajib memperhatikan peraturan perundang-undangan yang berlaku serta Kode Etik Profesi Kepolisian.

Kata kunci : Kepolisian – Diskresi – Reformulasi Hukum