

Authors

¹Olyadi Puhi

²Roy Marthen Moonti

³Yusrianto Kadir

⁴Salahudin Pakaya

Affiliation

^{1,2,3}, Gorontalo University

⁴Universitas Muhammadiyah

Gorontalo

Email

¹oyaldipuhi@gmail.com

²roymoonti16@gmail.com

³yusrikadir@gmail.com

⁴yadhikhlask@umgo.ac.id

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THE APPLICATION OF ARTICLE 22 OF THE REGULATION OF THE HEAD OF THE INDONESIAN NATIONAL POLICE FORCE NUMBER 14 OF 2011 CONCERNING THE CODE OF ETHICS OF THE INDONESIAN NATIONAL POLICE PROFESSION

Abstract

The purpose of this study is to determine and analyze the effectiveness of the application of Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police in the Gorontalo Regional Police and to determine and analyze what factors affect the effectiveness of the application of Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police in the Gorontalo Regional Police. The research used is empirical research. Empirical legal research is conducted by examining directly into the field to see directly the application of legislation or rules of law relating to law enforcement, as well as conducting interviews with several respondents who are considered to be able to provide information regarding the implementation of law enforcement. The application of the Regulation of the Chief of the Indonesian National Police (Perkap) is not yet effective, because from the results of the interview that the Gorontalo Regional Police prioritizes the Circular Letter (SE) rather than the Regulation of the Chief of the Indonesian National Police (Perkap), moreover that the debate regarding the application of legal norms does not only occur among law enforcers in general but within the internal police also becomes a debate caused by the existence of conflicting legal norms between high legal norms and low legal norms. Factors affecting the effectiveness of the application of the article on the Regulation of the Chief of the Indonesian National Police regarding the Police Professional Code of Ethics within the scope of the Gorontalo Regional Police, which is the formulation of the problem in this study, including; 1) Legal Substance, 2) Legal Structure, 3) Legal Culture.

Keywords: Code of Ethics, Implementation, Police

Abstrak

Tujuan penelitian ini adalah untuk mengetahui dan menganalisis efektivitas penerapan Pasal 22 Peraturan Kapolri Nomor 14 Tahun 2011 tentang Kode Etik Profesi Polri di Kepolisian Daerah Gorontalo dan untuk mengetahui dan menganalisis faktor-faktor apa saja yang mempengaruhi efektivitas penerapan Pasal 22 Peraturan Kapolri Nomor 14 Tahun 2011 tentang Kode Etik Profesi Polri di Kepolisian Daerah Gorontalo. Penelitian yang digunakan adalah penelitian empiris. Penelitian hukum empiris dilakukan dengan cara pemeriksaan langsung ke lapangan untuk melihat secara langsung penerapan peraturan perundang-undangan atau aturan hukum yang berkaitan dengan penegakan hukum, serta melakukan wawancara dengan beberapa responden yang dianggap dapat memberikan informasi mengenai pelaksanaan penegakan hukum. . Penerapan Peraturan Kapolri (Perkap) belum efektif, karena dari hasil wawancara bahwa Polda Gorontalo lebih mengutamakan Surat Edaran (SE) daripada Peraturan Kapolri Kepolisian Negara (Perkap), apalagi perdebatan tentang penerapan norma hukum tidak hanya terjadi di kalangan penegak hukum pada umumnya tetapi di dalam internal Polri juga menjadi perdebatan yang disebabkan oleh adanya konflik norma hukum antara norma hukum yang tinggi dan norma hukum yang rendah. . Faktor-faktor yang mempengaruhi efektivitas penerapan pasal Peraturan Kapolri tentang Kode Etik Profesi Polri di lingkungan Polda Gorontalo yang menjadi rumusan masalah dalam penelitian ini antara lain; 1) Substansi Hukum, 2) Struktur Hukum, 3) Budaya Hukum.

Kata Kunci : Kode Etik, Implementasi, Kepolisian

Introduction

The State is an organization that is very large in scope and has a guided Government structure whose Head of State (Executive) is usually determined in accordance with the system of government adopted by the State, for example the State of Indonesia which adheres to the Presidential system so that the Head of State is called the President, with the enactment of the Presidential system in Indonesia, the peak of Government power is given to a President who is directly elected by the Indonesian people through general elections.

The state is an association or the most prominent body that has the power to take care of matters relating to the interests of a wider area and has a commitment to succeed, maintain, and educate the life of the nation and state. Miriam Budiardjo defines the state as an organization in an area that can legitimately impose its power on all other power groups and that can set the goals of the common life. So the state is an association that involves a certain area and is coordinated by an authentic state government, most of which have power (outward and inward). Meanwhile, according to Soenarko, the State is a community organization that has a certain area where the state power is fully implemented as a sovereignty. (Rahman Abd-Madiong Baso, 2017).

The Indonesian state is a unitary state based on rules (*Rechtstaat*) and not because of coercion (*Machstaat*) which is intended to regulate the existence of the nation and state, law is the pioneer and law cannot be distinguished from the system of democratic rules, so that from the rules of the democratic system can be understood the equalization of the government. The 1945 Constitution is the idea of Indonesian law and order based on Pancasila, which contains the socio-social characteristics of the Indonesian nation and is the core of Indonesian development on the grounds that without it the direction and purpose of our nation that we love becomes blurred. the words in it are planned and distributed with clear implications and are very profound. The rule of law is a concept of state that has developed from several decades ago. It is evident from the existence of thoughts regarding the concepts of the State of Law that have existed and developed long before the concept of the State of Law has been organized and organized as it is today, (Asfiyak K & Muslim, 2020) as stated in Article 1 Paragraph 3 of the 1945 Constitution that the State of Indonesia is a State of Law which means that all order in the life of the nation, society and state is based on applicable law, so that the Indonesian State requires tools to support the performance of the State in terms of Law Enforcement in Indonesia. In any part of the world the police are needed including the State of Indonesia needs the Police to represent the State in implementing and ensuring equitable Law Enforcement in the pattern of community life.

The term law enforcement officer, which in a narrow sense only means the police, but in Indonesia is usually extended to several law enforcement professions, including prosecutors, lawyers (advocates) and judges. In this last broad sense, a translation of *rechthandhaving* can be used, which means law enforcement. Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the values that are spelled out in stable rules and manifesting attitudes and actions as a series of final stage value elaboration, to create, maintain and maintain peaceful living relationships. (Muhammad Arif, 2021)

The State of Indonesia has a Constitution that explains the duties and functions of the Indonesian National Police, namely Article 30 Paragraph 4 of the 1945

Constitution, which reads "The Indonesian National Police as a State Tool that maintains security and public order is tasked with protecting, protecting, serving the community, and enforcing the law". In carrying out their duties and functions as Law Enforcers based on Pancasila and the 1945 Constitution, the Police must act according to the provisions of Law Number 2 of 2002 concerning the Indonesian National Police and uphold the Police Professional Code of Ethics, so that they carry out their duties and functions professionally, so they do not fall into behavior that is hated by the community.

The Police Profession has a Code of Ethics that applies to holders of the Police function itself. The Code of Ethics for the Police Profession is not only based on professional needs, but has also been normatively regulated in Law Number 2 of 2002 concerning the Indonesian National Police which is followed up by Regulation of the Chief of the Indonesian National Police (Perkap) Number 14 of 2011 concerning the Code of Ethics for the Indonesian National Police Profession. Thus, the Code of Professional Ethics of the Indonesian National Police is binding for every member of the Indonesian National Police. (Pudi Rahardi, 2007)

The legal corridor of the discipline of the Indonesian National Police or violations of the code of ethics, acts that violate the law are resolved internally by the institution, in this case through the Professional Code of Ethics Commission hearing, as stipulated in Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Members of the Indonesian National Police, as well as in matters of judicial implementation referring to Government Regulation Number 3 of 2003 concerning Institutional Technical Implementation of General Courts for Members of the Indonesian National Police, then the examination for members of the Indonesian National Police in criminal cases starting from the investigator level to the trial is based on the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code. (Muh Aden Arsyad Amin, 2019).

Lately we often get news that often appears in various media, both print media and electronic / online media, where it is reported that the actions of police officers in carrying out their obligations and expertise as regulatory masters are not in accordance with Standard Operational Procedures (SOP), even we also often get information about the behavior of police officers who are very disgraceful, bringing a decrease in the level of public confidence in the extraordinary skills of the Police Institution itself.

Online media wrote around March 10, 2021 on the Tribratanews.gorontalo.polri.go.id website page that there were 4 (four) police officers within the jurisdiction of the Gorontalo Regional Police who were released from police administration or Dismissed Dishonorably (PTDH) because these individuals did not heed the Code of Professional Ethics of the Indonesian Police. In this case, Inspector General. Pol. Dr. Akhmad Wiyagus, SIK, M.Si., MM, as the

Gorontalo Police Chief issued a Decree of Dishonorable Discharge (PTDH) to 4 (four) police personnel, each of which is as follows; Gorontalo Police Chief Decree Number: Kep/35/III/2021 dated March 3, 2021, Gorontalo Police Chief Decree Number: Kep/36/III/2021 dated March 3, 2021, Gorontalo Police Chief Decree Number: Kep/37/III/2021 dated March 3, 2021, Gorontalo Police Chief Decree Number: Kep/38/III/2021 dated March 3, 2021. Each personnel violated Government Regulation Number 1 of 2003 concerning the Dismissal of Members of the Indonesian National Police and violated the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police.

In the web-based inclusion media above, the author obtained information that there was a gap in the material validity standard, In this case, the Head of the Gorontalo Regional Police issued a decision letter of Dismissal Not Honorably (PTDH) to one of the Police personnel who should be guided by the provisions of Article 22 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 14 of 2011 concerning the Professional Code of Ethics of the National Police of the Republic of Indonesia which explains that every member who gets Administrative sanctions in the form of a recommendation for Dismissal Not Honorably (PTDH) is decided through the Professional Code of Ethics Commission Session (KKEP) after first proving his criminal offense through the general judicial process until a court decision that has permanent legal force.

Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police is as follows.

1. Administrative sanctions in the form of PTDH recommendations are imposed through a KKEP hearing on:
 - a. violators who intentionally commit a criminal offense punishable by imprisonment of 4 (four) years or more and has been decided by a court with permanent legal force; and
 - b. violators who commit violations as referred to in Article 21 paragraph (3) letter e, letter g, letter h, and letter i.
2. Administrative sanctions in the form of PTDH recommendations as referred to in article 21 paragraph (3) letters a to d, and letter f are decided through the KKEP Session after first proving the criminal offense through the general judicial process until the court decision has permanent legal force.

The facts that occur in the field, the Chief of the Gorontalo Regional Police issued a Decree of Dishonorable Dismissal (PTDH) not based on Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police, but based on the Circular Letter of the Chief of the Indonesian National Police Number:

SE/9 / V / 2021 concerning Standard Guidelines for the Implementation of Enforcement of Violations of the Code of Professional Ethics of the Indonesian National Police.

The provisions of the Lex Superior Derogat Legi Inferior principle state that the higher law (lex superior) overrides the lower law (lex inferior). This means that the circular letter used as a reference material in making the decision to dismiss dishonorably is not in accordance with its designation, because it collides with the provisions above it, namely the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police.

Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police in its formation based on authority and ordered by a higher law so that it is a type of Legislation (regeling). Unlike the case with the Circular Letter of the Chief of the Indonesian National Police which is a policy regulation (beleidsregel) or pseudo legislation (pseudo wetgeving). So the Circular Letter is categorized as an internal administrative instrument, the Circular Letter is intended to provide further guidance on a general statutory norm, thus the Circular Letter must not collide with higher laws and regulations.

Law Number 15 of 2019 Amending Law Number 12 of 2011 concerning the Formation of Legislation. Article 7 paragraph (1) Types and hierarchy of laws and regulations consist of:

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

Article 8 paragraph (1) explains that, "Types of Legislation other than as referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by Law or Government by order of Law, Provincial Regional House of Representatives, Governors, Regency / City Regional House of Representatives, Regents / Mayors, Village Heads or equivalent". Meanwhile, Article 8 paragraph (2) explains that, "Legislation as referred to in paragraph (1) is recognized and has binding legal force as long as it is ordered by higher legislation or formed based on authority".

The reality in the field is that the Circular Letter of the Chief of the Indonesian National Police, which is only an internal administrative instrument, is more powerful than the Regulation of the Chief of the Indonesian National Police, which is based on a higher law and is a type of Legislation (regeling).

Based on the description, the problems raised are How is the Implementation of Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Professional Code of Ethics of the Indonesian National Police in the Gorontalo Regional Police and what factors affect the Effectiveness of the implementation of Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Professional Code of Ethics of the Indonesian National Police in the Gorontalo Regional Police.

Research Methods

The type of research used is empirical research. Empirical legal research is carried out by researching directly into the field to see firsthand the application of legislation or rules of law relating to law enforcement, as well as conducting interviews with several respondents who are considered to be able to provide information regarding the implementation of law enforcement.

Implementation of Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Ethics of the Indonesian National Police Profession

The professional code of ethics is born from within the institution or professional organization itself which is then morally binding for all members who are members of professional organizations, one with another organization has a different formulation of professional code of ethics, both elements of the norm and the scope and area of validity. Similarly, the police profession has a code of ethics that applies to the police and holders of police functions. (Yanius Rajalahu, 2013).

The Code of Ethics aims to regulate personality in terms of disciplining, coaching, and controlling the work ethic of members of the Police to provide good quality work as law enforcers and to maintain the honor and good name of the Police institution. Punishment of members of the Police who are not in accordance with the Police code of ethics will certainly have legal consequences, as well as what happened in the Gorontalo Regional Police in handling cases of violation of the code of ethics which invited prolonged public debate on a problem that could trigger conflicts that would lead to the State Administrative Court. Before entering the main discussion that has been formulated, the author wants to explain briefly about the mechanism in enforcing the Police Professional Code of Ethics which is an initial process in making a decision to dishonorably dismiss a police officer who violates the Police Professional Code of Ethics.

The Procedural Law or Procedure for the Implementation of the Code of Ethics within the scope of the Indonesian National Police is guided by the Regulation of the Chief of the Indonesian National Police Number 19 of 2012 concerning the Organizational Structure and Work Procedures of the Ethics Code Commission of the Indonesian National Police as well as implementing instructions in the form of circular letters of the Chief of the Indonesian National Police which complement all procedures for implementing the enforcement of the Code of Ethics, then the material law is guided by the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Professional Code of Ethics of the Indonesian National Police which explains the types of violations of the Code of Ethics.

Based on the results of the interview, there are several types of violations of the Police professional code of ethics including violations of drug abuse, becoming members or administrators of political parties, committing corruption, and abuse of authority, which clearly violate professional ethics, the following are several types of ethics that are used as the basis or guidelines in carrying out their duties and functions as police:

1. State Ethics
2. Institutional Ethics
3. Societal Ethics
4. Personality Ethics

The stages or procedures in resolving violations of the police professional code of ethics against alleged violators include:

- a. Preliminary examination

The resolution mechanism, considering that this is a violation of the Code of Ethics, does not have to wait for a complaint so that it is not a complaint offense, but complaints from the public can be used as a basis for conducting a Code of Ethics enforcement process through an investigative audit conducted by a certified accreditor, this stage is an investigation process which after that is under the stage of the case title to determine whether it meets the elements of a violation of the code of ethics or not? Whether it is a form of violation of institutional ethics, personality ethics or community ethics and even state ethics, if it meets the material formal requirements and is proven to meet the elements of a violation of the code of ethics, then enter the filing stage, after filing, evidence collection is carried out and suspected violators are determined by conducting objective research, then a preliminary examination file is examined by the Legal Division in the form of legal advice on whether or not it is feasible for a case to conduct a Code of Ethics hearing, after the legal advice from the Legal Division is issued, then the Code of Ethics Commission hearing is held

- b. Police Professional Code of Ethics Session (KKEP)

The Police Professional Code of Ethics Commission consists of five commissioners, three of whom are the Chairperson of the commission and two commissioners, and the remaining two are substitute commissioners. The Code of Ethics Commission hearing is held no later than 14 working days from the issuance of the decision to form the Police Professional Code of Ethics Commission, the place and time of the code of ethics hearing will be notified in writing by the secretariat of the code of ethics commission of the professional accountability function (Wabprof) within 3 days before the implementation of the code of ethics hearing attended by the alleged violator, The hearing process is quite long, at least 3 hearings or a maximum of 30 working days and there is an interlocutory decision in which the decision states that if the person concerned is not proven to be suspected, the Code of Ethics Commission hearing process will be dismissed, but if the suspicion is proven, it will continue until the verdict hearing. (interview with Police Commissioner Vondi Mawiretje, SH, MH) The decision issued by the Ethics Code Commission is an administrative recommendation which has several types of recommendations, namely, recommendations related to positions, recommendations related to places of duties and functions, and recommendations for dishonorable dismissal, if the person concerned objects to the administrative decision of the recommendation, he/she has the right to file an objection to the official forming the Police Ethics Code Commission if the person concerned in submitting his/her objection still gets a rejection, then the person concerned can submit an administrative appeal to the official forming the Police Ethics Code Commission.

c. Appeals Commission Hearing

The violator has the right to appeal the administrative decision because it is part of the facilities provided by procedural law. The appeal memorandum is submitted in writing within a maximum period of 14 working days after the violator receives the decision of the police code of ethics commission hearing which is carried out an examination of the file and appeal memory with a recommendation for a decision to reject or accept the appeal which is final, if it is not in accordance with the expectations desired by the person concerned, the next legal effort is to file an administrative lawsuit at the State Administrative Court against the object of the lawsuit in the form of a state administrative decision. (interview with Police Commissioner Vondi Mawiretje, SH, MH)

Regarding former members of the Police who filed a state administrative lawsuit, it is a Constitutional right when the person concerned has used legal remedies within the Police in dealing with cases of violation of the professional code of ethics which has obtained a concrete and individualized decision letter to the person concerned and is final in the sense that the person concerned has gone through the process of law enforcement of the code of ethics within the police until the issuance of a decision letter so that the decision letter is used as an object of

dispute at the State Administrative Court, Administrative remedies consist of objections and appeals relating to the nullity or invalidity of decisions without being accompanied by claims for compensation and administrative claims, in filing objections have a grace period of 21 working days after the decision is announced while filing an appeal has a grace period of 10 working days after the decision to object is received.

Recorded from 2020 to 2022 there were several violations of the Code of Ethics committed by unscrupulous police officers. The following is data on violations of the code of ethics committed by unscrupulous police officers within the scope of the Gorontalo Regional Police Law:

Table 1

**DATA PELANGGARAN KODE ETIK PROFESI KEPOLISIAN DAERAH
GORONTALO DAN POLRES JAJARAN TAHUN 2020 - 2022**

No	Kesatuan	Jumlah Pelanggar	Dalam Proses	Penyelesaian						Selesai
				SP4	Tercela	Minta Maaf	Demosi Fungsi	Demosi Wilayah	PTDH	
1	Polda Gorontalo	58	12	5	1	7	21	1	11	46
2	Gorontalo Kota	2	1				1			1
3	Gorontalo	14	3			3	5		3	11

Illegal Levy

Cheating/ Adultery

Procedural Error

Absent

Drug Abuse

Misuse of Firearms

Practical Politics

Discipline Violation 3 times

Maltreatment

The table above is a case of violation of the code of ethics committed by unscrupulous police officers in the jurisdiction of the Gorontalo Regional Police, from a total of 102 violators there is one case of a type of violation of the Code of Ethics committed by one of the unscrupulous police officers which has become a polemic, thus motivating the author to conduct research on the effectiveness of the application of legal norms which is a problem in the order of Laws and Regulations in Indonesia which confronts the Laws and Policy Regulations which contradict each other, as we all know that Policy Regulations are not based on the authority to make Laws, therefore they are not Laws and Regulations. According to Philipus M. Hadjon, policy regulations are essentially products of state administrative actions that aim to "naar buiten gebracht schriftelijk beleid", namely to reveal a written policy. Policy regulations only function as part of the operational implementation of government tasks so that they cannot change or deviate from laws and regulations,

(Juniarso Ridwan & Ahmad Sodik Sudrajat, 2012) as well as the position of the Circular Letter of the Chief of the Indonesian National Police Number: SE/9/V/2021 concerning Standard Guidelines for the Implementation of Enforcement of Violations of the Code of Professional Ethics of the Indonesian National Police as a technical implementation of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police which aims to complement the legal basis for enforcing the code of ethics against police officers who commit violations of professional ethics, as usual the Circular Letter (SE) cannot collide with the provisions of the legislation above it, namely the Regulation of the Chief of the Indonesian National Police (Perkap).

Circular Letter of the Chief of the Indonesian National Police Number: SE/9/V/2021 concerning Standard Guidelines for the Implementation of Enforcement of Violations of the Code of Professional Ethics of the Indonesian National Police which overrides the provisions of the regulations above it, namely the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police has a different perspective on law enforcers, The debate on the application of legal norms does not only occur among law enforcers in general but within the Police Force it has also become a debate caused by the application of conflicting legal norms between higher legal norms and lower legal norms "lex superior derogat legi inferior", The mechanism in the formation of laws and regulations is a fundamental reason for the formation of Circular Letters (SE) considering that the formation of a law takes a long time, while new regulations are needed to resolve existing problems within the institution related to the professional code of ethics concerning the professionalism of the Police institution, so that a new legal norm is made in a short time in the form of a policy regulation to resolve existing problems within the Police, even though the policy regulation is considered a weak legal product when viewed in the order of laws and regulations contained in Law Number 12 of 2011 concerning the Formation of Legislation. (interview with Police Commissioner Ramlan S. Pou, SH)

The implementation of Article 22 of the Regulation of the Chief of Police of the Republic of Indonesia Number 14 of 2011 concerning the Code of Professional Ethics of the Republic of Indonesia Police in the Gorontalo Regional Police is fairly effective in terms of enforcing the Code of Ethics against police officers who violate the Police Professional Code of Ethics (KEPP) who are given administrative sanctions in the form of recommendations for dishonorable dismissal (PTDH), the provisions are contained in article 21 paragraph 3 of the Regulation of the Chief of Police of the Republic of Indonesia Number 14 of 2011 concerning the Code of Professional Ethics of the Republic of Indonesia Police, (interview with Police Commissioner Salikhun B. Ikano SH). Ikano SH) is different from the decision to dishonorably dismiss (PTDH)

by the Head of the Gorontalo Police (Kapolda), which in this case is a State Administrative Official (TUN) who has not been in accordance with the provisions of Article 22 of the Regulation of the Chief of the Republic of Indonesia Police Number 14 of 2011 concerning the Code of Ethics of the Republic of Indonesia Police Profession which emphasizes more on Court decisions that are legally binding (*inkracht*), causing problems that will be litigated in the State Administrative Court.

Government Regulation Number 1 of 2003 concerning Dismissal of Members of the Indonesian National Police in article 12 paragraph 1 letter a that "Members of the Indonesian National Police are dishonorably discharged from the service of the Indonesian National Police if they are sentenced to imprisonment based on a court decision that has permanent legal force and according to the considerations of the authorized officials cannot be maintained to remain in the service of the Indonesian National Police", the sound of the article above contains the phrase "according to the consideration of the authorized official", when there are police officers who commit violations even though they have fulfilled the elements of article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Professional Code of Ethics of the Indonesian National Police but according to the consideration of the authorized official the police officer is still eligible to be in the service of the Indonesian National Police, therefore the member actually cannot be dismissed from the service of the Indonesian National Police.

Debates among police officers in terms of giving legal consideration to members who are suspected of violators often occur. The provisions of Article 22 paragraph 1 letter a that when a member of the Police commits an offense that intentionally commits a criminal offense punishable by imprisonment of 4 years or more and has been decided by a court with permanent legal force, by other police officials giving legal consideration that the violator has fulfilled the elements for administrative sanctions in the form of making a decision to dishonorably dismiss the police officer who committed the offense, in the application of the article we cannot only see from the threat of criminal punishment and whether he has undergone a judicial process or not? But we also have to see whether he has obtained a decision from the court that is legally binding or not? and to find out whether a decision is legally binding or not can be seen from whether the person concerned files a legal appeal or not, if the person concerned is still appealing to the cassation then the decision is not legally binding, as long as the person concerned in filing an appeal to the cassation has not passed the grace period determined by the applicable laws and regulations so that the decision cannot be executed, therefore we must respect the legal remedies filed by the person concerned. (interview with Police Commissioner Salikhun B. Ikano SH).

The author analyzes that the effectiveness of the application of Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011

concerning the Code of Professional Ethics of the Indonesian National Police which is overridden by the laws and regulations below in terms of making decisions to dishonorably dismiss members of police personnel in the Gorontalo Regional Police is not yet effective, because from the results of the interview that the Gorontalo Regional Police prioritized the Circular Letter (SE) rather than the Regulation of the Chief of the Indonesian National Police (Perkap), moreover that the debate regarding the application of legal norms not only occurs among law enforcers in general but in the internal Police also becomes a debate caused by the existence of conflicting legal norms between high legal norms and low legal norms.

Factors affecting the effectiveness of the implementation of Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Ethics of the Indonesian National Police Profession.

a. Substance of Law

In order to create laws that can protect the people, fair treatment, laws that protect every citizen of the nation so that their rights are guaranteed, of course there must be regulations that are used as guidelines in the preparation of laws and regulations, as the main rules that apply to formulate regulations from the initial process of their formation until the regulations are enacted to the community. So that with the existence of standard rules, each preparation of regulations can be carried out in a definite, standard, and standard manner and method that binds all institutions authorized to form laws and regulations, thus these regulations can meet the needs of the community for good laws and regulations. (Sopiani & Zainal Mubaroq). The Law on the Formation of Legislation is the implementation of the order of Article 22A of the 1945 Constitution of the Republic of Indonesia which states that "Further provisions regarding the procedures for the formation of laws shall be regulated by law".

The existence of the legal substance factor needs attention because it is one of the indicators that greatly affects the implementation of the law, especially in terms of enforcement of the code of ethics in the internal police institution, based on data collected during the research that the Gorontalo Regional Police has shown its consistency as a law enforcement agency that aims to realize a sense of justice, expediency, and legal certainty, which the results of the research will be summarized in this paper.

A police officer who is a suspected violator can be sentenced to administrative sanctions in the form of a recommendation for dishonorable dismissal (PTDH) by the Police Code of Ethics Commission where the police officer commits 3 forms of violations, namely, committing a criminal offense, committing an offense, leaving duty or other matters. Regarding criminal offenses, initially the Indonesian National Police only recognized the threat of criminal punishment of 3 months, while the provisions have been amended so that the substance in terms of punishment has

been extended to 4 years, then those who commit violations, one example is a member of the Police who leaves duty consecutively for 30 days without permission from the leadership, following a member of the Police who commits acts and behaviors that can harm the Police service, then he commits suicide with the intention of avoiding investigations or cases related to him whether he is a perpetrator or he is also a victim, which in essence he wants to avoid the case, then the following becomes a member or administrator of a Political Party. (interview with Police Commissioner Salikhun B. Ikano SH)

The legal rules are contained in the provisions of Article 21 paragraph 3 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Professional Ethics of the Indonesian National Police, as stated in Article 21 paragraph 3, which is as follows:

Administrative sanctions in the form of PTDH recommendations as referred to in paragraph (1) letter g are imposed on KEPP violators who commit violations including:

- a. is sentenced to imprisonment based on a court decision that has permanent legal force and according to the consideration of the authorized official cannot be maintained to remain in the Police service;
- b. is later found to have provided false and/or incorrect information when registering as a candidate for Polri membership;
- c. undertaking efforts or actions that are obviously aimed at changing Pancasila, engaging in movements, or committing acts that oppose the State and/or Government of the Republic of Indonesia;
- d. violates the Polri member oath/pledge, oath/pledge of office and/or KEPP;
- e. unlawfully leaves his/her duties for more than 30 (thirty) consecutive working days;
- f. commits acts and behaviors that may harm the police service, among others in the form of:
 1. negligence in the performance of duties and obligations, intentionally and repeatedly disobeying superior orders, mistreatment of fellow Polri members, excessive, arbitrary, or wrongful use of power, so that the service or individuals suffer losses;
 2. repeated acts contrary to decency committed inside or outside the service; and
 3. behavior or words in public or in writing that violate discipline.
- g. commits suicide with the intention of avoiding investigation and/or prosecution or dies as a result of the criminal offense he/she committed;
- h. becomes a member and/or administrator of a political party who is later discovered to have held a position or become a member of a political party and after being warned/reprimanded still maintains that status; and

- i. is sentenced to disciplinary punishment more than 3 (three) times and is considered no longer worthy of maintaining his/her status as a member of the National Police.

Based on the results of the study, the legal substance factor or the rule of law greatly influences the effectiveness of the application of law in the Gorontalo Regional Police in terms of enforcing the code of ethics against members who commit violations with the aim of maintaining the dignity of the Republic of Indonesia Police institution, although in implementing these rules often experience problems that focus on conflicting legal norms

b. Struktur Hukum

Legislation is basically a process of organizing the State / government in order to achieve order in the state. Legislation is a tool or means to achieve the ideals and goals of the State, namely the Welfare State.(Bewa Ragawino, 2005) Hierarchy Theory is a theory that states that the legal system is arranged in tiers and levels like steps. The relationship between norms that regulate the actions of other norms and other norms is referred to as the relationship of super and subordination in a spatial context. (Jimly Asshiddiqie and M. Ali Safa'at, 2006) Norms that determine the actions of other norms are superior, while the norms that perform the actions are called inferior norms. Therefore, the action performed by the superior norm becomes the reason for the validity of the entire legal system that forms a unity.

An important consequence of the above principles is that there must be a mechanism that safeguards and guarantees that these principles are not deviated or violated. The mechanism is that there is a system of judicial review of every legislation, policy, and other government action against higher-level legislation or the highest level, namely the Constitution. Without these consequences, the order would be meaningless. This can cause lower-level laws and regulations to remain in force even though they conflict with higher-level laws and regulations.

The National Police of the Republic of Indonesia made a breakthrough (Break Through) in several provisions if from the side of the regulation in terms of its implementation structure or the application of the law is consistent, that the institutional leadership of the Police institution with the existence of several cases of violations committed by members of the Police so that based on analysis and evaluation why the regulations in the internal Police always adjust, meaning that the law moves according to what is there. The legal structure of the Police institution made several changes related to the nomenclature regulated as well as the rules of implementation, after the issuance of the Regulation of the Chief of the Republic of Indonesia Police Number 14 of 2011 and Regulation of the Chief of the Republic of Indonesia Police Number 19 of 2012, there were several internal provisions that had not been accommodated by the two Regulations of the Chief of the Republic of Indonesia Police (Perkap), so that a Circular Letter of the Chief of the Republic of

Indonesia Police Number: SE/6 / V / 2014 concerning Technical Implementation of Enforcement of Violations of the Police Professional Code of Ethics, then after going through analysis and evaluation, changes were made to the existing regulations so that they changed to Circular Letter of the Chief of the Republic of Indonesia Police Number: SE/9 / V / 2021 concerning Standard Guidelines for the Implementation of Enforcement of Violations of the Police Professional Code of Ethics, in terms of legal structure related to the substance regulated in the Regulation of the Chief of the Republic of Indonesia Police (Perkap), it is not yet comprehensive, so the leadership of the Polri high institution issued a policy regulation in the form of a Circular Letter (SE). The Circular Letter regulates several provisions related to law enforcement against Polri members, both discipline and code of ethics, but the circular letter focuses more on enforcing the code of ethics whether it is related to drugs, immoral acts or terrorism crimes and so on. (interview with Police Commissioner Salikhun B. Ikano SH)

Regarding the position of the Circular Letter (SE) in the hierarchy of Laws and Regulations, indeed the Circular Letter (SE) is not included in the Laws and Regulations, but because it regulates internal provisions and is the authority of an internal institution, the Circular Letter (SE) is in line, let's compare it in the context of general justice there is such a thing as the Supreme Court Circular Letter (SEMA) which is usually used in law by the panel of judges in court on the pretext that there are provisions that have not been included in the Supreme Court Regulation (PMA), so that the Circular Letter (SE) is legally valid to be used as long as the Police institution must clearly fulfill the formal material requirements when applied to unscrupulous members of the Police who commit violations, so that the Circular Letter (SE) is legally valid to be used as long as the Police institution must clearly meet the material formal requirements when applied to unscrupulous members of the Police who commit violations, therefore the point is that the Circular Letter (SE) is a technical guideline by the Police institution which is inward related to violations of members of the Police.

In the copy of the decision of the State Administrative Court with case number 12/G/2021/PTUN.GTO. in the consideration of the panel of court judges that the circular letter is a statutory regulation as stipulated in Article 8 paragraph 1 of Law Number 12 of 2011 concerning the Formation of Legislation. (interview with Police Commissioner Ramlan S. Pou, SH).

The following reads from Article 8 paragraph 1 of Law Number 12/2011 on the Formation of Legislation:

"Types of Legislation other than as referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank

Indonesia, Ministers, agencies, institutions, or commissions of the same level established by Law or Government by order of Law, Provincial Regional House of Representatives, Governors, Regency/City Regional House of Representatives, Regents/Mayors, Village Heads or equivalent".

The element of legal structure is one of the factors that affect effectiveness in terms of efforts to apply the law to a problem regarding the order of legislation in force in Indonesia, the author argues that the effectiveness of the application of legal norms in the Gorontalo Regional Police which is the formulation of the problem in this paper has not been effective because in the results of the research the Gorontalo Regional Police prioritizes the Circular Letter (SE) which is a policy regulation rather than the Regulation of the Chief of the National Police of the Republic of Indonesia which is classified as legislation.

c. Legal Culture

The Indonesian National Police is one of the law enforcement agencies which provides a good role model for the community, therefore the institution which has the motto *Rastra Sewakotama* which means "The Main Servant for Nusa Bangsa" highly upholds the ethics and morals of each of its members. So that in law enforcement within the scope of the Police institution there are cases that are of particular concern (*atensi*) in enforcing violations of the Code of Ethics, including immoral cases, drugs and terrorism, therefore when there are members of the Police who are caught between the cases mentioned, the leadership of the Police will not hesitate to issue a decision letter of dishonorable dismissal (PTDH) against the offending Police member.

Article 22 of the Regulation of the Chief of the Indonesian National Police Number 14 of 2011 implies that in the institution of the Indonesian National Police there is such a thing as "*Tribrata* and *Catur Prasetya*" where "*Tribrata*" is a guideline for life and "*Catur Prasetya*" is a work guideline, So why in the Regulation of the Chief of the Indonesian National Police Number 14 of 2011, after a breakthrough (Break Through) from the Government Regulation of the Republic of Indonesia Number 1 of 2003 concerning the Dismissal of Members of the Indonesian National Police, there are several articles related to things that are appropriate or inappropriate, appropriate or inappropriate carried out by members of the Indonesian National Police so that they are divided into several ethics, namely, State Ethics, Institutional Ethics, Community Ethics and Personality Ethics, from several categories of ethics, things related to appropriate or inappropriate, feasible or inappropriate are done by members of the Indonesian National Police there are several articles used in the application of the law, why it is regulated because when members declare themselves as members of the Indonesian National Police there are consequences that must be held, because when they are appointed as members of the Indonesian National Police they take an oath of promise as members of the

Indonesian National Police and are used as a fundamental thing in the application of the article. With the existence of the oath of promise, it is hoped that there will be behaviors or culture from members of the Indonesian National Police after being declared members of the Indonesian National Police to become proficient, law-abiding and disciplined police personnel, with the existence of 3 spirits that are accommodated in one provision.

Legal culture means how members of the Indonesian National Police as personnel who know the law or can be said to be a running law library so that with these provisions, the legal culture within the internal Police can automatically run, although factually there are still some members of the Indonesian National Police who commit violations both at the level of the Sector Police, Resort Police, and Regional Police even at the Headquarters of the Indonesian National Police. So applying a legal culture to Polri personnel is not also instantaneously but still done through education, skills, vocational, development, and religion and this has been regulated in the applicable provisions in the institution of the Republic of Indonesia Police.

The state gives the mandate to the Police as the leading pillar in enforcing the law in the life of the community, therefore we members of the Police throughout the territory of the Unitary State of the Republic of Indonesia must behave and have good character in living in the community, therefore when there are members of the Police who behave badly, for example, drug abuse, committing immoral acts and so on which will tarnish the good name of the Police institution, which will have an impact on reducing the level of public confidence in the professionalism of the Police, Therefore, we take a firm stance to dismiss the police officer from the Indonesian National Police service which has gone through an in-depth investigation and investigation process even though we have not held a court decision that is legally binding, we do this because, if the member has not been dismissed from the Indonesian National Police service, the person concerned still receives his rights in the form of salary and benefits provided by the State.

Legal culture is very fundamental in determining the direction of our legal system can be implemented properly, because legal culture is the overall attitude and values that exist in the law itself which is then implemented to the community so that it will determine the validity of the law itself, thus when this legal culture becomes one thing that can be developed properly in the internal police institution, the legal reform can be accepted by members of the police force which is used as a guide to behavior that must be obeyed/

Closing

The implementation of the Regulation of the Chief of the Indonesian National Police (Perkap) has not been effective, because from the results of the interview that

the Gorontalo Regional Police prioritized the Circular Letter (SE) rather than the Regulation of the Chief of the Indonesian National Police (Perkap), moreover that the debate regarding the application of legal norms not only occurs among law enforcers in general but within the internal Police also becomes a debate caused by the existence of conflicting legal norms between high legal norms and low legal norms and factors that affect the effectiveness of the application of articles on the Regulation of the Chief of the Indonesian National Police regarding the Police Professional Code of Ethics within the Gorontalo Regional Police area which is the formulation of the problem in this study, including; 1) Legal Substance, 2) Legal Structure, 3) Legal Culture.

Bibliograph

- Asfiyak, K., & Muslim, M. (2020). The Practice of Fast Hearings Outside the Rules of Civil Procedure for the Efficiency of Case Settlement at the Malang City Religious Court. *Scientific Journal of Ahwal Syakhshiyyah (JAS)*, 2(2), 44-51.
- Bewa Ragawino, (2005). *State Legislation System of the Republic of Indonesia*, Bandung: Faculty of Social and Political Sciences, Padjadjaran University.
- Juniarso Ridwan and Achmad Sodik Sudrajat, (2012), "State Administration Law and Public Service Policy", Bandung: Nuance, West Java
- Jimly Asshiddiqie and M. Ali Safa'at, (2006), *Hans Kelsen's Theory of Law*, 1st Printing, Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia
- Muh Aden Arsyad Amin, (2019). *Settlement of Violations of the Code of Ethics of the Republic of Indonesia Police Profession (Case Study at Polda Jambi)*, Thesis of the Faculty of Sharia, Sulthan Thaha Saifuddin State Islamic University, Jambi.
- Muhammad Arif, (2021). *Duties and Functions of the Police in its Role as Law Enforcement According to Law Number 2 of 2002 concerning the Police*, Al Adl: Journal of Law, Volume 13 Number 1, Kalimantan Islamic University
- Pudi Rahardi, (2007). *Police Law (Professionalism and Police Reform*, Surabaya; Laksbang Mediatma
- Rahman Abd - Madiung Baso, (2017). *Civic Education in Higher Education*. Celebes Media Perkasa.
- Regulation of the Chief of the Indonesian National Police Number 14 of 2011 concerning the Code of Ethics of the Police Profession.
- Sopiani & Zainal Mubaroq, (2020). *Legal Politics of the Formation of Laws and Regulations After the Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations*, Indonesian Legislation Journal Vol. 17 No. 2 - June, Faculty of Law, Veteran National Development University Jakarta
- Yanius Rajalahu, (2013). "Settlement of Violations of the Professional Code of Ethics by the Indonesian National Police" *Lex Crimen Journal* Vol. II/No. 2/ Apr-Jun

WTC, Proven to Violate the Police Professional Code of Ethics, Gorontalo Police Chief Issues PTDH Decisions to 4 (four) Members, <https://tribrataneews.gorontalo.polri.go.id/45346/terbukti-melanggar-kode-etik-profesi-polri-kapolda-gorontalo-keluarkan-keputusan-ptdh-terhadap-4empat-anggota/>, accessed on November 21, 2021, at 22:00