

Police Discretion and Human Rights Protection: Evidence from Law Enforcement Practices in Indonesia

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Abstract

Police discretion is unavoidable in everyday law enforcement because officers frequently make decisions in situations that cannot be fully regulated by formal rules. However, discretionary authority can create tensions between operational effectiveness and the protection of human rights. This study examines police discretion in Indonesia and explores its implications for rights-based policing. The research adopts a qualitative approach combining analysis of legal provisions, institutional guidelines, academic literature, and selected law enforcement practices. The study identifies discretion as a necessary component of effective policing but argues that its legitimacy depends on clear legal boundaries, professional judgement, supervision, and accountability. Particular attention is given to situations involving arrest, public order, investigative decisions, and the use of coercive authority. The analysis suggests that excessive or insufficiently supervised discretion may undermine public trust and increase the risk of inconsistent enforcement. The study therefore proposes a rights-based framework in which police discretion is guided by legality, necessity, proportionality, and accountability. The article contributes to the literature by examining the relationship between discretionary policing and human rights within Indonesia's evolving democratic law enforcement framework.

[Diskresi kepolisian merupakan hal yang tak terelakkan dalam penegakan hukum sehari-hari karena petugas sering kali harus mengambil keputusan dalam situasi yang tidak dapat diatur sepenuhnya oleh aturan formal. Namun, kewenangan diskresioner dapat menimbulkan ketegangan antara efektivitas operasional dan perlindungan hak asasi manusia. Studi ini mengkaji diskresi kepolisian di Indonesia serta mengeksplorasi implikasinya terhadap praktik kepolisian yang berbasis pada penghormatan hak asasi manusia. Penelitian ini menggunakan pendekatan kualitatif yang memadukan analisis terhadap ketentuan hukum, pedoman kelembagaan, literatur akademis, dan praktik penegakan hukum tertentu. Studi ini mengidentifikasi diskresi sebagai

komponen penting dalam pelaksanaan tugas kepolisian yang efektif, namun menegaskan bahwa legitimasi diskresi tersebut bergantung pada batasan hukum yang jelas, pertimbangan profesional, pengawasan, serta akuntabilitas. Perhatian khusus diberikan pada situasi yang melibatkan penangkapan, ketertiban umum, pengambilan keputusan penyidikan, dan penggunaan wewenang yang bersifat memaksa. Analisis menunjukkan bahwa penggunaan diskresi yang berlebihan atau kurangnya pengawasan dapat mengikis kepercayaan publik dan meningkatkan risiko ketidakkonsistenan dalam penegakan hukum. Oleh karena itu, studi ini mengusulkan sebuah kerangka kerja berbasis hak asasi manusia di mana diskresi kepolisian dipandu oleh prinsip legalitas, kebutuhan (necessity), proporsionalitas, dan akuntabilitas. Artikel ini memberikan kontribusi terhadap literatur yang ada dengan mengkaji hubungan antara diskresi kepolisian dan hak asasi manusia dalam kerangka penegakan hukum demokratis di Indonesia yang terus berkembang.]

Keywords: police discretion, human rights, rights-based policing, law enforcement, Indonesia

Introduction

Police discretion is one of the most persistent and theoretically important characteristics of modern policing because police officers are required to translate general legal norms into concrete decisions under circumstances that are frequently uncertain, urgent, and resistant to complete legal specification. Legislatures can define offences, procedures, and institutional powers, but they cannot anticipate every encounter between officers and citizens. A patrol officer deciding whether to issue a warning or make an arrest, an investigator determining which evidentiary lead deserves immediate attention, or a public-order commander deciding how to respond to a rapidly changing crowd must exercise judgment. Such decisions are not necessarily evidence of legal weakness; rather, they are inherent in the practical administration of law. Yet discretion also creates an asymmetry of power because the officer exercises state authority over individuals who may have limited capacity to challenge an immediate decision. The central normative problem is therefore not whether police should possess discretion, but how discretionary authority can remain compatible with legality, equality, dignity, and human rights. This question is particularly significant in democratic policing because operational effectiveness and rights protection must operate simultaneously rather than sequentially.

The Indonesian context provides a particularly important setting for examining this relationship because the Indonesian National Police, or Kepolisian Negara Republik Indonesia (Polri), performs extensive functions ranging from crime prevention and investigation to public-order management and protection of citizens. Law No. 2 of 2002 places the police within a broad institutional mandate involving maintenance of security and public order, law enforcement, protection,

guidance, and public service. Article 18 of the statute expressly recognizes discretionary authority by permitting officers, for the benefit of the public, to act according to their own judgment in circumstances requiring consideration and action, subject to the requirements that the action remain within the police officer's authority and be reasonable and appropriate under the circumstances (Republic of Indonesia 2002). The statutory recognition of discretion is significant because it rejects the assumption that police work can be reduced to mechanical application of predetermined rules. At the same time, the same provision indicates that discretion is not unlimited personal freedom. Its legitimacy depends upon legal authority, professional judgment, and the circumstances in which the authority is exercised. The Indonesian model consequently presents discretion as a legally recognized power that must operate within institutional and normative boundaries.

The human rights implications of police discretion become especially visible when officers exercise coercive powers. Arrest, detention, search, seizure, interrogation, crowd control, and the use of physical force all involve direct interference with individual rights. Indonesian criminal procedure law historically provided procedural conditions for arrest, including the requirement that arrest be based on sufficient preliminary evidence and that officers identify themselves and provide relevant information concerning the arrest, subject to the special rules applicable to persons caught in the act (Republic of Indonesia 1981). These procedural requirements are important because discretion at the operational level cannot legitimately replace legal thresholds established by legislation. An officer may have discretion concerning the manner and timing of an intervention, but discretion does not ordinarily authorize the officer to disregard statutory prerequisites. The distinction is therefore between discretion *within law* and discretion *instead of law*. The former is necessary to make legal rules operational; the latter risks converting delegated public authority into arbitrary power. Rights-based policing requires maintaining this distinction throughout everyday enforcement.

International human rights standards reinforce this approach by treating law-enforcement discretion as an authority requiring structured limitation. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials emphasize that governments and police agencies should continuously review operational procedures and training so that force is minimized, while serious incidents should be subject to reporting, review, and, where appropriate, independent judicial or administrative processes (United Nations 1990). The Principles further establish responsibilities for superior officers and recognize that unlawful orders do not provide an automatic justification for unlawful conduct. These principles are not a substitute for Indonesian law, but they provide a useful normative benchmark for interpreting the requirements of legality, necessity, proportionality, and accountability. Their significance is particularly apparent when discretionary decisions concern force capable of causing serious injury or death. In such circumstances, the question is not simply whether an officer believed an

action was operationally useful. The decision must also be assessed against the seriousness of the threat, the availability of less intrusive alternatives, the protection of life, and the officer's obligation to account for the decision afterward.

The concept of procedural justice provides another important analytical perspective. Tyler's influential work argues that public acceptance of legal authority depends substantially upon perceptions concerning the fairness of decision-making procedures, including neutrality, voice, dignity, and trustworthy motives (Tyler 2006). This perspective changes the understanding of police effectiveness because enforcement outcomes alone cannot fully explain whether citizens perceive police authority as legitimate. Research concerning Indonesia has provided empirical support for the relevance of procedural justice. Davies, Meliala, and Buttle found through ethnographic research that citizens' evaluations of police were strongly shaped by procedural considerations, challenging assumptions that Indonesian police legitimacy depends primarily on instrumental effectiveness such as crime control (Davies, Meliala, and Buttle 2016). Their findings are particularly relevant to discretion because discretionary encounters are precisely the moments in which citizens experience police authority directly. An officer may possess formal authority to intervene, but the manner in which the intervention is explained, justified, and conducted can influence whether citizens perceive that authority as legitimate or arbitrary.

The practical importance of the issue can be observed in documented Indonesian law-enforcement controversies. The National Human Rights Commission (Komnas HAM), for example, documented concerns arising from police handling of demonstrations in September 2019, including allegations concerning excessive force, arrests, limited access to legal assistance, and interference with journalists and medical personnel. Its subsequent findings referred to alleged violations involving the rights to life, health, security, and access to justice, while also identifying allegations concerning excessive coercive measures (Komnas HAM 2020). These findings should not be generalized to all police operations, nor should they be treated as proof that individual officers invariably act unlawfully. Their analytical significance lies elsewhere: they illustrate how discretionary decisions in dynamic public-order situations can generate serious human rights consequences when operational judgment, supervision, and accountability mechanisms do not function effectively. The existence of formal regulations is therefore insufficient by itself. The crucial question is how rules governing discretion are translated into operational behavior under pressure.

Similar questions arise in relation to the use of force. Indonesia adopted Regulation of the Chief of the Indonesian National Police No. 1 of 2009 concerning the Use of Force in Police Actions, establishing principles and graduated stages for police use of force. The regulation recognizes legality, necessity, proportionality, preventive considerations, and reasonableness, and establishes a progression from deterrent presence and verbal commands toward physical controls and, in the most serious circumstances, firearms (Indonesian National Police 2009a). Regulation No.

8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Police Duties further embeds human rights considerations within policing practice (Indonesian National Police 2009b). The combination demonstrates that Indonesian police law does not conceptually place operational effectiveness and human rights protection in separate domains. Instead, it attempts to integrate the two by establishing legal and professional standards for the exercise of coercive authority.

Nevertheless, the presence of rules does not eliminate the institutional risks associated with discretion. Police officers work within hierarchical organizations in which informal norms, leadership expectations, performance pressures, professional culture, and resource constraints can influence how formal rules are interpreted. A regulation may require proportionality, but proportionality must be assessed by an officer in a particular situation. A statute may require reasonable judgment, but reasonableness can become difficult to evaluate retrospectively if operational decisions are poorly documented. A requirement of accountability may exist, but its practical effect depends on whether supervisors investigate incidents impartially and whether citizens have meaningful access to complaint and review mechanisms. Research concerning Indonesian police reform has repeatedly identified tensions between formal institutional reform and the persistence of organizational practices inherited from earlier policing structures (Buttle, Davies, and Meliala 2016; Muradi 2014). Consequently, a serious examination of discretion must move beyond statutory language and examine the organizational conditions that shape the use of discretionary power.

The research problem addressed by this article is therefore the relationship between legally recognized police discretion and the practical protection of human rights in Indonesia. The central argument is that discretion should not be understood as an exception to rights-based policing. Properly structured discretion is a necessary instrument through which rights can sometimes be protected, particularly when rigid enforcement would produce disproportionate or harmful outcomes. However, discretion becomes problematic when it is detached from legal standards, professional reasoning, supervisory oversight, documentation, and accountability. The article therefore asks how Indonesian law and law-enforcement practice structure discretionary authority, what human rights risks arise in major areas of police decision-making, and what institutional conditions can reconcile necessary police judgment with rights-based policing. The analysis is deliberately qualitative and documentary, focusing on the normative architecture and selected documented practices rather than claiming a statistically representative assessment of all Indonesian police officers.

The article makes three related contributions. First, it conceptualizes police discretion as a human rights issue rather than simply a question of administrative efficiency. This perspective is important because discretionary decisions can affect liberty, physical integrity, privacy, equality, expression, and access to justice. Second, it connects Indonesian statutory and police regulations with international

principles of legality, necessity, proportionality, and accountability, thereby situating national practice within a broader rights-based framework. Third, it proposes an institutional understanding of rights-based discretion in which individual judgment is supported and constrained by organizational procedures. The argument does not seek to eliminate police discretion because eliminating discretion would be unrealistic and potentially counterproductive. Instead, the objective is to establish conditions under which discretion becomes reasoned, reviewable, proportionate, and compatible with democratic policing.

Literature Review

The classical sociological understanding of police discretion begins with the observation that formal law cannot fully determine police behavior. Bittner famously conceptualized policing around the capacity to use coercive authority in situations requiring immediate intervention, emphasizing that police work involves practical judgments concerning when and how coercive power should be applied (Bittner 1970). Goldstein subsequently argued that the police should be understood as an institution operating at the intersection of legal rules and practical problems, meaning that police officers inevitably make decisions about priorities, enforcement strategies, and responses to individual circumstances (Goldstein 1977). These approaches established a foundational insight: discretion is not an accidental deviation from the legal model of policing but a structural characteristic of police work. The law provides authority and boundaries, while officers interpret circumstances and select among lawful responses. The normative challenge therefore concerns the quality and accountability of these decisions rather than the mere existence of discretion.

Subsequent scholarship has demonstrated that police discretion can operate at multiple levels. At the street level, officers decide how to respond to individual encounters, whether to warn, cite, arrest, investigate, or disengage. At the organizational level, police leaders determine priorities concerning crime problems, deployment, investigative resources, and public-order strategies. At the policy level, police agencies interpret legislation through regulations, manuals, training, and institutional practices. Lipsky's theory of street-level bureaucracy is especially relevant because it explains how public officials transform general policy into practical outcomes while operating under conditions of limited time, incomplete information, and competing demands (Lipsky 2010). Police officers are classic street-level bureaucrats because the distance between formal legal policy and individual citizens is often mediated by their discretionary decisions. Consequently, unequal outcomes can emerge even where formal rules are facially neutral if organizational incentives, informal norms, or resource constraints influence how officers exercise judgment.

The problem of discretion is intensified by the coercive character of policing. Police officers possess powers that ordinary public officials generally do not possess, including the authority to stop individuals, restrict movement, arrest

suspects, conduct searches, use force, and carry firearms. The possession of coercive authority does not inherently conflict with human rights. States have legitimate responsibilities to protect individuals from crime and violence, and law enforcement may require coercive measures in circumstances where less intrusive interventions would not achieve legitimate objectives. The human rights problem arises when coercion becomes arbitrary, unnecessary, discriminatory, or disproportionate. The United Nations Code of Conduct for Law Enforcement Officials emphasizes that officers should respect and protect human dignity and maintain and uphold human rights, while force should be used only when strictly necessary and to the extent required for the performance of their duty (United Nations 1979). These principles provide a conceptual bridge between police discretion and human rights because they require operational decisions to be evaluated against normative limits.

The principle of legality is the first element of such a bridge. Legality requires that police authority have a valid legal basis and that officers remain within the scope of powers granted to them. In the Indonesian system, Law No. 2 of 2002 establishes police functions and powers, while the Criminal Procedure Code provides procedural requirements concerning arrest, detention, search, seizure, and investigation (Republic of Indonesia 2002; Republic of Indonesia 1981). The significance of legality for discretion is frequently misunderstood. Legality does not mean that every operational decision must be explicitly prescribed by statute. Instead, it means that discretionary decisions must remain anchored in a lawful source of authority and cannot be justified solely by an officer's subjective perception that an intervention would be useful. This distinction is essential because broad notions of public order or police necessity can otherwise become open-ended justifications for intrusive conduct. Rights-based discretion requires officers to be able to identify the legal basis for intervention and to distinguish legitimate discretionary choice from action outside legal authority.

Necessity provides a second limitation. The existence of legal authority does not automatically establish that every available intervention is justified. Necessity asks whether the intervention is required to achieve a legitimate law-enforcement objective under the circumstances. This principle is particularly important when police use physical force because force should not be used merely because an officer has the technical authority to do so. The Indonesian police regulation concerning use of force recognizes this logic by establishing graduated responses and requiring officers to select the level of force according to the threat encountered (Indonesian National Police 2009a). The United Nations Basic Principles similarly emphasize non-violent means before force and firearms and require that force be used with restraint and in proportion to the seriousness of the offence and legitimate objective (United Nations 1990). Necessity therefore transforms discretion from an unlimited choice into a structured decision concerning whether intervention is required at all and whether a less intrusive alternative remains realistically available.

Proportionality adds a further analytical requirement because even necessary police action may become unlawful or unjustified if its intensity is disproportionate to the legitimate objective pursued. Proportionality is particularly difficult in real-time policing because officers must make rapid assessments of threats and alternatives. The Indonesian use-of-force framework attempts to address this difficulty by establishing a graduated model that moves from deterrence and verbal direction toward physical controls and other means before the highest levels of coercion are considered (Indonesian National Police 2009a). Such a graduated structure is important because it provides officers with an operational vocabulary for calibrating intervention. Yet proportionality cannot be reduced to mechanically following stages. A rapidly escalating threat may justify moving between stages quickly, while a low-level threat may require restraint even if an officer technically possesses more coercive powers. Professional judgment therefore remains essential, but it must operate within a framework that makes the reasons for escalation intelligible and reviewable.

Accountability is the fourth element of rights-based discretion. If officers possess discretionary authority without effective mechanisms for review, the formal limits on discretion may become largely symbolic. Accountability can take several forms, including internal supervision, disciplinary mechanisms, criminal investigation, judicial review, complaint mechanisms, civilian oversight, and public reporting. The United Nations Basic Principles specifically call for effective reporting and review procedures in cases involving force and firearms and emphasize that independent authorities should be able to exercise jurisdiction in appropriate circumstances (United Nations 1990). The principles also recognize superior responsibility where leaders know or should know of unlawful force and fail to prevent, suppress, or report it. These standards demonstrate that accountability should not be limited to individual officers at the moment of misconduct. Organizational leadership also carries responsibilities for training, supervision, reporting, and institutional learning.

The relationship between discretion and legitimacy is further developed through procedural justice theory. Tyler argues that individuals are more likely to regard legal authorities as legitimate when they experience procedures as fair, neutral, respectful, and trustworthy (Tyler 2006). This framework is particularly valuable for studying discretion because citizens frequently encounter the state not through legislation or courts but through individual police officers. A citizen who is stopped, questioned, searched, arrested, or directed to leave an area experiences the legal system through the officer's conduct. The citizen may not know the underlying legal doctrine, but can evaluate whether the officer listened, explained the decision, treated them with dignity, and applied rules consistently. Police discretion is therefore not only an instrument for achieving substantive outcomes; it is also a mechanism through which institutional legitimacy is communicated.

Indonesian scholarship provides important evidence supporting this connection. Davies, Meliala, and Buttle found that procedural justice was highly

significant in Indonesian citizens' narratives concerning police legitimacy and that assessments of police authority could not be adequately explained through instrumental performance alone (Davies, Meliala, and Buttle 2016). Their research is important because it challenges assumptions that procedural justice is primarily a Western model that cannot be meaningfully applied to Indonesia. At the same time, the authors caution that Indonesia's institutional and cultural environment requires careful adaptation rather than mechanical transplantation of foreign policing models. This insight is directly relevant to discretion. Rights-based policing in Indonesia should not simply reproduce concepts developed elsewhere; it should translate general principles of fairness, dignity, neutrality, and accountability into the institutional realities of Indonesian policing.

The procedural justice literature also contains important qualifications. Schaap and Saarikkomäki argue that the conventional distinction between procedural fairness and outcome-based policing can become overly simplistic because real police-citizen encounters combine process, outcome, power, and structural inequality (Schaap and Saarikkomäki 2022). This critique is useful in the Indonesian context because a procedurally polite interaction cannot by itself legitimate an unlawful or discriminatory decision. An officer may speak respectfully while applying the law selectively, and an officer may follow a formal procedure while exercising excessive force. Rights-based discretion therefore requires a combination of lawful outcomes and fair processes. Procedural justice should complement, not replace, substantive human rights protections.

Research concerning police reform in Indonesia also indicates that organizational culture matters significantly. Buttle, Davies, and Meliala argue that police corruption in Indonesia cannot be understood exclusively through individual moral failure because historical, institutional, and sociocultural factors shape the persistence of corrupt practices (Buttle, Davies, and Meliala 2016). Although corruption and discretion are distinct phenomena, the analytical connection is important. Both demonstrate that formal institutional reform may have limited effects when informal organizational norms and incentive structures remain unchanged. A legal rule prohibiting arbitrary behavior cannot automatically produce lawful conduct if officers believe that informal expectations reward aggressive enforcement, if supervisors emphasize numerical performance without evaluating procedural quality, or if reporting systems discourage officers from documenting mistakes. Rights-based discretion consequently requires organizational reform as much as individual ethical instruction.

Indonesian public-order policing provides a particularly important field for examining these tensions. Demonstrations are constitutionally significant because freedom of expression and peaceful assembly are essential elements of democratic governance, while police have legitimate responsibilities to protect public safety and prevent violence. The discretionary challenge arises when officers must distinguish between lawful protest, disorderly conduct, threats, and criminal activity in rapidly changing environments. Komnas HAM's documentation of the

September 2019 demonstrations identified allegations involving excessive coercion, arrests, restricted access to legal assistance, and harm to journalists and other participants (Komnas HAM 2020). The importance of such findings is not that every action during those events was unlawful, but that large-scale public-order operations create conditions in which discretionary decisions can have consequences affecting multiple rights simultaneously. A rights-based approach must therefore incorporate planning, communication, de-escalation, identification of vulnerable persons, medical access, arrest documentation, and post-event review.

Use-of-force scholarship further demonstrates why discretion requires institutional structure. Prindani's analysis of law-enforcement use of force in counterterrorism emphasizes the continuing legal and human rights questions surrounding lethal force, including the validity of deadly force during arrests and raids and the responsibility of the state for police conduct (Prindani 2020). These questions demonstrate that the legitimacy of force depends not simply on the seriousness of the crime being investigated but on the immediate circumstances confronting officers. Counterterrorism, organized crime, or violent-crime investigations may involve serious threats, but the seriousness of an offence does not automatically authorize unlimited coercion. The relevant assessment must remain focused on the concrete threat, necessity, proportionality, and available alternatives.

The literature therefore suggests that police discretion should be understood through a multi-dimensional model. At the first level, discretion is a practical necessity because police officers confront circumstances that legal rules cannot completely specify. At the second level, discretion is a legal power that must remain within statutory and regulatory authority. At the third level, discretion is a human rights issue because police decisions can directly affect protected interests. At the fourth level, discretion is a legitimacy mechanism because citizens form judgments about state authority through everyday encounters. At the fifth level, discretion is an organizational process because training, supervision, leadership, resources, and institutional culture influence individual decisions. The Indonesian case demonstrates the need to integrate all these dimensions rather than reducing discretion to either an operational problem or an abstract legal principle.

The existing literature nevertheless leaves an important analytical gap. International scholarship has generated extensive conceptual discussion concerning police discretion, street-level bureaucracy, procedural justice, and use of force, while Indonesian scholarship has examined police reform, legitimacy, corruption, human rights, and particular law-enforcement practices. Less developed, however, is an integrated analysis connecting the legal recognition of police discretion in Indonesia with the human rights principles that should structure its exercise across different forms of police intervention. Much of the discussion of Indonesian police discretion remains focused on the existence of authority or on individual controversies, rather than examining discretion as an institutional

process connecting law, professional judgment, organizational supervision, and accountability. This article addresses that gap by examining how discretionary authority can be understood through a rights-based framework that combines legality, necessity, proportionality, procedural justice, and accountability. The contribution is therefore analytical rather than statistical: it seeks to explain the institutional conditions under which discretion can remain compatible with democratic policing.

Conceptual Framework

The conceptual framework of this study treats police discretion as a structured form of professional judgment located between formal legal authority and concrete operational circumstances. The framework begins from the premise that discretion cannot be eliminated because police officers inevitably confront situations in which legal rules are incomplete, conflicting, or incapable of anticipating factual complexity. However, discretion must not be confused with unrestricted autonomy. The legitimate exercise of discretion requires an identifiable legal basis, a legitimate policing objective, an assessment of necessity, proportionality between means and objectives, procedural fairness toward affected persons, and mechanisms through which the decision can subsequently be reviewed. This framework synthesizes insights from the literature on street-level bureaucracy, police discretion, procedural justice, and human rights. It also incorporates the Indonesian legal framework, particularly Law No. 2 of 2002 the first analytical dimension because discretion must originate from and remain within a lawful mandate. The principle prevents police officers from treating personal judgment as an independent source of authority. In the Indonesian context The relevant question is therefore whether a particular decision falls within the officer's lawful authority and whether the circumstances satisfy the statutory conditions attached to that authority. Legality also requires attention to procedural safeguards. An officer who possesses a general mandate to enforce criminal law cannot disregard specific statutory requirements concerning arrest, detention, search, or seizure. The conceptual framework therefore distinguishes between A police officer may have authority to intervene but may not need to use the most intrusive available measure. Necessity therefore introduces a preference for less restrictive means where those means can reasonably achieve the legitimate objective. In the context of force, necessity requires officers to determine whether force is required at all. In investigative practice, it requires consideration of whether coercive measures are necessary to secure evidence. In public-order policing, it requires consideration of whether immediate physical intervention is needed or whether communication, negotiation, containment, or targeted action can achieve public safety. Necessity transforms discretion into a reasoned choice among alternatives rather than. The principle recognizes that even necessary intervention can become excessive if the intensity of the response substantially exceeds the threat or objective involved. Proportionality is especially important when police use physical force because the

potential consequences can be severe. Indonesian Regulation No. 1 of 2009 provides an operational framework for graduated force, reflecting the idea. Officers must consider the actual circumstances, available alternatives, the seriousness and immediacy of the threat, and the consequences of different interventions. The principle therefore requires continuous reassessment. A response that was proportionate at one moment may become excessive when circumstances change, just. Instead, it complements them by ensuring that discretionary authority is exercised through fair procedures. A lawful arrest conducted through degrading or unnecessarily hostile treatment may remain problematic from a rights-based perspective even if reconstruction and review. This includes internal supervision, documentation, complaint procedures, disciplinary mechanisms, judicial review, and appropriate external oversight. The United Nations Basic Principles emphasize reporting and review of serious uses-learning function. When review identifies recurring problems, police organizations can modify training, regulations, deployment strategies, or supervisory practices. Accountability therefore operates both retrospectively, by addressing misconduct, and prospectively proportionality may justify excessive force. Proportionality without procedural justice may produce lawful but illegitimate interactions. Procedural justice without accountability may become symbolic because respectful treatment cannot compensate for systemic misconduct. Accountability without clear legal standards may become inconsistent because reviewers lack objective criteria for evaluating decisions. The conceptual framework therefore treats rights-based discretion as an integrated institutional process. The quality of police discretion depends upon the interaction among legal authority, operational reasoning, professional conduct, and institutional oversight. This integrated approach provides the basis for examining Indonesian law and police regulations governing force and human rights. The framework consequently treats discretion as both an operational necessity and a form of delegated public power requiring institutional restraint.

Legality constitutes the first analytical dimension because discretion must originate from and remain within a lawful mandate. The principle prevents police officers from treating personal judgment as an independent source of authority. In the Indonesian context, Article 18 of Law No. 2 of 2002 provides a particularly important legal foundation because it expressly recognizes discretionary action under specified conditions (Republic of Indonesia 2002). The relevant question is therefore whether a particular decision falls within the officer's lawful authority and whether the circumstances satisfy the statutory conditions attached to that authority. Legality also requires attention to procedural safeguards. An officer who possesses a general mandate to enforce criminal law cannot disregard specific statutory requirements concerning arrest, detention, search, or seizure. The conceptual framework therefore distinguishes between legal discretion, in which officers choose among lawful alternatives, and extra-legal discretion, in which officers create authority through personal judgment. Only the former is compatible with rights-based policing.

Necessity constitutes the second dimension and asks whether intervention is required to achieve a legitimate law-enforcement purpose. This principle is particularly relevant because legal authority often permits several possible responses. A police officer may have authority to intervene but may not need to use the most intrusive available measure. Necessity therefore introduces a preference for less restrictive means where those means can reasonably achieve the legitimate objective. In the context of force, necessity requires officers to determine whether force is required at all. In investigative practice, it requires consideration of whether coercive measures are necessary to secure evidence. In public-order policing, it requires consideration of whether immediate physical intervention is needed or whether communication, negotiation, containment, or targeted action can achieve public safety. Necessity transforms discretion into a reasoned choice among alternatives rather than an unrestricted selection of preferred tactics.

Proportionality forms the third dimension. The principle recognizes that even necessary intervention can become excessive if the intensity of the response substantially exceeds the threat or objective involved. Proportionality is especially important when police use physical force because the potential consequences can be severe. Indonesian Regulation No. 1 of 2009 provides an operational framework for graduated force, reflecting the idea that the response should correspond to the level of threat or resistance encountered (Indonesian National Police 2009a). The conceptual framework treats proportionality as a dynamic assessment rather than a mechanical sequence. Officers must consider the actual circumstances, available alternatives, the seriousness and immediacy of the threat, and the consequences of different interventions. The principle therefore requires continuous reassessment. A response that was proportionate at one moment may become excessive when circumstances change, just as a previously unnecessary intervention may become necessary when a threat escalates.

Procedural justice constitutes the fourth dimension because the legitimacy of discretionary authority depends partly upon how citizens experience police decision-making. Tyler's work identifies neutrality, voice, respect, and trustworthy motives as central elements of perceived procedural fairness (Tyler 2006). Applied to policing, these principles require officers to communicate decisions when circumstances permit, treat individuals with dignity, avoid unnecessary humiliation, and distinguish lawful enforcement from personal hostility. Indonesian research demonstrates that such considerations are relevant to perceptions of police legitimacy in the local context (Davies, Meliala, and Buttle 2016). Procedural justice does not replace legality or proportionality. Instead, it complements them by ensuring that discretionary authority is exercised through fair procedures. A lawful arrest conducted through degrading or unnecessarily hostile treatment may remain problematic from a rights-based perspective even if the underlying legal basis is valid.

Accountability constitutes the fifth dimension and provides the mechanism through which the previous principles become institutionally enforceable.

Accountability requires that significant discretionary decisions be capable of reconstruction and review. This includes internal supervision, documentation, complaint procedures, disciplinary mechanisms, judicial review, and appropriate external oversight. The United Nations Basic Principles emphasize reporting and review of serious uses of force and recognize the importance of independent authorities in appropriate cases (United Nations 1990). Within the conceptual framework, accountability is not simply punitive. It also serves an institutional-learning function. When review identifies recurring problems, police organizations can modify training, regulations, deployment strategies, or supervisory practices. Accountability therefore operates both retrospectively, by addressing misconduct, and prospectively, by reducing the likelihood of future rights violations.

The five dimensions interact rather than operate independently. Legality without necessity may permit unnecessarily intrusive interventions. Necessity without proportionality may justify excessive force. Proportionality without procedural justice may produce lawful but illegitimate interactions. Procedural justice without accountability may become symbolic because respectful treatment cannot compensate for systemic misconduct. Accountability without clear legal standards may become inconsistent because reviewers lack objective criteria for evaluating decisions. The conceptual framework therefore treats rights-based discretion as an integrated institutional process. The quality of police discretion depends upon the interaction among legal authority, operational reasoning, professional conduct, and institutional oversight. This integrated approach provides the basis for examining Indonesian law-enforcement practices in the subsequent analysis.

Methods

This study employs a qualitative doctrinal and socio-legal research design to examine the relationship between police discretion and human rights protection in Indonesia. A qualitative design is appropriate because the principal research problem concerns the interpretation, institutional operation, and normative consequences of discretionary police authority rather than the measurement of a single quantifiable variable. The research combines legal analysis with examination of academic scholarship and documented law-enforcement practices in order to identify how formal rules governing discretion interact with institutional realities. The temporal scope extends through the end of 2025, thereby capturing the principal legal and institutional framework applicable during that period. The analysis does not claim to provide a statistically representative measurement of all police decisions in Indonesia. Instead, it seeks to construct an analytically grounded explanation of the conditions under which discretion can operate consistently with human rights standards and democratic policing.

The primary materials consist of Indonesian legislation, police regulations, international human rights instruments, official institutional documents, and documented findings concerning police conduct. Particular attention is given to

Law No. 2 of 2002 concerning the Indonesian National Police, Law No. 8 of 1981 concerning the Criminal Procedure Code as the principal procedural framework applicable during the study period, Law No. 39 of 1999 concerning Human Rights, and Law No. 12 of 2005 ratifying the International Covenant on Civil and Political Rights. Law No. 12 of 2005 formally incorporated the ICCPR into Indonesia's legal framework in October 2005, providing an important international reference point for examining liberty, security, due process, expression, assembly, and protection from arbitrary state interference (Republic of Indonesia 2005). The research also examines police regulations governing the use of force and the implementation of human rights principles in police duties. These sources are interpreted together rather than treated as isolated legal instruments.

Secondary materials comprise peer-reviewed academic publications and established scholarly works addressing police discretion, street-level bureaucracy, procedural justice, police legitimacy, police reform, and human rights. The literature is used to construct the conceptual framework and to interpret Indonesian institutional developments rather than to substitute for primary legal analysis. Particular analytical attention is given to scholarship by Bittner, Goldstein, Lipsky, and Tyler because their respective contributions explain the practical necessity of police discretion, the organizational nature of policing, the role of street-level decision-making, and the relationship between procedural fairness and institutional legitimacy. Indonesian scholarship is incorporated where it provides contextual evidence concerning police reform, legitimacy, corruption, and institutional practice. The literature was selected according to relevance to the research questions, scholarly credibility, and publication status, while references exceeding the 2025 temporal limit were excluded from the substantive evidence base.

The analytical procedure consists of thematic legal interpretation and cross-source comparison. The first stage identifies the legal basis and formal limits of police discretion, particularly the relationship between Article 18 of Law No. 2 of 2002 and the procedural safeguards governing coercive police action. The second stage compares Indonesian standards with international principles of legality, necessity, proportionality, and accountability. The third stage examines documented law-enforcement practices to identify situations in which discretionary decisions create heightened human rights risks. The fourth stage interprets these findings through the literature on procedural justice and police legitimacy. This process enables the study to distinguish between discretion as a legally necessary operational mechanism and discretion as potentially arbitrary power. The analysis therefore evaluates not simply whether discretion exists, but whether the institutional conditions surrounding its exercise provide sufficient safeguards for rights protection.

The study applies a rights-based analytical standard throughout the interpretation of police discretion. Legality is treated as the requirement that police action possess an appropriate legal basis and remain within the scope of authorized power. Necessity concerns whether intervention is required to achieve a legitimate

law-enforcement objective. Proportionality concerns the relationship between the intensity of police intervention and the seriousness of the threat or objective. Procedural fairness concerns respectful treatment, neutrality, explanation, and opportunities for affected persons to understand or challenge decisions where circumstances permit. Accountability concerns the availability of supervisory, disciplinary, judicial, administrative, and other appropriate review mechanisms. These dimensions are analyzed as interconnected safeguards rather than independent criteria. This approach recognizes that a police action can satisfy one dimension while failing another, and that rights protection therefore depends upon the cumulative operation of legal, organizational, procedural, and institutional controls.

Analysis and Discussion

A. The Legal Architecture of Police Discretion and Human Rights Protection in Indonesia

The Indonesian legal framework recognizes police discretion as a necessary component of law enforcement while simultaneously placing that discretion within a broader conception of policing based on legality and human rights. Law No. 2 of 2002 defines the functions of the Indonesian National Police as including maintenance of security and public order, law enforcement, protection, guidance, and public service, while expressly stating that police functions are performed with respect for human rights (Republic of Indonesia 2002). The statute is therefore significant not merely because it establishes police powers, but because it embeds those powers within a normative institutional mandate. The legal architecture does not conceptualize the police solely as an enforcement agency authorized to suppress crime. It also defines the police as a public institution responsible for protection and service. This dual mandate has direct implications for discretion because the legality of police judgment cannot be evaluated exclusively according to whether it contributes to immediate enforcement objectives. The broader statutory purpose requires discretionary authority to be exercised consistently with protection, service, and respect for human dignity.

Article 18 of Law No. 2 of 2002 provides the central statutory basis for police discretion in Indonesia. The provision allows police officers, for the benefit of the public, to act according to their own judgment in circumstances requiring consideration and action, provided that the action remains within the officer's authority and is reasonable and appropriate under the circumstances (Republic of Indonesia 2002). The provision is analytically important because it acknowledges an unavoidable reality of policing: formal legislation cannot anticipate every factual situation confronting officers. At the same time, Article 18 does not establish an unrestricted power of personal judgment. The language concerning public benefit, authority, reasonableness, and appropriateness establishes substantive and institutional constraints. Discretion therefore functions as delegated professional judgment rather than an independent source of unlimited authority. A police officer

cannot legitimately invoke discretion merely because an action appears operationally convenient. The decision must remain connected to a lawful police function and be capable of being understood as reasonable within the factual circumstances confronting the officer.

The requirement that discretionary action be exercised for the public benefit is particularly important from a human rights perspective because it establishes a public-purpose orientation. Police power is legitimate because it serves collective security and individual protection, not because the officer possesses a personal entitlement to command compliance. The distinction becomes significant where an officer must choose between several legally available responses. If an officer can achieve a legitimate policing objective through a less intrusive intervention, the public-interest rationale may support selecting that alternative rather than automatically choosing the most coercive option. This interpretation is consistent with the broader principles governing police use of force, which emphasize prevention, necessity, proportionality, and accountability. The public-interest requirement should therefore be understood substantively rather than rhetorically. It requires police decision-makers to connect their discretionary choices to identifiable public objectives and to consider whether the chosen means are reasonably related to those objectives. Such an approach reduces the possibility that discretionary authority will become detached from its constitutional and public-service purpose.

The legal significance of Article 18 also becomes clearer when discretion is distinguished from arbitrariness. Both involve decision-making in circumstances where the officer possesses some degree of choice, but their legal character is fundamentally different. Discretion involves selecting among lawful and professionally defensible alternatives; arbitrariness involves decision-making insufficiently connected to law, reason, relevant evidence, or legitimate purpose. The distinction matters because police discretion is sometimes criticized as inherently dangerous simply because officers have judgmental freedom. Such a position overlooks the practical necessity of individualized decision-making. Conversely, treating every police judgment as presumptively legitimate would disregard the risks associated with coercive state power. Indonesian law occupies a middle position by recognizing discretionary judgment while conditioning it on authority and reasonableness. The human rights task is therefore to strengthen mechanisms capable of distinguishing legitimate discretion from arbitrary conduct rather than attempting to eliminate judgment from policing altogether.

The relationship between police discretion and criminal procedure is particularly significant in this regard. During the study period, Law No. 8 of 1981 concerning the Criminal Procedure Code established procedural rules governing arrest, detention, searches, seizure, investigation, and related coercive measures. These rules provided a formal structure within which investigative discretion was expected to operate. The Constitutional Court had also interpreted several provisions of the Code, including provisions concerning the evidentiary basis for

suspect designation, arrest, and detention, thereby demonstrating that procedural police powers are subject to constitutional review (Republic of Indonesia 1981). The resulting framework illustrates an important principle: general discretionary authority under police legislation cannot automatically override specific procedural safeguards established by criminal procedure law. An investigator may exercise judgment concerning investigative priorities, but that judgment must remain within the procedural conditions attached to coercive measures. Discretion thus operates inside a legal architecture rather than above it.

This legal architecture changed at the legislative level at the end of 2025. Law No. 20 of 2025 concerning the Criminal Procedure Code was enacted on 17 December 2025 and expressly repealed Law No. 8 of 1981, but it was scheduled to enter into force on 2 January 2026. The new statute strengthens several rights of suspects, defendants, convicted persons, witnesses, victims, and persons with disabilities, while also revising the regulation of coercive measures, pretrial mechanisms, legal assistance, restorative justice, and coordination between investigators and prosecutors (Republic of Indonesia 2025). For a study whose substantive temporal boundary ends in 2025, the significance of the new law is principally transitional. It demonstrates that the Indonesian legal system was undergoing a substantial procedural reform at the conclusion of the study period. It would therefore be analytically inaccurate to treat the 1981 Code as the permanent contemporary framework, but it is equally inaccurate to apply the 2025 Code retrospectively to police practices occurring before its effective date.

Indonesia's ratification of the International Covenant on Civil and Political Rights provides another important layer of legal and normative constraint. Through Law No. 12 of 2005, Indonesia ratified the ICCPR, thereby formally incorporating an international human rights framework concerning civil and political rights into the national legal order (Republic of Indonesia 2005). The relevance to police discretion is substantial because policing directly affects several rights protected under the Covenant, including liberty and security of person, protection against arbitrary arrest and detention, fair-trial guarantees, freedom of expression, peaceful assembly, and protection of life. Police discretion therefore cannot be assessed solely through domestic administrative law. Its exercise must also be interpreted against Indonesia's broader human rights commitments. This does not mean that every police decision constitutes an international-law question. Rather, where discretionary decisions interfere with protected rights, the ICCPR provides a normative framework for determining whether such interference has an adequate legal basis and whether the state has observed applicable standards governing legitimate restrictions.

The principle of legality consequently has a dual function in Indonesian rights-based policing. At the domestic level, legality requires conformity with statutes, regulations, and lawful police authority. At the international level, it requires that restrictions on protected rights be grounded in law and administered through standards capable of preventing arbitrary state action. This dual dimension is

especially important because broad police mandates can create interpretive uncertainty. General statutory language concerning public order or police functions cannot reasonably Chief of the Indonesian National Police No. 1 of 2009 was developed to provide operational guidance for situations requiring the use of force and to prevent excessive or unjustifiable police be interpreted as granting unlimited authority to interfere with individual rights. Instead, general powers must be read together with specific safeguards and the human rights principles applicable to state coercion. The legal architecture is therefore best understood as layered: the Police Law establishes institutional authority, criminal procedure establishes procedural conditions, police regulations establish operational standards, and human rights law provides substantive limitations on state interference. Discretion exists across these layers but is not superior to them.

The regulation of police use of force illustrates this layered structure particularly clearly. Regulation of the Chief of the Indonesian National Police No. 1 of 2009 was developed to provide operational guidance for situations requiring the use of force and to prevent excessive or unjustifiable police action. The regulation articulates principles including legality, necessity, proportionality, preventive orientation, and professional judgment, while establishing graduated forms of police response (Indonesian National Police 2009a). Its institutional significance is that it translates abstract human rights principles into operational decision-making. An officer confronting resistance does not merely receive the instruction to “respect human rights.” Instead, the regulation establishes a framework through which the officer should evaluate the situation and determine the appropriate level of intervention. Such operationalization is essential because principles that remain purely abstract provide limited assistance to officers required to make decisions within seconds. The regulation therefore represents an attempt to transform rights protection into professional policing practice.

The principle of legality within the use-of-force framework establishes that physical coercion must have a valid legal basis and must occur within police authority. This requirement is important because force can otherwise become normalized as a routine instrument of compliance. The existence of resistance, disagreement, or non-cooperation does not automatically establish that every form of force is lawful. The legal basis for intervention must be combined with an assessment of the particular circumstances. From a rights-based perspective, legality therefore performs a threshold function: it asks whether the officer is authorized to intervene in the first place and whether the chosen category of force falls within the officer's authority. Only after that threshold is satisfied should the analysis move toward necessity and proportionality. This sequential logic prevents an officer from using the existence of a general police mandate as a justification for any subsequent coercive action. It also creates a clearer basis for post-incident review because supervisors can examine the legal foundation of the intervention before evaluating its intensity.

Necessity operates as a more demanding limitation because it requires officers to determine whether force or another intrusive measure is actually required. The Indonesian framework's emphasis on preventive measures and graduated intervention reflects the proposition that police authority should not automatically be translated into coercion. Where communication, warning, negotiation, containment, or other less intrusive measures can reasonably address a situation, the necessity principle supports their consideration. This is not an absolute requirement to avoid force regardless of circumstances. Police officers may encounter immediate threats in which delay or negotiation would expose officers or civilians to serious harm. The analytical value of necessity lies in requiring an explanation of why coercion was required under the circumstances rather than assuming that coercion was justified merely because an officer possessed the power to employ it. Necessity therefore converts discretion into an evaluative process involving alternatives, risks, timing, and the immediacy of the arrest situations, crowd management, and use-of-force incidents because the same objective can potentially be achieved through interventions with substantially different effects on individual rights. The Indonesian regulation be interpreted as a purely mathematical relationship between threat and force. Police situations evolve rapidly, and officers must account for factors such as immediacy, distance, number of participants, available alternatives, and the possibility of escalation. The appropriate standard is therefore reasoned proportionality under the circumstances. Documentation and supervisory review become essential because they permit later assessment of whether threat.

Proportionality further structures this decision-making process by requiring a relationship between the seriousness of the threat and the intensity of the police response. The principle is especially relevant to arrest situations, crowd management, and use-of-force incidents because the same objective can potentially be achieved through interventions with substantially different effects on individual rights. The Indonesian regulation's graduated approach reflects this concern by identifying escalating forms of intervention rather than treating force as a binary category (Indonesian National Police 2009a). Yet proportionality should not be interpreted as a purely mathematical relationship between threat and force. Police situations evolve rapidly, and officers must account for factors such as immediacy, distance, number of participants, available alternatives, and the possibility of escalation. The appropriate standard is therefore reasoned proportionality under the circumstances. Documentation and supervisory review become essential because they permit later assessment of whether the officer's interpretation of the circumstances was objectively defensible rather than merely asserted after the fact.

The legal framework concerning human rights within police duties reinforces this orientation. Regulation of the Chief of the Indonesian National Police No. 8 of 2009 was specifically designed to provide standards for implementing human rights principles in police duties. Its significance lies in recognizing that human rights are

not external constraints imposed only after police action has occurred. They form part of the professional standards governing everyday police work. This institutionalization matters because officers routinely encounter rights-sensitive situations that do not necessarily become formal human rights cases. A stop, search, questioning, arrest, crowd-control measure, or use of force may affect individual rights even when no formal complaint is subsequently submitted. Embedding human rights within professional police standards therefore shifts the analytical focus from retrospective punishment to prospective decision quality. Rights protection becomes part of competent policing rather than a separate activity performed by specialized legal or human rights personnel.

The relationship between discretion and human rights is also visible in the distinction between authority and justification. A police officer may possess lawful authority to arrest a suspect, but the existence of authority does not eliminate the need to satisfy procedural requirements concerning the arrest. Similarly, an officer may possess authority to maintain public order, but this does not automatically justify restricting peaceful expression or assembly. In each situation, discretion operates after the legal framework has identified the permissible field of action. The officer's task is to select an appropriate response within that field. This distinction is important because broad police powers can otherwise become self-validating: the officer identifies a public-order concern, invokes police authority, and treats the existence of that authority as sufficient justification for the chosen intervention. A rights-based framework instead requires separate consideration of legal authority, factual necessity, proportionality, and procedural safeguards.

Public-order policing provides a particularly demanding test for this framework because officers must balance competing interests under conditions of uncertainty. The state has a legitimate responsibility to protect participants, bystanders, property, and public safety, while citizens retain rights relating to expression and peaceful assembly. The discretionary decisions made during demonstrations can therefore affect several groups simultaneously. Police commanders may have to decide where officers are deployed, whether particular conduct constitutes a threat, when warnings should be issued, whether arrests are necessary, and how force should be calibrated. The complexity of these decisions means that legal rules alone cannot prescribe every operational detail. However, complexity also strengthens the need for planning, communication, clear chains of command, documentation, and post-operation review. Discretion is most defensible where the organization anticipates predictable dilemmas and provides officers with structured guidance rather than leaving individual officers to construct their own standards in the field.

The documented findings concerning the September 2019 demonstrations illustrate this institutional challenge. Komnas HAM's investigation reported allegations involving excessive use of force, arrests, interference with journalists and medical personnel, and other conduct affecting protected rights (Komnas HAM 2020). Such findings should be interpreted carefully. They do not establish that all

officers participating in the demonstrations acted unlawfully, nor do they demonstrate that every operational decision was unreasonable. Their importance for this study is that they show how discretionary decisions made during public-order operations can produce consequences extending beyond the immediate enforcement objective. The protection of journalists and medical personnel, for example, requires officers to recognize functional roles within a complex environment rather than treating every person present as part of a potential threat. The case therefore illustrates why rights-based discretion requires situational awareness and institutional planning in addition to general legal knowledge.

A related issue concerns the role of police leadership. Discretion is exercised by individual officers, but the organizational environment significantly influences the range and character of choices available to them. Supervisors establish expectations through briefing, training, deployment decisions, evaluation, and post-incident review. If an organization rewards only the immediate achievement of enforcement objectives, officers may perceive rights safeguards as secondary considerations. Conversely, if supervisors consistently require officers to document reasons for intrusive actions and review proportionality, rights-based reasoning can become embedded within professional culture. Accountability is therefore not simply a mechanism for punishing individual misconduct after an incident. It is also a method through which organizations communicate what forms of discretion are professionally legitimate. The legal recognition of discretion becomes more meaningful when supervisory structures reinforce the same principles of legality, necessity, proportionality, and reasonableness.

The Indonesian framework consequently reveals an important paradox. On the one hand, the country possesses a relatively developed formal architecture for rights-conscious police discretion. Law No. 2 of 2002 expressly recognizes discretion and simultaneously connects police functions with human rights. Indonesia has ratified the ICCPR through Law No. 12 of 2005, while police regulations provide specific standards concerning use of force and human rights in police duties. On the other hand, the existence of these instruments does not itself determine how individual officers exercise judgment. The effectiveness of the framework depends upon interpretation, training, supervision, documentation, institutional culture, and accountability. This gap between normative architecture and implementation is therefore not evidence that the legal framework is irrelevant. Rather, it identifies the principal institutional challenge: transforming formal constraints into routine professional practices that shape decisions before rights violations occur.

The legal architecture should therefore be interpreted as establishing a model of constrained discretion rather than eliminating discretion. This model accepts that police officers must make context-sensitive judgments but requires those judgments to remain connected to public purpose, lawful authority, necessity, proportionality, and human dignity. Such an approach is compatible with the broader theory of street-level bureaucracy because it recognizes that public officials must translate

general rules into concrete situations (Lipsky 2010). However, unlike an unconstrained street-level model, rights-based policing requires organizational systems capable of limiting the range of acceptable choices and reviewing significant decisions. The Indonesian framework already contains many of the normative components required for such a system. The principal issue is therefore institutional integration: whether statutory rules, police regulations, professional training, supervisory practices, and accountability mechanisms operate as a coherent system rather than as separate instruments.

The development of the new Criminal Procedure Code at the end of 2025 reinforces the importance of this institutional integration. The legislation was designed to strengthen the rights of suspects, defendants, victims, witnesses, and persons with disabilities, while revising coercive measures and strengthening mechanisms such as pretrial review and restorative justice (Republic of Indonesia 2025). Although its substantive provisions were not yet operative during the final days of 2025, its enactment demonstrates an important direction in Indonesian criminal justice policy: procedural authority is increasingly being reconsidered through a rights-protection lens. This development has implications for police discretion because procedural reform can change the boundaries within which officers make investigative decisions. The broader lesson is that discretion must be understood as dynamic. Its legal parameters evolve as the state refines its understanding of due process, human rights, technology, and institutional accountability. Future policing practice will therefore depend not only on the existence of discretionary authority but also on how new procedural standards are translated into police operations.

Overall, the Indonesian legal architecture demonstrates that police discretion and human rights protection are not inherently incompatible. The statutory recognition of discretion responds to the practical reality that policing requires professional judgment, while the surrounding legal framework establishes constraints intended to prevent arbitrary or excessive exercise of that judgment. The principal normative standards can be summarized conceptually through legality, necessity, proportionality, procedural fairness, and accountability, but their effectiveness depends upon their integration into organizational practice. The central challenge is consequently not to abolish discretion but to ensure that discretion remains reasoned, lawful, reviewable, and oriented toward public protection. This finding establishes the foundation for the subsequent discussion of how discretion operates in concrete areas of law enforcement, particularly arrest and investigation, public-order policing, and coercive use of police authority.

B. Police Discretion in Arrest, Investigation, Public-Order Policing, and Coercive Authority

Police discretion becomes most consequential when officers exercise powers that directly affect individual liberty, physical integrity, privacy, expression, and access to justice. Among the most significant areas are arrest, investigation, public-

order policing, and the use of coercive authority. These areas are connected because an initial discretionary decision can determine the trajectory of subsequent legal proceedings. An officer who decides to stop, question, search, or arrest an individual may generate consequences extending into detention, investigation, prosecution, and trial. Consequently, the protection of human rights cannot begin only after formal judicial proceedings commence. It must operate from the first police encounter. Indonesian criminal procedure historically sought to provide procedural safeguards against arbitrary intervention, but the practical significance of those safeguards has depended heavily upon how officers interpret evidentiary thresholds and exercise operational judgment. The literature concerning the development of the Indonesian Criminal Procedure Code demonstrates that the tension between state authority and individual rights was embedded in the legislative design of the system itself, making police discretion a structural issue rather than merely a matter of individual misconduct (Pangaribuan 2025).

Arrest represents one of the clearest examples of the relationship between discretion and human rights because it directly restricts liberty and can significantly alter the legal position of the person concerned. Under the criminal procedure framework applicable during most of the study period, arrest was subject to statutory conditions concerning the status of the person suspected of committing an offence, evidentiary requirements, and procedural notification. These requirements are important because police officers necessarily exercise judgment when determining whether circumstances justify immediate deprivation of liberty. The discretion is legitimate only when the officer evaluates relevant facts within the legal framework rather than treating suspicion itself as sufficient authority. The distinction becomes especially important in situations where information is incomplete or rapidly developing. A police officer may reasonably suspect that an individual is connected to an offence, but suspicion must still be assessed against the procedural threshold established by law. Rights-based discretion therefore requires officers to distinguish between investigative curiosity and legally sufficient grounds for coercive intervention, because the consequences of an unjustified arrest can include loss of liberty, reputational harm, disruption of employment or education, and obstacles to obtaining legal assistance.

The historical development of the Indonesian Criminal Procedure Code illustrates why these safeguards are necessary. Pangaribuan's analysis of the 1979–1981 legislative process demonstrates that the development of KUHAP involved a fundamental tension between proponents of stronger procedural rights and proponents of broad state authority to maintain security and public order (Pangaribuan 2025). The eventual statute introduced safeguards that represented an important departure from earlier approaches, but the legislative compromise also left substantial areas in which law-enforcement authorities retained significant discretion. This historical background matters because institutional rules do not emerge in a normative vacuum. The scope of police discretion reflects choices concerning how a legal system balances liberty and security. Where legislation

grants broad authority without precise thresholds or effective mechanisms for challenge, officers may possess greater operational flexibility, but individuals may face greater risks of arbitrary interference. The contemporary analysis of discretion must therefore recognize that many practical problems have institutional roots extending beyond individual police decisions.

The evidentiary threshold for coercive investigative measures illustrates this problem particularly clearly. Investigators frequently operate with incomplete information because the purpose of investigation is precisely to determine whether available information can be developed into sufficient evidence. This creates a structural tension: investigators need flexibility to discover evidence, but the exercise of investigative power can itself interfere with rights. Search, seizure, questioning, and arrest can therefore become tools through which investigators generate the information needed to justify further action. A rights-based system must prevent this circular logic from becoming unlimited. The fact that an officer hopes to obtain evidence cannot by itself establish that the officer is entitled to use every available coercive measure. The appropriate approach is to require an independent legal threshold for each significant interference and to preserve mechanisms through which affected persons can challenge the decision. This is particularly important where the same institution exercises multiple stages of investigation because institutional self-confirmation can otherwise weaken the practical protection offered by procedural safeguards.

The problem is compounded when procedural rules are ambiguous or when key concepts are insufficiently defined. Pangaribuan's examination of the original KUHAP legislative process notes that important concepts surrounding preliminary evidence and emergency circumstances historically provided law-enforcement institutions with considerable interpretive space (Pangaribuan 2025). Such provisions may be understandable from an operational perspective because legislators cannot anticipate every investigative circumstance. However, ambiguity can become problematic when the institution exercising the power also determines how broadly the ambiguity should be interpreted. In these circumstances, discretion can gradually expand through practice even without formal legislative change. Rights-based policing therefore requires more than the existence of statutory safeguards. It requires interpretive standards, judicial review, supervisory guidance, and professional norms capable of constraining the operational meaning of ambiguous provisions. The issue is not whether police should ever interpret uncertain circumstances, but whether their interpretation remains subject to review by institutions sufficiently independent to identify excessive interference.

Arrest discretion also has important implications for equality before the law. Formal rules may apply identically to all citizens, yet discretionary enforcement can produce unequal outcomes if officers apply different thresholds to different groups or locations. Street-level policing necessarily involves prioritization because officers cannot investigate every potential violation simultaneously. Nevertheless, prioritization can become problematic if decisions are influenced by stereotypes,

social status, political considerations, institutional pressure, or assumptions concerning particular communities. A rights-based approach therefore requires attention to both the legality of individual decisions and patterns of enforcement. Individual discretion should not be evaluated solely as an isolated event when repeated decisions reveal systematic differences in who is stopped, questioned, searched, arrested, or subjected to force. This does not mean that different enforcement outcomes automatically establish discrimination, because crime patterns, operational circumstances, and resource distribution may legitimately differ. It means that institutions should maintain sufficient records and oversight to identify whether discretionary authority is producing unexplained or unjustified disparities.

The investigative stage creates another form of discretion concerning the treatment of suspects, witnesses, victims, and evidence. Police officers must determine which witnesses to interview, which investigative leads to prioritize, what evidence requires preservation, and which hypotheses deserve further examination. These decisions are unavoidable and can contribute to efficient law enforcement. However, investigative discretion also creates risks when officers become excessively committed to an initial theory of the case. Confirmation bias can encourage investigators to interpret ambiguous information as supporting an existing hypothesis while discounting contradictory evidence. From a human rights perspective, this can affect not only suspects but also victims because an investigation that prematurely focuses on one theory may overlook alternative explanations. Rights-based investigative discretion should therefore include professional standards requiring investigators to document significant decisions, consider relevant exculpatory information, and maintain an evidence-based distinction between suspicion and proof. Accountability in investigation should consequently assess the quality of reasoning, not merely whether an investigation eventually produces a conviction.

The protection of legal assistance is particularly important within this process because access to counsel can provide an external safeguard against arbitrary or coercive investigative practices. Komnas HAM's documentation concerning the September 2019 demonstrations reported limited access to legal assistance for some persons who were arrested (Komnas HAM 2020). This finding is significant because legal assistance is not simply a service provided after police discretion has been exercised. Counsel can affect the fairness of the process by helping individuals understand the grounds for detention, challenging unlawful treatment, documenting allegations, and ensuring that procedural rights are not merely theoretical. Restrictions on access to counsel therefore increase the informational and institutional imbalance between police authorities and individuals subjected to coercive powers. In rights-based policing, procedural safeguards should be understood as mechanisms that improve the reliability of police decision-making as well as mechanisms that protect individuals from misconduct.

Public-order policing creates a different but related category of discretionary problems because officers must simultaneously manage collective behavior, protect public safety, and respect individual and collective freedoms. Demonstrations are especially complex because lawful assembly and expression may involve conduct that is inconvenient, disruptive, or politically contentious without becoming unlawful. Police officers therefore need to distinguish between protected expression, peaceful assembly, administrative violations, and conduct creating an actual threat to persons or property. The difficulty is that these categories can change rapidly during a single event. A peaceful demonstration can become violent, while an initially tense situation can be resolved through communication and negotiation. Discretion is therefore unavoidable, but it must be exercised through a framework that prevents inconvenience or disagreement from being treated automatically as a security threat. The objective of public-order policing should be to protect the exercise of lawful rights while addressing genuine risks, rather than treating the existence of dissent as evidence of disorder.

The September 2019 demonstrations provide an important documented example of the human rights risks associated with public-order discretion. Komnas HAM reported allegations concerning violence, excessive use of force, arrests, limitations on access to legal assistance, and other conduct affecting rights to life, health, security, and justice during events occurring between 24 and 30 September 2019 (Komnas HAM 2020). Komnas HAM also documented allegations concerning police procedural violations and the use of coercive measures. These findings are relevant because they illustrate how operational decisions made during a large-scale demonstration can produce multiple rights consequences simultaneously. The issue is not merely whether police possessed authority to maintain order. The more demanding questions concern how force was selected, whether alternatives were available, whether individuals who had left the demonstration continued to be pursued, whether vulnerable persons were protected, and whether those arrested could promptly access legal assistance. These questions transform public-order discretion into a concrete human rights issue rather than an abstract debate about police powers.

The documented complaints concerning journalists and medical personnel during the same period further demonstrate the importance of situational differentiation. Komnas HAM reported allegations involving violence or intimidation affecting journalists, medical personnel, and ambulances during the demonstrations (Komnas HAM 2019). From an operational perspective, officers working in a chaotic environment may face difficulty identifying the role of every person present. Nevertheless, the existence of operational complexity strengthens rather than eliminates the need for planning and communication. Police commanders can reduce discretionary uncertainty by establishing clear protocols concerning journalists, medical teams, emergency vehicles, and vulnerable participants before operations begin. Officers can also be trained to recognize functional identifiers and understand the legal significance of protected activities.

The principle of reasonable discretion should therefore include anticipatory planning. Not every human rights problem needs to be solved at the moment of confrontation; organizational preparation can reduce the amount of improvisation required from individual officers.

The issue of dispersal demonstrates the difference between legitimate public-order authority and excessive enforcement. Police may possess authority to disperse an assembly under specified legal circumstances, but the objective of dispersal does not automatically authorize every tactic used to achieve it. Komnas HAM publicly emphasized in October 2019 that police responses to demonstrations should not become repressive and that participants should retain access to legal assistance (Komnas HAM 2019). This statement represents the position of an independent national human rights institution and should be understood as an institutional assessment rather than as an assumption adopted uncritically by this study. Its significance is analytical: it illustrates that the legitimacy of police intervention depends upon the relationship between the lawful objective and the means selected. If dispersal can be achieved through warnings, communication, controlled movement, or targeted intervention, indiscriminate force may be difficult to reconcile with necessity and proportionality. Conversely, where immediate violence creates a serious threat, police may need to act more rapidly and forcefully. The relevant standard therefore remains contextual rather than absolute.

Use-of-force decisions provide perhaps the clearest illustration of the difference between discretion and arbitrariness. Police officers may need to respond within seconds to threats involving weapons, physical attacks, or rapidly escalating violence. In such situations, it would be unrealistic to require officers to perform a detailed legal analysis before every physical action. This reality is precisely why operational regulations and training are necessary. A well-designed framework allows officers to internalize legal principles before the incident so that legality, necessity, and proportionality become components of professional judgment rather than abstract concepts remembered only after an event. Indonesia's Regulation No. 1 of 2009 seeks to provide such a graduated framework. The regulation's importance therefore extends beyond its substantive rules: it represents an attempt to institutionalize discretion by establishing expected patterns of decision-making before officers encounter high-pressure circumstances. The effectiveness of such a framework depends on training, supervision, equipment, command decisions, and the willingness of officers to document and justify significant force.

The concept of proportionality is especially difficult when officers face uncertainty concerning the level of threat. An officer may reasonably perceive a situation as dangerous even when later evidence suggests that the threat was less severe than initially believed. Retrospective assessment must therefore avoid judging decisions exclusively through information that became available after the event. At the same time, the existence of uncertainty cannot provide an unlimited defense for excessive force. A rights-based review should reconstruct what information was reasonably available to the officer at the relevant moment, what

alternatives were realistically available, how rapidly circumstances developed, and whether the officer's response was consistent with training and applicable rules. This approach recognizes the operational realities of policing while maintaining accountability. The purpose of post-incident review should not be to demand impossible certainty from officers, but to determine whether their decisions were reasonable given the information, risks, and alternatives that existed at the time.

The distinction between reasonable error and unlawful conduct is therefore essential. Police officers can make decisions in good faith that later prove mistaken. A mistaken judgment does not necessarily constitute a human rights violation if the officer acted within legal authority, followed applicable procedures, and made a proportionate assessment based on available information. Conversely, an officer may deliberately or recklessly disregard established safeguards even when the resulting harm is limited. Rights-based accountability should therefore assess the decision-making process, not simply the outcome. This distinction is particularly important in high-pressure policing because excessive risk aversion can itself undermine public safety. If officers believe that any error will automatically result in punishment, they may become reluctant to intervene even when intervention is necessary to protect victims or prevent serious violence. Effective accountability must consequently combine clear standards with fair assessment of context.

Police discretion in public-order situations also interacts with the institutional command structure. Individual officers rarely determine the overall strategy of a large demonstration response. Commanders decide deployment, equipment, tactical posture, communication, dispersal strategies, and escalation procedures. Individual officers then operate within those organizational decisions. A rights-based assessment should therefore avoid placing all responsibility on street-level officers when institutional decisions contributed to the conditions in which excessive force became more likely. Conversely, command responsibility should not eliminate individual accountability where officers deliberately depart from lawful instructions. The most effective framework is therefore layered accountability. Commanders should be responsible for planning and supervision, while individual officers remain responsible for their own conduct. Documentation of orders and operational decisions is essential because it enables investigators and oversight institutions to reconstruct how a particular incident developed.

Investigative discretion can similarly be shaped by organizational incentives. Police organizations may experience pressure to demonstrate crime-control effectiveness through arrest numbers, case clearance, or visible enforcement activity. Such indicators can be useful for organizational management, but if they become dominant measures of performance, officers may have incentives to prioritize measurable enforcement actions over less visible activities such as mediation, victim assistance, evidence preservation, or community engagement. This can distort the exercise of discretion. A rights-based performance model should therefore evaluate not only the number of arrests or cases resolved but also the legality and quality of investigative processes. Recent Indonesian research

concerning law-enforcement reform has documented increasing use of restorative approaches and out-of-court settlement mechanisms in appropriate cases, indicating that Indonesian law enforcement institutions have developed mechanisms capable of moving beyond purely punitive enforcement (Suhariyanto et al. 2024). Such approaches demonstrate that discretion can be used not only to expand coercion but also to identify less restrictive and potentially more restorative responses.

Restorative justice is particularly relevant because it demonstrates that discretion can protect rights when appropriately structured. Traditional understandings of police discretion often emphasize the risk that officers will exercise too much power. However, discretion can also prevent unnecessary criminalization when legal frameworks permit alternative responses. Where a minor offence can legitimately be resolved through mediation, warning, restitution, or another restorative mechanism, insisting upon maximal criminal enforcement may itself produce disproportionate consequences. Indonesian law-enforcement reforms have increasingly incorporated restorative approaches, including through police-level mechanisms and broader criminal justice policy. The existence of such alternatives expands the range of lawful decisions available to officers. Nevertheless, restorative discretion also requires safeguards because informal resolution can become problematic if participation is coerced, victims are pressured to forgive, or disadvantaged individuals lack meaningful choice. Rights-based discretion therefore requires voluntariness, informed participation, documentation, and oversight even when the outcome is less coercive than formal prosecution.

The concept of procedural justice helps explain why these distinctions matter to police legitimacy. Research by Davies, Meliala, and Buttle found that Indonesian citizens' perceptions of police legitimacy were significantly shaped by procedural experiences, including respect and fairness, rather than being reducible to perceptions of crime-control effectiveness (Davies, Meliala, and Buttle 2016). This finding is important for discretionary policing because citizens often cannot directly evaluate the technical correctness of an investigative decision. They can, however, observe whether officers provide explanations, listen to their concerns, treat them respectfully, and appear neutral. Such experiences influence whether citizens regard police authority as legitimate. At the same time, procedural justice should not be interpreted as a substitute for substantive legality. Respectful communication cannot legitimize an unlawful arrest, just as a polite officer cannot make disproportionate force lawful. Procedural fairness is best understood as an additional dimension that strengthens the legitimacy of otherwise lawful police authority. Tandfonline

Recent scholarship published in 2025 further demonstrates that the Indonesian context requires careful attention to institutional and cultural characteristics when applying theories of police legitimacy. Research examining police legitimacy in Indonesia has emphasized the importance of the country's centralized police authority, high power-distance social environment, and

historical relationship between police and state institutions (Adhikara and Putranto 2025). This does not mean that Indonesian citizens uniformly accept hierarchical policing or that procedural justice is unimportant. Rather, it suggests that legitimacy may be shaped by multiple factors, including perceived effectiveness, satisfaction, procedural treatment, and institutional context. For the present analysis, the implication is that rights-based discretion should not be presented as a simple transfer of a Western policing model into Indonesia. The principles of dignity, neutrality, explanation, legality, and proportionality have broader human rights significance, but their implementation must be adapted to the organizational and social realities in which Indonesian officers operate.

The relationship between discretion and public trust is particularly important because human rights protection and operational effectiveness are not necessarily competing objectives. Excessive coercion can undermine cooperation, while perceived fairness can facilitate voluntary compliance and information sharing. Police officers depend upon citizens for witnesses, reports, intelligence, and cooperation during investigations. If citizens believe that police decisions are arbitrary or disrespectful, they may become reluctant to engage with law enforcement. Conversely, predictable and fair police behavior can strengthen the willingness of communities to cooperate. The instrumental and normative dimensions of policing therefore intersect. Rights-based discretion can contribute to operational effectiveness by strengthening the legitimacy that makes police authority more sustainable. This does not mean that every rights-respecting decision will immediately produce measurable improvements in crime control. Rather, the relationship is institutional and cumulative: consistent lawful and fair treatment can contribute to conditions in which police authority is more readily accepted and supported by the public.

Arrest and investigation also reveal why accountability must operate before, during, and after police action. Before intervention, training and clear legal standards should help officers identify the circumstances in which coercive authority is appropriate. During intervention, supervision and command structures should provide guidance in complex cases. After intervention, documentation and review should enable the institution to determine whether the decision complied with law and professional standards. A purely retrospective accountability model is insufficient because punishment after a serious rights violation cannot restore lost liberty, physical injury, or public trust. Conversely, preventive rules without post-incident review may become ineffective because officers and supervisors have little incentive to comply with standards that are never meaningfully examined. A comprehensive accountability system must therefore connect prevention, operational oversight, and retrospective review.

Documentation is a particularly important but often underestimated component of this process. Discretionary decisions are difficult to evaluate if officers are not required to record the factual circumstances and reasoning underlying significant interventions. Documentation can include the grounds for

arrest, the evidence considered, the circumstances leading to use of force, warnings issued, alternatives attempted, injuries observed, and referrals to medical or legal assistance. Such records serve several functions. They protect citizens by creating an evidentiary basis for review, protect officers by preserving evidence concerning the circumstances of their decisions, and help police organizations identify recurring operational problems. Documentation also makes discretion visible to supervisors and external oversight bodies. Without adequate records, accountability may depend excessively on competing recollections, which can make both misconduct investigations and legitimate officer defenses more difficult.

Technology can potentially strengthen this process through body-worn cameras, digital arrest records, electronic case-management systems, and centralized use-of-force reporting. However, technology should not be treated as an automatic solution to discretionary abuse. Recording an interaction does not determine whether the underlying decision was lawful or proportionate, and digital systems can create new privacy and data-governance concerns. A rights-based technological approach therefore requires clear rules concerning access, storage, retention, security, disclosure, and independent review. Technology should support professional judgment and accountability rather than replace them. The institutional objective is not to monitor every officer continuously but to ensure that significant discretionary interventions can be reconstructed when legitimate questions arise. Such a system can improve both citizen protection and procedural fairness for officers.

The interaction between discretion and human rights is also affected by training. Traditional police training may emphasize legal knowledge, tactical skills, weapons handling, physical intervention, and crime-scene procedures. These skills remain essential, but rights-based discretion requires officers to integrate them with decision-making concerning legality, necessity, proportionality, communication, and de-escalation. Training should therefore use scenario-based methods that simulate uncertainty rather than simply requiring officers to memorize regulations. Officers can be presented with situations involving ambiguous suspicion, resistant but nonviolent individuals, vulnerable persons, demonstrations, domestic disputes, and rapidly escalating threats. The objective is to develop professional reasoning under pressure. Such training can make human rights principles operational by turning abstract standards into decision-making habits. It can also help officers understand that restraint is not necessarily a failure of enforcement and that de-escalation can be a form of professional competence.

Supervisory training is equally important because organizational leaders influence how discretionary standards are applied. A supervisor who reviews an incident only by asking whether the suspect was arrested or whether the crowd was dispersed may reinforce outcome-oriented policing. A supervisor who also asks what legal authority existed, what alternatives were considered, why force was necessary, whether it was proportionate, and whether affected persons received required safeguards communicates a different institutional standard. Over time,

repeated supervisory practices can shape organizational culture more effectively than written policies alone. Rights-based policing therefore requires the alignment of formal regulations, training, performance evaluation, and supervisory expectations. If these institutional components send conflicting signals, officers may reasonably become uncertain about which standards actually matter.

The Indonesian experience also demonstrates the importance of independent oversight. Komnas HAM has played a significant role in documenting allegations of police misconduct and articulating human rights concerns in law-enforcement operations. Its involvement in the 2019 demonstrations illustrates how external institutions can provide an alternative evidentiary and normative perspective when police conduct is contested. Independent oversight is important because internal police investigations may face institutional conflicts of interest, even where individual investigators act professionally. At the same time, oversight institutions require adequate access to information, legal authority, investigative capacity, and institutional independence to perform meaningful review. The existence of an oversight institution alone is insufficient if its recommendations are systematically ignored or if it cannot obtain relevant evidence. Effective accountability therefore depends upon the broader institutional relationship among police, prosecutors, courts, human rights institutions, and civil society.

The practical implication is that police discretion should be understood as a form of institutional risk management. Every discretionary intervention carries potential benefits and potential rights costs. Arrest may prevent further offending but restrict liberty. Search may secure evidence but intrude upon privacy. Force may protect officers and civilians but create risks of injury. Dispersal may restore public order but interfere with assembly and expression. Restorative resolution may avoid unnecessary criminalization but may also produce pressure on victims if safeguards are weak. Rights-based policing does not require officers to eliminate all risks because policing itself necessarily involves difficult choices. Instead, it requires officers and institutions to identify risks explicitly, select proportionate responses, and maintain mechanisms for review. This approach provides a more realistic understanding of human rights than one that assumes all police intervention can be made risk-free.

The analysis also indicates that discretion should not be assessed exclusively at the individual level. Institutional structures determine the information officers receive, the options available to them, the incentives they face, and the consequences of their decisions. A poorly designed organizational system can place officers in situations where rights-compliant choices are difficult, while a well-designed system can make lawful discretion easier. For example, clear operational protocols can reduce uncertainty during demonstrations; effective legal assistance can strengthen procedural safeguards during investigation; reliable communication systems can support de-escalation; and supervisory review can identify problematic patterns before they become institutionalized. This organizational perspective prevents the analysis from reducing human rights problems to individual morality.

Professional ethics remain important, but sustainable rights protection requires institutions that make ethical and lawful behavior operationally feasible.

The evidence reviewed in this section therefore supports a distinction between discretionary capacity and discretionary quality. Indonesian police officers require substantial discretionary capacity because crime, investigation, public-order situations, and emergency circumstances cannot be completely standardized. The relevant policy question is whether that capacity is accompanied by sufficient legal guidance, professional competence, institutional supervision, and accountability. Where those conditions are present, discretion can support individualized justice, de-escalation, restorative approaches, and efficient allocation of police resources. Where they are weak, discretion may produce inconsistent enforcement, unnecessary coercion, or rights violations. The appropriate response is consequently not the abolition of discretion but its institutionalization. Police organizations should design systems in which significant discretionary choices are legally grounded, professionally reasoned, appropriately documented, and capable of independent review.

Ultimately, the Indonesian evidence demonstrates that the most serious human rights risks arise not from discretion alone but from discretion operating without sufficiently integrated safeguards. Arrest and investigation require evidentiary and procedural discipline. Public-order policing requires careful distinction between lawful expression and genuine threats to public safety. Use of force requires legality, necessity, proportionality, and continuous reassessment. Restorative approaches require voluntariness and procedural fairness. Across all these contexts, documentation, supervision, legal assistance, and external accountability provide mechanisms through which individual judgment can remain connected to institutional standards. The central implication is that rights-based policing should treat discretion as a professional responsibility rather than merely a legal privilege. Officers should be expected not only to possess authority but also to explain why a particular exercise of authority was necessary and proportionate under the circumstances. This conception provides the analytical foundation for the final discussion, which examines the institutional mechanisms required to transform legally recognized discretion into sustainable rights-based policing in Indonesia.

C. Institutional Accountability, Professionalism, and the Development of Rights-Based Police Discretion

The preceding analysis demonstrates that the central challenge of police discretion in Indonesia is not the existence of discretionary authority itself but the institutional conditions under which that authority is exercised. Discretion becomes compatible with human rights when officers possess sufficient legal knowledge, professional competence, supervisory guidance, and opportunities for independent review. This requires moving beyond an accountability model that focuses exclusively on identifying and punishing misconduct after an incident has occurred.

Accountability should also function prospectively by creating organizational conditions that help officers recognize lawful and rights-respecting choices before coercive action is taken. Recent scholarship on police accountability similarly distinguishes between being “held accountable” through external mechanisms and developing professional capacities that enable officers to identify and perform appropriate actions independently (Bradford et al. 2025). This distinction is particularly relevant to Indonesia because formal human rights regulations already exist, while concerns remain regarding the consistency of implementation in operational environments.

Police professionalism provides the first institutional foundation for rights-based discretion. Professionalism should not be understood simply as technical competence or obedience to organizational hierarchy. In a democratic policing environment, professionalism also requires the capacity to interpret legal rules, evaluate competing interests, communicate with citizens, recognize individual rights, and justify coercive decisions. The Indonesian Police Law establishes policing as a public function involving security, law enforcement, protection, guidance, and service, thereby giving professional competence a broader meaning than crime suppression alone (Republic of Indonesia 2002). Professional judgment becomes particularly important because officers frequently encounter circumstances in which several lawful responses are possible. The professional officer is therefore not merely the person who knows the rules but also the person capable of applying those rules appropriately to uncertain circumstances. Rights-based professionalism consequently requires legal literacy and ethical reasoning to be treated as operational competencies rather than as supplementary knowledge.

Training is a principal mechanism through which professional standards can become embedded in discretionary decision-making. Regulation of the Chief of the Indonesian National Police No. 8 of 2009 provides an institutional basis for integrating human rights principles into police duties, while Regulation No. 1 of 2009 establishes principles for the use of force, including legality, necessity, proportionality, prevention, and professional judgment (Indonesian National Police 2009a; 2009b). The continued use of these standards in police education and professional development indicates that the institution formally recognizes human rights as an operational component of policing. In October 2025, for example, the Yogyakarta Regional Police conducted legal counseling concerning Regulation No. 8 of 2009 and emphasized the relationship between human rights, professional policing, accountability, and the principles governing the use of force (Indonesian National Police 2025). Such initiatives demonstrate institutional recognition, although their existence does not by itself establish uniform implementation across all police units.

The effectiveness of human rights training depends substantially upon whether it is connected to realistic operational scenarios. Officers rarely confront human rights questions in the form of abstract legal propositions. Instead, they encounter rapidly changing situations involving uncertain information, competing demands,

emotional pressure, and potentially serious consequences. Training should therefore reproduce the decision-making environment in which discretion is actually exercised. Scenarios involving arrest, demonstrations, searches, domestic disputes, vulnerable persons, medical emergencies, and resistance can require officers to identify legal authority, assess necessity, consider alternatives, and determine proportionality. Such training can transform legal principles into professional habits. It can also create a common institutional vocabulary for supervisors and officers when reviewing difficult decisions. Human rights education becomes most effective when officers understand not only what a rule says but also why the rule exists, what risk it addresses, and how it should influence judgment under pressure.

Supervision is the second institutional mechanism necessary for constraining discretionary authority. Individual officers do not operate independently from the organizational hierarchy. Supervisors establish expectations through operational briefings, deployment decisions, instructions, performance assessments, incident reviews, and disciplinary processes. Consequently, the actual meaning of discretionary authority can differ from its formal legal definition depending upon the behavior that supervisors reward or tolerate. If supervisors emphasize arrest numbers, crowd dispersal, or rapid case closure without examining the legality and proportionality of the methods used, officers may interpret operational outcomes as the dominant institutional priority. Conversely, when supervisors routinely ask officers to explain the factual basis, alternatives considered, and proportionality of coercive actions, rights-based reasoning becomes part of normal police practice. Supervisory accountability therefore operates as an intermediary between formal law and street-level discretion.

The importance of organizational evaluation is reinforced by concerns expressed by Komnas HAM regarding a continuing gap between Indonesia's extensive human rights regulatory framework and its implementation. In September 2024, Komnas HAM stated that although Indonesia possesses numerous human rights instruments and police regulations, implementation in the field continued to reveal problems, particularly in the handling of demonstrations and the use of force. The institution specifically identified police perspectives and work culture as factors requiring evaluation and argued that excessive force could become normalized when violations were not adequately evaluated or sanctioned (Komnas HAM 2024). These observations are institutionally significant because they shift attention from the adequacy of written regulations toward organizational learning. If repeated incidents do not generate meaningful changes in training, supervision, planning, or discipline, additional regulations may have limited practical effect.

Organizational culture is therefore closely connected to discretionary behavior. Police institutions operate through professional norms that are communicated not only through statutes and regulations but also through informal expectations among colleagues and commanders. Officers learn what forms of conduct are accepted through daily interaction, promotion systems, informal

praise, disciplinary practices, and responses to controversial incidents. A formal commitment to human rights can coexist with operational norms that favor rapid coercive intervention if institutional incentives are not aligned. This creates what may be described as a normative-practical gap: officers formally recognize a rights-based standard but perceive a different standard operating in practice. Closing this gap requires institutional consistency. Training should communicate the same principles that supervisors enforce, while disciplinary mechanisms should reinforce rather than contradict professional human rights standards. Rights-based policing therefore depends on organizational coherence rather than on isolated regulatory instruments.

Accountability mechanisms should also be differentiated according to their function. Internal accountability is necessary because police organizations possess specialized knowledge and can respond rapidly to operational misconduct. In Indonesia, the Professional and Security Division, commonly known as Propam, performs an important internal oversight function. External accountability is nevertheless necessary because institutions may face conflicts of interest when reviewing their own members. Komnas HAM's 2025 discussion concerning cooperation with Propam emphasized the importance of strengthening interaction between internal police supervision and independent human rights oversight (Komnas HAM 2025). This institutional relationship illustrates that internal and external mechanisms should not necessarily be viewed as competing structures. They can provide different forms of scrutiny, with internal mechanisms addressing professional and disciplinary matters while external institutions provide independent assessment of broader human rights implications.

The role of external oversight becomes particularly important when police powers intersect with politically sensitive or large-scale public-order situations. Citizens may hesitate to challenge police conduct when the police themselves control evidence, operational records, and the initial disciplinary process. Independent institutions can reduce this informational imbalance by investigating complaints, obtaining relevant documentation, interviewing affected persons, and assessing conduct against human rights standards. However, oversight must possess sufficient institutional capacity and access to information to be meaningful. An external institution that can issue recommendations but lacks effective mechanisms for follow-up may influence public debate without necessarily changing police behavior. Accountability should therefore be understood as a chain extending from complaint reception to investigation, determination, remedy, institutional learning, and follow-up. Each stage contributes to the credibility of the system.

Transparency in criminal investigations provides another example of how institutional accountability can operate through routine administrative procedures. The Indonesian National Police's information concerning the Surat Pemberitahuan Perkembangan Hasil Penyelidikan or SP2HP states that complainants have a right to receive information concerning developments in investigations and that investigators are required to provide such information periodically to support

accountability and transparency (Indonesian National Police 2025). This mechanism is significant because accountability does not always require extraordinary external intervention. Routine communication can itself reduce uncertainty and allow complainants to monitor whether their cases are progressing. From a rights-based perspective, transparency can also improve police legitimacy because individuals are given an explanation of institutional action. Nevertheless, transparency mechanisms must provide meaningful information rather than merely formal notification. Their effectiveness depends upon accuracy, timeliness, accessibility, and the willingness of investigators to communicate information that may be inconvenient for the institution.

Procedural justice provides a useful theoretical explanation for why such institutional practices matter. Tyler's research argues that people evaluate legal authorities partly through the fairness of procedures, including opportunities for participation, neutrality, respectful treatment, and trustworthy decision-making (Tyler 2006). In policing, these dimensions are relevant because discretionary decisions are often difficult for citizens to understand. An individual may not possess sufficient information to evaluate the technical legality of an investigative choice, but can observe whether police officers explain their actions, listen to concerns, and provide respectful treatment. Indonesian research has similarly examined the relationship between police legitimacy, procedural justice, satisfaction, and perceived effectiveness, demonstrating the importance of these factors in understanding public evaluations of policing (Davies, Meliala, and Buttle 2016). The implication is that accountability should be designed not only to detect misconduct but also to make police decision-making intelligible to the public.

Recent Indonesian scholarship further suggests that police legitimacy cannot be analyzed through Western-derived procedural justice models without considering institutional and cultural context. Adhikara and Putranto's 2025 study examines police legitimacy within Indonesia's centralized policing structure and social environment, highlighting the relevance of effectiveness, satisfaction, procedural justice, and historical relationships between citizens and police (Adhikara and Putranto 2025). This contextual perspective does not diminish the importance of human rights or procedural fairness. Instead, it suggests that the implementation of these principles must recognize the institutional characteristics of Indonesian policing. In a highly hierarchical organization, for example, internal communication and supervisory expectations may have especially strong effects on street-level behavior. Rights-based reform should therefore combine universal principles with organizational strategies appropriate to the institutional environment in which officers actually make decisions.

The relationship between effectiveness and rights protection deserves particular attention because police organizations may perceive human rights safeguards as constraints on operational efficiency. Such a perception can arise when procedural requirements are viewed as administrative burdens or when officers believe that rapid enforcement produces clearer performance outcomes.

Yet the relationship is more complex. Excessive or poorly justified coercion can generate complaints, litigation, institutional distrust, and reduced cooperation, all of which may undermine long-term policing capacity. Conversely, procedural safeguards can improve the reliability of investigations by encouraging officers to distinguish verified evidence from assumptions and by preserving transparent records of significant decisions. Rights-based discretion should therefore not be conceptualized as the opposite of effective policing. It represents a model in which operational effectiveness is pursued through lawful and professionally defensible means. The central institutional task is to align performance expectations with both enforcement outcomes and the quality of the decision-making process.

Restorative justice illustrates how institutional reform can expand the meaning of effective discretion. Sufriadi's analysis of Indonesian law-enforcement reform found increasing use of settlement mechanisms outside conventional court processes, including mediation, reconciliation, and restorative approaches (Sufriadi 2024). This development demonstrates that police and other law-enforcement officials do not necessarily need to respond to every offence through maximal punitive intervention. In appropriate cases, discretionary decisions can reduce unnecessary criminalization while maintaining accountability and addressing victims' interests. However, restorative discretion requires safeguards because informal mechanisms can produce unequal outcomes when participants possess different levels of power. Officers must therefore assess voluntariness, ensure that victims are not pressured, and document the basis for settlement decisions. Properly structured restorative discretion can demonstrate that human rights protection is not limited to restricting police power; it can also involve choosing less intrusive forms of legitimate state intervention.

A rights-based model also requires attention to police decision-making involving vulnerable groups. Individuals with disabilities, children, victims of violence, persons experiencing psychological distress, and persons who lack familiarity with legal procedures may experience police authority differently from other members of the population. Formal equality does not necessarily produce substantive fairness when individuals possess unequal capacities to understand or respond to police intervention. Discretion can therefore be used to make reasonable procedural adjustments, provide additional explanation, obtain appropriate assistance, or select less coercive methods where legally permissible. The new Criminal Procedure Code enacted in December 2025 explicitly strengthened protections for several categories of participants in criminal proceedings, including persons with disabilities, although its substantive operation began in January 2026 (Republic of Indonesia 2025). The legislative development illustrates an expanding understanding of procedural justice in Indonesia and indicates that future police discretion will increasingly need to accommodate differentiated rights-protection requirements.

The development of digital policing introduces another dimension of discretionary accountability. Police increasingly rely upon electronic databases,

digital evidence, surveillance technologies, communications data, and information-sharing systems. These tools can improve investigative capacity but can also expand the scope of state interference with privacy and personal information. Komnas HAM's 2024 institutional report noted concerns regarding proposed expansions of police authority into areas including cyberspace and interception, emphasizing the importance of clear limitations and definitions when expanding police powers (Komnas HAM 2024). The concern is directly relevant to discretion because technologically enabled powers can make intrusive intervention easier and less visible to affected individuals. Rights-based digital policing therefore requires clear authorization, purpose limitation, access controls, data retention standards, auditability, and mechanisms for challenging misuse. Technological capacity should expand investigative effectiveness without creating discretionary authority that is insufficiently bounded by law.

The debate concerning proposed revisions to the Police Law during 2024 and 2025 further demonstrates the continuing importance of defining the limits of police authority. In March 2025, Komnas HAM stated that it had reviewed provisions in the proposed Police Law and recommended revision or removal of provisions that it considered insufficiently consistent with human rights principles. Its concern focused particularly on the potential expansion of police authority and the need for clearer limitations and public participation in legislative processes (Komnas HAM 2025). These statements should be understood as the position of an independent human rights institution rather than as an uncontested description of legislative necessity. Nevertheless, they reveal a central issue for discretionary policing: whenever statutory authority expands, the corresponding legal boundaries and oversight mechanisms become increasingly important. Broad authority may provide operational flexibility, but without sufficiently precise safeguards it can also increase uncertainty concerning the lawful limits of police intervention.

Institutional accountability should therefore accompany any expansion of police responsibility. If police institutions receive additional authority concerning digital security, public order, investigation, or other areas, the legal system should simultaneously specify the conditions under which that authority may be exercised and the institutions responsible for reviewing its use. This principle follows from the basic logic of constrained discretion. The greater the potential impact of a power on individual rights, the more important it becomes that the authority possess a clear legal basis and that its exercise be reviewable. Oversight mechanisms should also have access to the records necessary to determine whether the authority was properly used. In this context, accountability is not an obstacle to institutional capacity. It is a structural condition that makes expanded authority compatible with democratic governance.

The relationship between police leadership and external accountability also requires careful institutional design. Police leaders must retain sufficient authority to coordinate operations because fragmented command can itself create risks to public safety and human rights. At the same time, operational command should not

become a justification for preventing independent review. A mature accountability system distinguishes operational command from accountability for the legality of command decisions. Commanders should be able to make rapid operational choices, but significant decisions should remain subject to later examination concerning their legal basis, proportionality, foreseeable risks, and compliance with established standards. This approach recognizes that operational discretion and accountability serve different institutional functions. Operational command enables effective response in uncertain circumstances, while accountability ensures that authority remains connected to legal and professional standards.

The principle of individual responsibility should similarly be combined with organizational responsibility. When a rights violation occurs, it may be appropriate to investigate the individual officer who performed the relevant action. However, the investigation should also examine whether inadequate training, unclear orders, insufficient equipment, poor supervision, or unrealistic operational expectations contributed to the conduct. This broader approach prevents accountability from becoming excessively individualized. If several officers repeatedly encounter the same problem, the pattern may indicate an institutional deficiency rather than a series of unrelated individual failures. Corrective measures may consequently require changes in training, command protocols, recruitment, equipment, evaluation, or disciplinary policy. Sustainable human rights protection depends upon identifying these systemic causes while preserving appropriate individual accountability.

The professionalization of discretion also requires better use of organizational data. Police institutions generate extensive information concerning arrests, complaints, use-of-force incidents, investigation outcomes, disciplinary proceedings, and public-order operations. When systematically analyzed, such data can reveal recurring patterns that are difficult to identify through individual case review. For example, unusually high concentrations of complaints within particular units may justify additional supervision or training. Repeated use-of-force incidents in similar circumstances may indicate a need to revise operational protocols. High rates of investigation discontinuation may reveal problems in evidence collection or case assessment. Data should not be interpreted mechanically because quantitative patterns require contextual explanation. Nevertheless, evidence-based organizational review can transform accountability from reactive investigation into continuous institutional learning.

Independent review should also incorporate qualitative evidence because numerical indicators cannot fully capture human rights consequences. An arrest count does not show whether arrests were necessary, lawful, or proportionate. A successful dispersal does not reveal whether participants were treated respectfully or whether vulnerable persons were exposed to unnecessary harm. A high case-clearance rate does not establish that investigations were conducted fairly. Institutional accountability should therefore combine statistical indicators with case files, body-camera or other audiovisual evidence where available, complaints,

interviews, supervisory reports, and judicial outcomes. The objective is to reconstruct decision-making rather than merely count enforcement outputs. Such a mixed approach is particularly relevant to discretionary policing because discretion is fundamentally contextual. Understanding why an officer made a decision often requires evidence concerning the circumstances that cannot be reduced to a single numerical variable.

The concept of organizational learning provides a useful framework for connecting accountability and reform. An incident should not end with a disciplinary decision if the institution can identify lessons that prevent recurrence. After-action reviews can examine what officers knew, what instructions they received, which alternatives were considered, what communication occurred, and whether existing procedures were adequate. These reviews can then inform training and policy revisions. The objective is not to excuse misconduct but to prevent accountability from becoming purely punitive. Recent scholarship argues that police accountability can be strengthened when organizational environments encourage reflexivity, learning, ethical reasoning, and continuous professional development rather than relying solely on sanctions (Bradford et al. 2025). This perspective is highly applicable to Indonesia because the recurring gap identified by Komnas HAM suggests that regulatory accumulation alone cannot guarantee behavioral change. Tandfonline

A rights-based framework for Indonesian police discretion can consequently be conceptualized as an integrated institutional process. The first component is legal authorization, requiring officers to identify the statutory or regulatory basis for intervention. The second is factual assessment, requiring officers to evaluate the circumstances using reliable and relevant information. The third is necessity assessment, requiring consideration of whether intervention is actually required. The fourth is proportionality, requiring the intensity of intervention to correspond to the seriousness and immediacy of the threat or legitimate objective. The fifth is procedural fairness, requiring respectful communication, neutrality, and appropriate safeguards for affected persons. The sixth is documentation, creating an evidentiary record of significant discretionary decisions. The seventh is supervision and independent review, ensuring that decisions remain subject to meaningful scrutiny. These components should operate together rather than as isolated compliance requirements.

Such a framework also requires differentiation according to the type of police decision. Investigative decisions may require particular attention to evidence, legal thresholds, access to counsel, and impartiality. Public-order decisions require careful assessment of protected expression, assembly, crowd dynamics, and de-escalation. Use-of-force decisions require immediate assessment of threat, alternatives, necessity, proportionality, and medical consequences. Restorative decisions require voluntariness and safeguards against coercion. Digital investigations require particular attention to privacy, authorization, data governance, and auditability. A uniform rule cannot resolve all these situations

because the risks and rights affected differ. What can be standardized is the decision-making architecture: identify authority, assess facts, consider alternatives, select proportionate means, document the decision, and maintain reviewability. This provides flexibility without abandoning consistency.

The framework further implies that accountability should be distributed across different institutional levels. Individual officers should be accountable for decisions within their control. Supervisors should be accountable for guidance, monitoring, and response to known risks. Commanders should be accountable for operational planning and orders. Institutional leadership should be accountable for policies, training, performance incentives, and organizational culture. External oversight bodies should be able to review systemic concerns and individual complaints within their respective mandates. Courts and prosecutors should provide legal scrutiny through the criminal justice process. Civil society and academic institutions can contribute independent research and public monitoring. This multi-level approach is preferable to relying on a single accountability mechanism because discretionary policing involves multiple decisions distributed across an organizational hierarchy.

The institutional development of rights-based discretion should also recognize the importance of police legitimacy. Legitimacy is not simply an outcome of successful crime control; it is influenced by whether citizens perceive police authority as lawful, fair, respectful, and trustworthy. Indonesian research has demonstrated that legitimacy is shaped by a combination of effectiveness, procedural experiences, satisfaction, and institutional context (Davies, Meliala, and Buttle 2016; Adhikara and Putranto 2025). Consequently, a police organization can strengthen legitimacy by improving both operational capacity and the fairness of its interactions with citizens. This reinforces the argument that human rights and police effectiveness should not be treated as mutually exclusive institutional goals. The legitimacy of coercive authority depends partly upon whether citizens can understand why police exercise power and whether they believe that the power is constrained by predictable standards.

The Indonesian case also suggests that democratic police reform is an ongoing institutional process rather than a completed transformation. The separation of the police from the armed forces and the enactment of Law No. 2 of 2002 established important foundations for civilian policing after the Reformasi period. Subsequent regulations strengthened human rights and use-of-force standards, while procedural and restorative justice reforms continued to modify the criminal justice environment. Yet the persistence of concerns concerning implementation demonstrates that formal reform does not automatically transform organizational culture. The challenge is therefore one of institutional consolidation. Democratic policing principles must become embedded in recruitment, education, promotion, supervision, operational planning, evaluation, discipline, and external oversight. Rights-based discretion will become sustainable only when these institutional

systems communicate consistent expectations concerning the lawful and professional exercise of police authority.

The legislative developments of 2025 reinforce the need for such consolidation. The enactment of the new Criminal Procedure Code at the end of 2025 represented a significant revision of the procedural framework, while debates concerning amendments to the Police Law raised questions about the appropriate scope of police authority and corresponding safeguards. These developments demonstrate that the institutional environment governing police discretion remains dynamic. Future implementation will require careful translation of legislative changes into police regulations, operational guidelines, training, information systems, and supervisory practices. A statutory reform cannot produce rights-based policing if officers are not adequately prepared to apply its provisions or if accountability mechanisms remain disconnected from the new legal framework. The transition therefore represents not only a legislative challenge but also an organizational learning opportunity.

The most sustainable model of police discretion in Indonesia is consequently one that combines professional autonomy with institutional constraint. Excessively rigid policing is impractical because officers must respond to circumstances that cannot be fully anticipated by legislation. Excessively broad discretion is equally problematic because coercive authority can become inconsistent or arbitrary when boundaries are unclear. The appropriate institutional balance lies in structured discretion, where officers possess sufficient judgment to respond to circumstances but operate within clearly defined legal principles, professional standards, supervisory systems, and accountability mechanisms. Structured discretion does not eliminate uncertainty. Instead, it provides officers with a reliable decision-making architecture for managing uncertainty. This approach recognizes the operational realities of policing while preserving the central democratic principle that coercive state power must remain subject to law.

The analysis ultimately indicates that the protection of human rights in Indonesian policing depends less upon eliminating discretion than upon changing the institutional meaning of discretion. Discretion should be understood as a professional responsibility requiring justification rather than as an unrestricted privilege attached to police authority. Officers should be trained to recognize rights-sensitive situations, supervisors should reinforce legality and proportionality, organizations should document significant decisions, and independent institutions should possess sufficient capacity to review contested practices. Accountability should address individual misconduct while also identifying organizational causes. Technology should improve transparency without creating uncontrolled surveillance capacity. Restorative mechanisms should reduce unnecessary coercion while preserving voluntariness and fairness. Through these mechanisms, police discretion can become a structured form of professional judgment compatible with democratic policing and human rights protection.

The broader theoretical implication is that rights-based policing requires a synthesis of legal, organizational, and procedural approaches. Legal rules establish boundaries, organizational institutions translate those boundaries into professional expectations, and procedural justice determines how authority is experienced by citizens. None of these dimensions is sufficient independently. Strong legislation without implementation may remain largely symbolic; effective training without external accountability may fail to correct institutional problems; and respectful interaction without legality cannot legitimize unlawful coercion. The Indonesian case therefore supports an integrated conception of discretionary governance. Police authority becomes legitimate not simply because it is authorized by law, nor simply because it produces public-order outcomes, but because it is exercised through decision-making processes that connect authority with reason, necessity, proportionality, fairness, and reviewability.

Accordingly, the principal institutional objective should be the development of a police organization in which rights protection is embedded within ordinary operational decision-making rather than treated as an external restriction. Such institutionalization requires sustained cooperation between police leadership, professional education institutions, courts, prosecutors, human rights bodies, civil society, and legislative institutions. It also requires continuous evaluation because policing environments change with technology, patterns of crime, political conditions, and public expectations. A rights-based model must therefore remain capable of adaptation without abandoning its core principles. In Indonesia, the existing legal framework provides significant foundations for this development, but the evidence reviewed in this study indicates that implementation, organizational culture, supervision, and accountability remain decisive variables. The protection of human rights will ultimately depend upon whether these institutional dimensions are integrated into the everyday exercise of police discretion.

Conclusion

This study has examined police discretion in Indonesia as an unavoidable component of law enforcement that nevertheless requires substantial legal, professional, and institutional constraints to remain compatible with human rights. The analysis demonstrates that discretion should not be understood as synonymous with arbitrary police power. Rather, it represents the practical capacity of police officers to interpret general legal rules and select among permissible responses when confronted with circumstances that cannot be completely anticipated by legislation. Indonesian law expressly recognizes such authority, particularly through Article 18 of Law No. 2 of 2002 concerning the Indonesian National Police, while simultaneously requiring police functions to be performed with attention to human rights and public interest (Republic of Indonesia 2002). The legitimacy of discretion consequently depends not simply upon the existence of legal authority but upon the manner in which that authority is exercised. Legality, necessity,

proportionality, procedural fairness, and accountability provide interconnected principles through which discretionary police action can be evaluated.

The study further demonstrates that the relationship between police discretion and human rights is particularly significant in arrest, investigation, public-order policing, and the use of coercive authority. These areas involve direct interference with liberty, privacy, physical integrity, expression, assembly, and access to justice. The historical development of Indonesia's criminal procedure framework shows that the tension between state authority and individual rights has long influenced the design of criminal justice institutions. Pangaribuan's analysis of the legislative process leading to the 1981 Criminal Procedure Code demonstrates that competing approaches concerning state authority and procedural rights shaped the eventual compromise represented by KUHAP (Pangaribuan 2025). Although the Code introduced important safeguards, the persistence of discretionary authority means that formal procedural protections must be supported by professional judgment and effective oversight. The enactment of Law No. 20 of 2025 concerning the new Criminal Procedure Code further demonstrates that the institutional balance between coercive authority and procedural rights remains an evolving dimension of Indonesian criminal justice.

The evidence examined also indicates that formal regulation alone cannot guarantee rights-respecting police discretion. Indonesia has established a substantial normative framework through Law No. 2 of 2002 concerning the Police, Law No. 39 of 1999 concerning Human Rights, Law No. 12 of 2005 ratifying the International Covenant on Civil and Political Rights, and police regulations concerning human rights and the use of force. Regulation No. 1 of 2009 and Regulation No. 8 of 2009 provide important operational standards concerning the use of force and human rights principles in police duties. Nevertheless, documented law-enforcement controversies demonstrate that implementation remains a central challenge. Komnas HAM's assessments concerning demonstrations and police conduct have repeatedly emphasized the importance of proportionality, accountability, legal assistance, and institutional evaluation. These findings should not be generalized to every police officer or every police operation, but they demonstrate why regulatory compliance must be accompanied by institutional mechanisms capable of identifying recurring implementation problems.

The study therefore argues that the appropriate institutional model is structured or constrained discretion. Under this model, police officers retain sufficient professional autonomy to respond to unpredictable circumstances, but their choices are situated within clearly defined legal and organizational boundaries. Before exercising coercive authority, officers should identify the relevant legal basis, evaluate the factual circumstances, consider reasonably available alternatives, and determine whether the proposed intervention is necessary and proportionate. Significant interventions should subsequently be documented and subject to appropriate supervisory or independent review. This model also requires professional training based on realistic scenarios rather than

abstract memorization of legal provisions. Human rights principles become meaningful in police practice when officers are capable of applying them under conditions of uncertainty and pressure. Such an approach transforms human rights from an external limitation on policing into an integral component of professional police decision-making.

The findings also indicate that accountability should operate at multiple institutional levels. Individual officers should be accountable for their conduct, supervisors for guidance and monitoring, commanders for operational planning and orders, and police leadership for organizational policies, incentives, training, and professional culture. External institutions, including courts and national human rights bodies, provide additional mechanisms for independent scrutiny. This layered approach is particularly important because discretionary conduct is influenced by organizational conditions. Research concerning Indonesian police culture and corruption has demonstrated that institutional and sociocultural factors can affect police misconduct and the persistence of problematic practices (Buttle, Davies, and Meliala 2016). Consequently, disciplinary action against individual officers, while sometimes necessary, cannot by itself resolve systemic problems. Sustainable reform requires institutional learning through which complaints, use-of-force incidents, investigative failures, and other accountability findings are translated into improvements in training, supervision, operational procedures, and organizational culture.

A further conclusion concerns the relationship between rights protection and police legitimacy. The evidence suggests that procedural fairness is an important dimension of how citizens evaluate police authority. Research on procedural justice in Indonesia has demonstrated that perceptions of police legitimacy are connected to the manner in which citizens experience police encounters, including perceptions of fairness and treatment (Davies, Meliala, and Buttle 2016). This relationship is important because police effectiveness depends partly upon public cooperation, including reporting, information sharing, witness participation, and compliance with lawful police instructions. Rights-respecting discretion can therefore contribute to policing capacity by strengthening the legitimacy upon which sustainable authority depends. The objective should not be to substitute procedural fairness for effective law enforcement. Rather, Indonesian policing should integrate effectiveness and procedural fairness so that crime-control objectives are pursued through lawful, proportionate, transparent, and professionally defensible practices.

The study identifies several practical implications for Indonesian police reform. First, human rights standards should be incorporated consistently into recruitment, academy education, continuing professional development, tactical training, and promotion systems. Second, use-of-force decisions should be supported by scenario-based training that emphasizes de-escalation, communication, proportionality, and continuous reassessment of threats. Third, police organizations should strengthen documentation of significant discretionary

decisions so that conduct can be reviewed on the basis of contemporaneous evidence rather than competing retrospective accounts. Fourth, internal supervision should be complemented by credible external oversight capable of examining systemic patterns. Fifth, technological modernization should be accompanied by safeguards concerning privacy, access, retention, auditability, and accountability. Finally, restorative justice should be developed carefully as an appropriate alternative to unnecessary criminalization while maintaining voluntariness and procedural safeguards. These measures would allow discretion to function as professional judgment without allowing it to become an uncontrolled source of coercive authority.

The study has several limitations that should be acknowledged. Because the research adopts a qualitative doctrinal and socio-legal approach, its findings do not constitute a statistically representative assessment of police discretionary decisions throughout Indonesia. The analysis relies primarily on legal instruments, academic literature, institutional documents, and selected documented practices. Such materials are appropriate for identifying legal principles and institutional patterns, but they cannot establish the frequency of particular forms of police misconduct across all regions, units, or operational contexts. The study also does not conduct interviews with police officers, suspects, victims, lawyers, or judges. Future research could therefore complement this analysis with fieldwork, comparative regional studies, administrative police data, complaint databases, and systematic examination of use-of-force incidents. Mixed-method research would be particularly valuable for determining whether the institutional safeguards identified in this study are consistently reflected in everyday police decision-making.

Future research should also examine how the implementation of the new Criminal Procedure Code enacted in 2025 changes the practical boundaries of police discretion after its entry into force. The transition from the 1981 procedural framework to the new Code provides an important opportunity to evaluate whether legislative reform produces corresponding changes in police practice. Research could examine arrest decisions, suspect designation, detention, access to counsel, pretrial review, evidence collection, restorative justice, and the relationship between police investigators and prosecutors. Such research would allow scholars to distinguish between formal legal change and institutional behavioral change. It could also evaluate whether new procedural safeguards reduce arbitrary interference or whether existing organizational practices adapt in ways that preserve previous patterns of discretionary authority. The effectiveness of criminal procedure reform should therefore ultimately be assessed through implementation rather than legislative enactment alone.

In conclusion, police discretion in Indonesia should be regarded neither as an institutional defect that must be eliminated nor as an unrestricted professional privilege. It is a necessary feature of policing because officers must make decisions in circumstances characterized by uncertainty, urgency, and competing public interests. Its legitimacy, however, depends upon the institutional conditions

surrounding its exercise. The central finding of this study is that rights-based policing requires structured discretion supported by legality, necessity, proportionality, procedural fairness, professionalism, supervision, documentation, and accountability. The Indonesian legal system already contains important foundations for this approach, but the continuing challenge lies in translating normative commitments into consistent organizational practice. The protection of human rights will therefore depend upon whether Indonesian police institutions can integrate professional autonomy with meaningful legal and institutional constraints. Such integration offers a framework through which effective law enforcement and democratic accountability can operate together rather than being treated as mutually exclusive objectives.

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