

Application of the Principle of Equality Before the Law in the Practice of Investigating Criminal Cases by General Criminal Investigation Investigators at the Memberamo Raya Resort Police

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Abstract

Equality before the law is positioned by the UN as the first indicator or main characteristic of a democratic rule of law, in the sense that there must be no arbitrariness, so that someone can only be punished if they violate the law, have equal standing before the law, and are good for the people. ordinary and for officials. However, in practice, what was hoped for has not been fully realized. Moreover, this is related to the application of the principle of equality before the law. The problem in this research is that the process of examining criminal cases by investigators from the Memberamo Raya Police Criminal Investigation Unit certainly cannot be carried out according to plan. It should be, because of various factors and reasons behind it, both in terms of the law enforcement system as a whole, structurally, as well as morally or mentally. The type of research used is Normative Juridical research methods and Empirical Juridical research methods. The research results obtained are that the application of the principle of equality before the law has not been implemented properly by the Memberamo Raya Resort Police Criminal Investigation Investigators, in the practice of examining general criminal cases. In the practice of examining general criminal cases, there are three investigators from the Memberamo Raya Police Criminal Investigation Unit. The main factors that hinder the application of the principle of equality before the law are first, limited human resources for investigators, both in terms of quality and quantity; second, the minimal budget for investigative operational costs; and third, demands for resolution of criminal cases based on the customs of local customary law communities

I. Introduction

In Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that "The Indonesian state is a state of law".¹ This assertion contains the meaning that national and state life is based on legal rules. Whoever the person is, whether they have a position or not, is obliged to submit and obey the law. This shows that state life is based on legal rules, both written and unwritten. The law must be placed in a primary position or it is often said that the law is the commander in chief, the law must be sovereign, the law is just.

Therefore, various concepts and ideas have emerged that have been developed to position law as the highest authority in administering the country, namely the concept of "supremacy of law", "nomocratos" (rule of law) and the concept of "the rule of law" (rule of law).²

According to Jimly Assaddiqie, the idea of a constitutional state The legal system or tradition "civil law" is known as "rechtsstaat" relies on a "continental" or "modern" legal system Roman Law". So the concept of the rule of law in the civil law system is more associated with the concept of legal sovereignty, while in "common law system" or "Anglosaxon" is better known by the term "rule of law". Where the concept of the rule of law is more focused on concept of justice.³

Characteristics of the rule of law in the civil law system law according to Friedrich Julius Stal, is first, recognition of human rights; second, separation of powers country; third, government based on law; And fourth, the existence of administrative justice. Meanwhile, the characteristics of the country law in the common law system, (rule of law) was put forward by A.V. Dicey was the first "supremacy of the law"; secondly "equality before the law" (equality before the law); And third "constitutional based on individual rights" (guaranteed rights human basics by the state constitution).

The United Nations in its study of application of the concept of nomocratos or the rule of law, in the state democratic law, provides 4 (four) indicators and becomes main references, namely:

1) Equality before the law;

The law applies and is enforced equally and equally regardless respect for every citizen regardless of background background, position and status.

¹ Perubahan keempat Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

² Anthony Valcke, *The Rule Of Law; Its Origins and Meanings*, American Bar Association, 2012, <https://ssrn.com/abstract=2042336>, diakses 9 Maret 2023

³ Jimly Assaddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, PT. Ilmu Bhuana Populer, Jakarta, 2007,

- 2) Based on individual rights;
Every state administrator exercises power. The state is not based on personal or group wishes but rather based on the Constitution, Laws and statutory regulations other invitations. That means every state administrator carrying out duties and authority in accordance with the scope of his/her field of duties (jurisdiction), carrying out duties and authority to comply with applicable regulations, respect the duties and authority of other institutions and willing to work together to achieve appropriate state goals with their respective duties, do not abuse authority for personal and group interests, respect the rights and freedoms of citizens and rights human rights in general.
- 3) Constitutionalism:
It is an understanding that requires control and preventing abuse of state power by state administrators through the state constitution (controlling and preventing abuse of power), and
- 4) Due process of law.
Due process of law consists of two dimensions, namely substantive due process and procedural due process. Substantively, law enforcement process against every citizen must continue to respect the rights and freedoms of citizens and human rights in general as stipulated in Articles 27 to 34 Constitution of the Republic of Indonesia Year 1945 and other laws and regulations regulates the rights and freedoms of citizens and human rights humans who are the substance of the law enforcement process. Procedurally, the law enforcement process must also be carried out in accordance with procedural justice. In the process criminal law enforcement, the law enforcement process is not only substantively it must be in accordance with the Law Criminal Law (substantive due process), however must also be in accordance with procedural justice (Procedural due process), which is regulated in criminal/legal procedural law formal crime.

Thus, "equality before the law" or equality in before the law by the United Nations is positioned as The first indicator or main characteristic of a legal state democratic, in the sense that there should be no arbitrariness, so that someone should only be punished if they violate the law, equal status before the law, is good for ordinary people as well as for officials.⁴

Based on the understanding above, you can It is said that the principle of equality before the law is one pillars and main elements that must be considered in the process state administration. The law must apply equally to all citizen, no one is above the law. This principle is in a sense broad as the

⁴ Ridwan H.R, Hukum Administrasi Negara, Radja Grafindo Persada, Jakarta, 2010 hal 3.

main principle of a just legal system, as expressed by Frederick Hayek that equality before the law is the most important element or a crucial element of human freedom. Aim to obtain Freedom is equality before the law. (Equality before the law, it as the most critical element of liberal society, stating that. The great aim of the struggle for liberty has been equality before the law).⁵

Constitutionally recognition and understanding of equality before the law or the principle of equality in law, has regulated in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. It is stated in Article 27 paragraph (1):

"All citizens have the same position in it law and government and are obliged to uphold the law and government without exception."

This article provides the meaning that every citizen without have to see if he is a native or not, comes from educated class or illiterate common people, class upper middle class or people who struggle with poverty must be treated equally before the law. Even a head of state (President/Vice President) government officials, leaders state institutions and/or institutions are positioned equally and equally in before the law.

Furthermore, in the provisions of Article 28 D paragraph (1) of the 1945 Republic of Indonesia Constitution mentioned that:

"Everyone has the right to recognition, security, protection, and fair legal certainty and equal treatment in before the law."

The provisions of Article 28D paragraph (1) above are more emphasizes the concept of the Indonesian rule of law, which upholds high rule of law. Law plays an important role in national and state life. What is the law? positioned according to its purpose of providing recognition, guarantee and protection of citizens' human rights in the field of law, or how the law is positioned in terms of provide a sense of justice, benefit and legal certainty as well treat all citizens equally before the law countries in the process of stateization and implementation of laws in Indonesia regardless of the position, rank, class and social status of a citizen.

Apart from the provisions in the state constitution, the principle of equality before the law, in the context of the process of law, substantively too regulated in Article 4 paragraph (1) of Law Number: 48 of 2009 regarding Judicial Power, namely that the Court judges according to the law does not discriminate between people."

⁵ Daron Acemoglu dan Alexander Wolitzky, "A Theory Of Equality Before The Law", Massachusetts Avenue, MA, 2018, hal, 1.

Procedurally, the principle of equality before the law, although not stated explicitly in the provisions of Law Number: 8 of 1981 concerning Criminal Procedure Law (KUHP), but is implicitly explained in the General Explanation point 3a of the Criminal Procedure Code, which formulates "equal treatment of persons everyone is before the law without any discrimination in treatment." Limitatively, this principle requires equal treatment between one person and another with ignoring various factors that exist in people so that the legal process can proceed smoothly fair (due process model). In other words, the principle of equality in in front of the criminal procedural law that applies to every citizen people who undergo the process of inquiry, investigation, examination both as a witness and as a suspect treated the same in accordance with the provisions regulated in the Criminal Procedure Code.⁶

In practice, there are internal assumptions and/or opinions the public that the investigation has not been carried out by investigators reflects a sense of justice for society. In general, practice examination of criminal cases is always considered and/or transformed into a kind of drama.⁷ Investigation of criminal cases Crime is not an event that is described to be resolved for the sake of justice, legal certainty and expediency, but the storyline (scenario) staged by actors, where each act there are climaxes of their own. The end of the drama is complete determined by them with their own measuring instruments, not measuring instruments justice. The investigative practices carried out are considered to be still cutting edge choose, there are differences in treatment of marginalized groups, small communities, poor communities or terms that are often used When you hear "the law is sharp downwards but blunt upwards", the law seems to belong to people with money, people who have resources high economic status, especially regarding status or position.⁸

Concrete cases that occur in investigative practice for example, a mother in Karawang was named a suspect because reported by the husband, just because the mother was nagging her husband who often came home drunk, a young man in Madura made a suspect after defending himself as a result of being robbed by a grandmother who was 92 years old, was made a suspect and even sentenced a sentence of 1 month and 14 days just for cutting down a tree belonging to him his relatives in Medan.⁹ "The hashtag#PercumaReportPolice" even appeared. It went viral on social media due to annoyance and disappointment the community regarding the form of service and performance

⁶ Ramelan, Hukum Acara Pidana Teori Dan Implementasinya, Sumber Ilmu Jaya, Jakarta, 2016, hlm 74

⁷ Jhon Kennedy, Buku Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum di Indonesia, Pustaka Pelajar, Jakarta, 2014, hlm 78.

⁸ Bobi Aswandi & Kholis Roisah. (2019). Negara Hukum dan Demokrasi Pancasila Dalam Kaitanya Dengan Hak Asasi Manusa (HAM). Jurnal Pembangunan Hukum Indonesia, Volume 1, Nomor I

⁹ Isshana Haruma <https://nasional.kompas.com/read2022/03/24/0130001/kasus-kasus-ketidakadilan-di-indonesia>, diakses 9 Maret 2020.

of the Police institution RI in various regions in Indonesia.¹⁰

In Papua Province, especially in the jurisdiction of the Police Membramo Raya Resort, there are many criminal cases including theft, fraud, abuse, arson, robbery, murder, gambling, alcohol, sexual violence, domestic violence (KDRT), and so on. As a state of law, it is expected by the perpetrators of society The criminal act is sought and processed in accordance with the law applies in this country (positive law), so it can create feelings and/or social conditions of the community that are safe, peaceful and peace and bring a sense of justice to society.

However, in practice what is expected is not yet fully realizable. Moreover, this is associated with application of the principle of equality before the law. Inspection process criminal cases by investigators from the Resort Police Criminal Investigation Unit Memberamo Raya certainly cannot be implemented as planned It should be, for various factors and reasons background, both in terms of the law enforcement system as a whole substantial, structural and moral or mentality of the enforcement apparatus law and real or concrete realities in legal life people in Memberamo Raya Regency, who are more inclined and/or prioritize community traditions or customs local area in resolving a legal issue.

2. Research Method

The type of research used is by using Normative Juridical research methods and Juridical research methods Empirical. Normative juridical research is research that sourced from library data or secondary data, (legal materials primary and secondary legal materials) that correspond to the title and formulation of this research problem. Primary legal materials, refer to laws and regulations relating to regulation the principle of equality of justice before the law, namely: the Constitution Republic of Indonesia 1945, Law Number 8 1981 concerning the Criminal Procedure Code, Law Number 2 of 2002 concerning the Indonesian National Police, as well as statutory regulations and implementing regulations others related to the investigation of general criminal acts. Secondary legal materials are based on and supported by principles or legal principles, doctrines or theories of legal science.

Meanwhile, Empirical Juridical research, namely research that done by obtaining and/or finding direct facts that occur directly in practical application the principle of equality of justice before the law in case examination criminal act by the Memberomo Raya Police Criminal Investigation Unit investigator, by conducting observations and interviews with respondents that is directly

¹⁰ Kurnia Azisah, Kapolri Respons Tagar Percuma Lapor Polisi, 31 Desember 2020, <https://www.merdeka.com/tranding/> diakses 9 Maret 2023.

related to what is being researched.

3. Results and Discussion

Application of the Principle of Equality Before the Law in Practice Examination of Criminal Cases by Criminal Investigation Unit Investigators Memberamo Raya Resort Police.

The National Police of the Republic of Indonesia, as one of them State institutions have important main tasks and functions in the field criminal law enforcement, one of which is carrying out investigation of suspected criminal cases and examinations criminal cases that occur in society. Practice implementing these main duties and functions carried out by special Agencies, Directorates, Units, Units or Sub Units in accordance with the institutional structure of the Indonesian Police Institution starting from the level of Headquarters (Mabes), Regional Police (Polda), Police Resorts (Polres) and Sector Police (Polsek) throughout Indonesia in accordance with the provisions of the statutory regulations applies.

Likewise with the Resort Police (Polres) Memberamo Raya, as an element of the Indonesian National Police, Structurally it is under the Papua Regional Police (Polda), cannot be separated from the implementation of these main duties and functions on. Where in practice it is carried out by investigators as well assistant investigator at the Criminal Investigation Unit (Sat.Reskrim), especially the General Criminal Investigation Unit (Unit Reskrimum). As a unit formed to carry out duties and functions in the field of investigating general criminal cases, then in practice will not be free from various kinds of problems, especially those relating to the implementation of Human Rights.

This is one manifestation of the implementation of rights human rights in the practice of examining criminal cases generally by general criminal investigators at the Criminal Investigation Unit The Memberamo Raya Resort Police are obliged to pay attention one of the main principles adhered to in the modern rule of law which is democratic, and is the embodiment of human rights namely equality before the law principle or the principle of equality in before the law.

Talking about the principle of equality before the law in the history of its development is the embodiment of ideas and values human morals (das sollen) that emerge from reflection on circumstances actual (das sein), on law enforcement practices which is contrary to respect for human rightsman.¹¹ For this reason, the principle of equality before the law in the form of "das sollen", cannot be separated in the form of "das sein", because it is not might be called a moral idea of law, without based on a reflection on empirical dynamics or reality and reality (das sollen-sain) Therefore, this principle is one of the important principles for

¹¹ Ibnu Alwoton Surya Waliden, Selvi Maulida, Mochammad Agus Rochmatullah. (2022) Tinjauan Asas Equality Before The law Terhadap Penegakan Hukum Di Indonesia. Jurnal Verfassung: Jurnal Hukum Tata Negara, Volume 1 No 2.

investigators to pay attention to and/or assistant investigators at the Police Reskrim Unit Memberamo Raya, considering the practice of examining criminal cases.

There can be various kinds of actions or behavior from individuals investigators and/or assistant investigators who deviate from ideas and ideals and the moral values contained in this principle, so that Various questions and doubts arise from the public regarding credibility and professionalism of the Indonesian National Police institution, in carrying out duties and functions in the field of case investigation general crime.

The statement above is important for you to pay attention to every investigator in the practice of examining criminal cases general, because of the ideas, ideals and essence of moral values contains the abstract principle of equality before the law (in abstracto), can only be tested and realized concretely (in concreto) between others through the practice of investigating criminal cases carried out by investigators at the Memberamo Raya Police Criminal Investigation Unit. Is In practice, the examination of criminal cases has carried out in accordance with the process and procedures of procedural procedures, without distinction between people, religion, social status, rank and so on position in society and where the person comes from (ethnicity/race) or without discrimination? then this question is that needs to be studied in more depth.

Besides that, it needs to be emphasized that as a country laws that uphold the supremacy of the law (supremacy of the law), human rights and due process of law, then everything that is regarding the investigation of criminal cases examination of witnesses, victims, suspects, expert witnesses, implementation of efforts forced, handing over case files to the Public Prosecutor, up to up to the termination of the investigation (SP3), or termination investigations through the application of Restorative Justice must be guided by according to the legal provisions as mentioned above.¹²

This matter because, when in the practice of examining criminal cases criminal, investigators in carrying out their investigative duties and functions are not in accordance with the provisions of statutory regulations as follows The above will of course have legal consequences separately both for investigators, the Unit, and the credibility of the institution Indonesian National Police in general. In other words, in practice examination of general criminal cases carried out by investigators must be guided by the processes and procedures as follows which are regulated in the provisions of the statutory regulations apply, so that undesirable things can be avoided.

¹² Sukardi, Restorative Justice dalam Penegakan Hukum Pidana Indonesia, RajaGrafindo Persada, Jakarta, 2019, hlm 87.

The confirmation as mentioned above is important to remember in carrying out investigative duties and functions, especially in Memberamo Raya Police jurisdiction, there are various kinds criminal cases that must be faced by investigators in the Unit Criminal Investigation Unit and/or Criminal Investigation Unit. This can be seen from general criminal cases that occur within the jurisdiction of the Police Memberamo Raya, in the last 3 (three) years, in detail seen in each of the following tables:

Table: 1
Handling General Criminal Cases
By Criminal Investigation Investigator - Memberamo Raya Police
2020

No	Laporan Polisi	Jenis TP	Penerapan Pasal	Ket
1	LP/01/III/2020/SPKT, Tanggal 28 Maret 2020	Gambling	303 ayat (1) KUHP	P21
2	LP/02/IV/2020/SPKT, Tanggal 04 April 2020	Gambling	303 ayat (1) KUHP	P 21
3	LP/03/V/2020/SPKT, Tanggal 18 Mei 2020	Obscenity	289 KUHP	P21
4	LP/04/VIII/2020/SPKT, tanggal 27 Agustus 2020	Forgery	263 KUHP	SP3
5	LP/05/VIII/2020/SPKT, tanggal 28 Agustus 2020	Burning/Vanishing	188 jo Pasal 406 KUHP	SP3
6	LP/06/VIII/2020/SPKT, tanggal 28 Agustus 2020	Destruction	406 Ayat (2) KUHP	SP3
7	LP/B/07/IX/2020/SPKT, tanggal 06 Sept 2020	Persecution	351 KUHP	RJ
8	LP/B/08/XII/2020/SPKT, tanggal 09 Des 2020	T.P Pemilihan	187 A	P21
9	LP/B/09/XII/2020/SPKT, tanggal 18 Des 2020	Discovery of An's Body. Augustine Seido	-	SP3
10	LP/B/10/X/2020/SPKT, tanggal 28 Des 2020	Extortion	368 KUHP	DPO
11	LP/B/11/XII/2020/SPKT, tanggal 31 Des 2020	Persecution	351 Ayat (1) KUHP	P21

Source: Mamberamo Raya Police Criminal Investigation.

Table: 2
Handling General Criminal Cases
By Criminal Investigation Investigator–Memberamo Raya Police
Year 2021

No	Laporan Polisi	Jenis TP	Penerapan Pasal	Ket
1	LP/01/II/2021/SPKT, tanggal 18 februari 2021	Persecution	351 Ayat (1) KUHP	RJ
2	LP/02/III/2021/SPKT, tanggal 17 Maret 2021	Theft	362 KUHP	SP3
3	LP/03/III/2021/SPKT, tanggal 18 Maret 2021	Embezzlement	372 Jo 374 KUHP	SP3
4	LP/04/IV/2021/SPKT, tanggal 19 April 2021	Destruction	406 Ayat (2) KUHP	RJ
5	LP/05/V/2021/SPKT, tanggal 10 Mei 2021	Persecution	351 Ayat (1) KUHP	P21
6	LP/B/06/VI/2021/SPKT.SAT RESKR IM/POLRES M.RAYA/POLDA PAPUA, tanggal 27 Juni 2021	Destruction	406 Ayat (2) KUHP	RJ
7	LP08/VI/2021/SPKT.SATRE SKRIM/ POLRES M.RAYA/POLDA PAPUA	Missing person	-	SP3
8	LP/09/VII/2021/SPKT.SATR ESKRI M/POLRES M.RAYA/POLDA PAPUA	Body Discovery in the name of Mario Kambney	-	SP3
9	LP/10/VII/2021/SPKT.SATR ESKRI M/POLRES M.RAYA/POLDA PAPUA, 29 Juli 2021	Destruction	406 KUHP	SP3
10	LP/11/VIII/2021/SPKT.SAT RESKRI M/POLRES M.RAYA/POLDA PAPUA, 03 Agustus 2021	Persecution	351 Ayat (1) KUHP	RJ
11	LP/B/12/X/2021/SPKT.SAT RESKRI M/POLRES M.RAYA/POLDA PAPUA, tanggal 29 Oktober 2021	Obscenity	289 KUHP	RJ
12	LP/B/13/XI/2021/SPKT.SAT RESKR IM/POLRES M.RAYA/POLDA PAPUA, tanggal 16 November 2021	Persecution	351 Ayat (1) KUH	RJ
13	LP/B/14/XI/2021/SPKT.SAT	Destruction	406 KUHP	RJ

	RESKRIM/POLRES M.RAYA/POLDA PAPUA, tanggal 20 November 2021			
14	LP/B/16/XII/2021/SPKT.SA TRESKRIM/POLRES M.RAYA/POLDA PAPUA, tanggal 21 Desember 2021	Persecution	351 Ayat (1) KUHP	RJ

Source: Mamberamo Raya Police Criminal Investigation.

Table: 3
Handling General Criminal Cases
By Criminal Investigation Investigator–Mamberamo Raya Police
Year 2022

No	Laporan Polisi	Jenis TP	Penerapan Pasal	Ket
1	LP/B/01/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 19 JANUARI 2022	Sea accidents, drownings and missing people	-	SP3
2	LP/B/02/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 02 FEBRUARI 2022	Persecution	351 KUHP	RJ
3	LP/B/03/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 10 FEBRUARI 2022	Persecution	351 KUHP	RJ
4	LP/A/04/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 13 FEBRUARI 2022	Gambling	303 KUHP	P21
5	LP/A/05/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 13 FEBRUARI 2022	Gambling	303 KUHP	P21
6	LP/B/06/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 16 MARET 2022	Corpse Discovery	-	SP3
7	LP/B/07/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 05 MEI 2022	Murder	338 KUHP	P21
8	LP/B/08/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 08 SEPTEMBER 2022	Persecution	351 KUHP	RJ
9	LP/B/09/2022/SPKT.SAT RESKRIM/RES M. RAYA.	Persecution	351 KUHP	RJ

	Tanggal 01 NOVEMBER 2022			
10	R/ LI-06/XI/2022/SAT RESKRIM/RES M.RAYA, Tanggal 15 NOVEMBER 2022	Persecution	351 KUHP	LIDIK
11	LP/B/10/2022/SPKT.SAT RESKRIM/RES M. RAYA. Tanggal 19 NOVEMBER 2022	Obscenity	289 KUHP	P21

Source: Mamberamo Raya Police Criminal Investigation

Research data are in table 1, table 2 and table 3 as mentioned above, shows that the inspection general criminal cases carried out by Criminal Investigation investigators Memberamo Raya Police, based on the type of general crime, clearly visible criminal acts of physical violence, namely abuse is the most common criminal offense in the region Memberamo Raya Police law, and is a frequent case occurred in the last three years, namely there were 12 (twelve) cases, each in 2020 there were 2 (two) cases, in 2021 increased to 5 (five) cases, and in 2022 there will also be 5 (five) cases. This is followed by the type of criminal act destruction from 2020 to 2022 there were 6 (six) case, gambling from 2020 to 2022 consists of 4 (four) cases, criminal acts of sexual immorality in 3 (three) cases, while acts 1 (one) case of theft, forgery, murder and extortion each occurring from 2020 to 2022, Apart from that, there are also case reports of the discovery of corpses consisting of: 2 (two) cases, 1 (one) case each in 2021 and 2022, and reports of maritime accidents consist of 1 (one) case which will occur in 2022.

Based on the types of general criminal cases handled by investigators at the Memberamo Raya Police Criminal Investigation Unit, if further explored the settlement process and procedures In criminal cases, it appears that there are several types of acts criminal, which in principle is the same but the process and procedure the resolution of the matter is different. So several arise Basic questions in conducting case examinations whether the investigator is in the Criminal Investigation Unit and/or Criminal Investigation Unit Memberamo Raya Police has done this according to the process and procedural procedures as stated in provisions of criminal procedural law? besides, in doing examination of the case whether the investigator has applied the principles equality before the law? in other words, what is the inspection? carried out against anyone suspected of committing an act punishment is the same and equal regardless of background, position and status?

The questions mentioned above need to be raised by because, if you look at the research data in table 1, table 2 and table 3, in the practice of examining general criminal cases carried out by investigators there are types of criminal acts and application of the same articles, but processes and procedures the solution to the problem is different.

Therefore, in relation to the application of principles equality before the law, then

the concept of restorative justice is mandatory carried out without coercion or carried out on initiative or the wishes of the investigator, let alone differences in application based on the investigator's subjective assessment by looking at who the perpetrator of the crime, the victim, where he comes from, his position in society or things that lead to the process discriminatory investigations. But restorative justice is mandatory based on the will or initiative of the parties, namely the victim, family victims and perpetrators or families of criminals.

Apart from that, to ensure equal treatment for every completed criminal investigation through restorative justice procedures, investigators are required to do so pay attention to the conditions and procedures for implementing this concept in investigative practice. Conditions for handling criminal cases punishment through restorative justice procedures based on the Regulations Indonesian Police Number: 8 of 2021, regulated in the provisions of Article 4, Article 5 and Article 6, namely material and formal requirements. Material requirements includes:

- a) does not cause unrest and/or rejection from public;
- b) does not impact social conflict;
- c) does not have the potential to divide the nation;
- d) no radicalism and separatism;
- e) not a repeat perpetrator of criminal acts based on court ruling; And
- f) not a criminal act of terrorism, a criminal act against state security, corruption crimes, and criminal acts on people's lives.

Meanwhile, formal requirements include:

- a) Peace between the two parties as evidenced by peace agreement and signed by para parties, except for Narcotics crimes;
- b) Fulfilling the rights of victims and the responsibilities of perpetrators, in the form of returning goods, compensating for losses, reimburse costs incurred as a result of criminal acts and/or compensate for damage caused as a result criminal act.
- c) Proven by a statement letter in accordance with agreement signed by the victim.

Determination of the suspect, initially not categorized into in pretrial objects, which are regulated in the provisions of Article 77 Criminal Procedure Code, but in its development the determination of suspects by The Constitutional Court in its Decision Number: 21/PUU-XII/2014, changed the provisions of Article 77 letter (a) of the Criminal Procedure Code, so that the determination The suspect was then used as one of the objects of pre-trial proceedings. One of the legal considerations is determining the suspect part of the investigation process which constitutes the seizure of human rights then the suspect should be determined by The investigator is an object that can be requested for protection through pretrial legal efforts. That's all to protect someone from arbitrary actions by investigators which can most likely happen when someone is assigned as a suspect, even though in the

process it turned out there was an error then no other institution other than the pretrial institution can check and disconnect it.

This Constitutional Court decision provides protection for someone which experienced an erroneous legal process when it was determined as a suspect. In the provisions of Article 8 of Law 39/1999 concerning Human Rights are regulated that "Protection, promotion, enforcement, and Fulfillment of human rights is primarily a responsibility government. This means that the Constitutional Court takes a role in fulfillment human rights through its decisions as part of its efforts constitutional responsiveness. One of the elements of legal protection emphasized through this decision is legal certainty that The investigator must carry out investigative actions in accordance with applicable legal procedures

Factors That Inhibit the Implementation of the Principle of Equality Before The Law in the Practice of Investigating Criminal Cases By Memberamo Raya Police Criminal Investigation Unit Investigator.

Talking about the application of the principle of equality before the law, in general it will not be separated from law enforcement practices, either it is broad, covering three main aspects of the legal system (legal system), namely legal substance, structure law (legal structure) and legal culture (legal culture), as well as law enforcement known to the general public are identical with a pro justitia process, namely a criminal law enforcement system (criminal justice system) run by the police, prosecutor's office, courts and correctional institutions and advocates, as components inherent in the law enforcement system in Indonesia.

Therefore, in conjunction with the factors that greatly hinders the implementation of the principle of equality before the law influenced by the law enforcement system. No matter how good the arrangement is legal structure to implement established legal rules and no matter how good the legal substance is made without cultural support law by people involved in the social system, then the application of the principle of equality before the law will not work effectively effective, like the current law enforcement that is happening or not systematic, selective logging, overlapping and reactive to various legal violations that occurred

However, the above is also not free from problems law enforcement that is often faced includes human resources limited, lack of professionalism and poor mental, supervision weak and ineffective budgeting and/or funding systems inadequate in supporting the law enforcement system Alone. Likewise with law enforcement practices criminal matters, especially those related to criminal investigation practices general crimes carried out by investigators in the Investigation Unit General Crime (Reskrim) Memberamo Raya Resort Police (Polres), based on research data, observations and the author's interview with the research sample, then this applies with factors that hinder the application of the principle of equality before the practice of examining general criminal cases by investigators from the

Memberamo Raya Police Criminal Investigation Unit, there were three The main factors are as follows:

a) Limited Human Resources (HR) for Investigators in the Unit Memberamo Raya Police Criminal Investigation Unit.

In the criminal law enforcement system in Indonesia, it can it is said that the Indonesian National Police investigators are the tip spearhead in handling criminal cases or cases. Investigators are at the forefront of system administration criminal justice in Indonesia. The investigator's abilities are required to transforming the rules, norms and real patterns of human behavior in the legal system. Apart from that, investigators are also prosecuted not only understand the rules in the law books, but also cover the laws living in society (living law), especially coupled with various kinds of phenomena, developments in science and technology, are encouraged by open information flows, democratization, globalization, and protection of Human Rights. So, in order carry out investigations into criminal cases or cases, the behavior and abilities and professionalism of investigators are very important.

Investigators who have the ability, investigators who qualified, professional investigator, has competence and integrity in carrying out authority based on duties and function is something ideal and highly expected in law enforcement practice in Indonesia. The investigator's abilities are as mentioned above in Carrying out investigations into criminal cases will of course influence the image of the National Police in the eyes of the public. With Thus, the public's negative perception of investigators is still considered unprofessional, can still be bribed, likes to blackmail and sometimes fabricating a criminal case, will gradually fade, until eventually it will leading to a positive assessment from society.

To achieve this, various efforts, policies and the program has been tried to be implemented and run by the Police The Republic of Indonesia, among other things, is described into programs priorities as well as vision and mission known as "QTAP" (Quick, Transparency, Accountability and Professionalism), "Precision Police" (Predictive, responsibility and transparency), in carrying out main duties and functions, including for internal investigators carry out investigations into criminal cases. However, for achieve goals in implementing programs, vision and mission This of course needs to be supported by the availability of facilities and supporting infrastructure and human resource development (HR) police personnel, especially investigators themselves.

Apart from the number, in terms of the quality of investigators in the Unit Criminal Investigation is still very far from what was expected. Where almost all investigators can be said to have not met the standards or requirements set by law, for become an investigator. This can be seen in the following table:

No	PERSONNEL	RANK	POSITION
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1.	Muhammad Rustam.SH	IPDA	Head of Criminal Investigation Unit/Investigator
2.	Herman Mandosar	Bripka	Head of Identification/Investigator Unit
3.	Muh.Iqra Apriyanto	Briptu	Assistant Investigator
4.	Maldi Maripadang	Briptu	Assistant Investigator
5.	Dedi.B.Tallomanafe	Bripda	Assistant Investigator
6.	Muh.Fauzi.I.Pratama	Bripda	Assistant Investigator
7.	Yohan Mauridz Giay	Bripda	Assistant Investigator
8.	Fadly Rivai Wally	Bripda	Assistant Investigator

Source: Satreskrim – Memberamo Raya Police in 2023.

Based on the data in table 4, it can be seen from the quality aspect HR, according to Head of Criminal Investigation Unit for Memberamo Raya Police, IPDA. Muhammad Rustam, that, if you look at what is required in the provisions of Article 2A paragraph (1) PP Number: 58 of 2010 and Article 10 of the National Police Chief Regulation Number: 1 of 2012, absolutely not commensurate with the implementation of investigative duties and functions criminal cases at the Police Criminal Investigation Unit Memberamo Raya.

Human Resources (HR) police personnel in the field This investigation is important, because based on the provisions of Article 2A paragraph (1) Government Regulation Number 58 of 2010 concerning Amendments to Government Regulation Number 27 of 1983 Regarding the Implementation of the Criminal Procedure Code, it is stated that in order to be held as an official Indonesian National Police investigator as intended, candidate must meet the requirements:

- 1) The lowest rank is Inspector Two Police and have at least a bachelor's degree or equivalent;
- 2) Serve in the field of investigative functions for a minimum of 2 (two years);
- 3) Complete and pass specialist development education detective function;
- 4) Physical and spiritual health as proven by a letter doctor's statement, and
- 5) Have the ability and moral integrity

In the event that a work unit does not have a Second Police Inspector those with at least a bachelor's degree or something equivalently, the Chief of the Indonesian National Police or an Indonesian Police Officer The person appointed may appoint another Inspector of Two Police as investigator.

Furthermore, based on the provisions of Article 10 of the Regulations Chief of Indonesian Police Number 1 of 2012 concerning Recruitment And the Selection of Indonesian National Police Investigators is regulated as follows requirements for prospective participants in the recruitment and selection of National Police Investigators includes:

- 1) The lowest rank is Inspector Two (IPDA);
- 2) Have a bachelor's degree accredited at the lowest Strata One (S1) and preferably a Bachelor of Law degree (SH);
- 3) Have an interest in the field of investigation accompanied by a letter statement;
- 4) Demonstrated ability to operate a computer with a statement letter from Kasatker/Kasatfung or from the course institution;
- 5) Have received a recommendation from the Satker concerned to take part in the selection accompanied by performance appraisal list;
- 6) Physically and spiritually healthy as proven by a letter doctor's statement from the National Police doctor, and
- 7) There are no criminal/violation problems proven by a Certificate of Research Results (SKHP).

Thus, referring to the criteria mentioned above, Investigator at the Resort Police Criminal Investigation Unit Memberamo Raya, which meets the terms and criteria only

numbering 1 (one) person, namely Head of Criminal Investigation Unit IPDA Muhammad Rustam, SH. Meanwhile, investigators and other assistant investigators can be said to have not met the requirements for rank or status education, even investigators and assistant investigators have never attended a course or training or education investigation specialist.

To overcome the problem of quality and quantity then it is necessary to take policies or concrete steps by the elements leaders of the State Police at Headquarters Level, as well as at Polda level in providing special policies, namely in Acceptance of prospective employees to the Indonesian National Police is more at the quota (number) level for prospective employees who complete 1st level undergraduate education (S1), especially Bachelor of Laws (SH), to be placed in the Work Unit of the Directorate of Investigation and Crime, to be in line with the legal regulations mentioned above, for example, what has been implemented by the Indonesian Prosecutor's Office, Candidates to become Public Works Prosecutors must have a minimum education Bachelor of Laws and Ministry of Law and Human Rights in implementation and acceptance of prospective judges.

With an increase in the quantity of human resources for investigators and/or investigators, then the workload will be greater reduced, let alone offset by an increase in quality or the quality. Improving the quality or qualities of investigative personnel, In the end, it can create an increase in work results accordingly with the current program, vision and mission of the Indonesian National Police, namely "Precision" police, namely predictive, responsible, transparent, as an important indicator in realizing practice examination of general criminal cases in accordance with ideas, ideals and objectives of implementing the principle of equality before

the law.¹³

b) Insufficient Investigation Operational Cost Budget.

Of course, there is the problem of a lack of operational budget often experienced by agencies, or institutions and government agencies in financing activities in the implementing unit or units technical operations, including the police institution The Republic of Indonesia, both at the central level (National Police Headquarters) and at

Regional Police and Resort Police levels spread across Cities and Regencies throughout Indonesia. Which is the problem? This operational cost budget shortage is keenly felt by Memberamo Resort Police Criminal Investigation Unit Raya in supporting operational technical activities in the field inquiries and investigations.

As an illustration based on the author's experience in the field of Criminal Investigation and also as an investigator, in relationship with operational cost budget requests investigation, normatively there are 3 (three) rules that are made references or guidelines, namely:

- 1) Chief of Police Regulations Republic of Indonesia Number: 4 of 2014 concerning Administration Financial Accountability Within the State Police RI;
- 2) Regulation of the Head of the Police Criminal Investigation Agency Republic of Indonesia Number: 1 of 2014 concerning Operational Standards Criminal Investigation Planning Procedures and
- 3) Decree of the Chief of the Indonesian National Police Number: Kep/440/IV/2022, Regarding the 2023 National Police Index Norms.

For more details, below is a table of quantities the investigation budget value is in accordance with the classification of the criminal act which is regulated in the 2023 Police Index Norms.

Table: 4
Police Index Norms for 2023
Investigation and Investigation Operational Budget
General Crimes

No	Case Classification	Unit	Index T.A 2023
1.	Very Difficult Matter. Used for: a. Investigation: 1) Investigation Administration.	1 Case	Rp. 31,507,000,- Rp.10.158.000,- Rp. 1.000.000,-

¹³ Renggong Ruslan, Hukum Pidana Khusus Memahami Delik-Delik di Luar KUHP, Prenandamedia Group, Jakarta, 2016, hlm 26.

	2) Crime scene processing 3) Observation (observation) 4) Interview (interview) 5) Tailing 6) Incognito 7) Tracking 8) Research and Document Analysis 9) Shooting And Recording b. Investigation: 1) Investigation Administration 2) Coercive Efforts 3) Inspection 4) Case title 5) Submission of Case Files		Rp. 900.000,- Rp. 900.000,- Rp. 2.982.000,- Rp. 1.100.000,- Rp. 1.400.000,- Rp. 900.000,- Rp. 476.000,- Rp. 500.000,- Rp. 21.349.000, Rp. 1.000.000,- Rp. 5.650.000,- Rp. 5.089.000,- Rp. 9.160.000,- Rp. 450.000,-
2.	Very Difficult Regional Case	1 Case	Rp. 39.709.000,-
3.	Difficult Matters	1 Case	Rp. 27.025.000,-
4.	Medium Case	1 Case	Rp. 12.710.000,-
5.	Easy Matter	1 Case	Rp. 7.720.000,-
Total Investigation and Investigation Operational Funds			Rp. 78.852.000,-

Data Source: Processed from National Police Chief's Decree Number: Kep/440/IV/2022.

The problem of insufficient operational cost budget investigation, is one of the inhibiting factors settlement of criminal cases carried out by the Unit Memberamo Raya Police Criminal Investigation Unit, so various things emerged bad and negative perspective in society as it were the cases being investigated do not know where the process is, there is even an impression of discrimination in examination practices criminal cases carried out by investigators. Which on Ultimately the public will judge that inspection practice Criminal cases are carried out by investigators in the Unit The Memberamo Raya Police Criminal Investigation Unit does not reflect the values and sense of justice in society.

c) Demands for Settlement of Criminal Cases Based on Customs of the Local Customary Law Community.

Apart from the two factors mentioned above, in practice examination of general criminal cases carried out by investigators from the Memberamo Raya Police Criminal Investigation Unit were also present one of the factors that influences public perception regarding the application of the principle of equality before the law, namely demands settlement of criminal cases outside the criminal justice system by resolving cases based on customs or customs of local customary law communities.

According to the Head of the Identification Unit, Bripka Herman Mandosar, that This factor is considered to be a very complex factor, so that the solution must be done very carefully, and carried out with various approaches even in some cases in practice a case is resolved with an informal compomistic approach, namely when deep a case, then the tendency of positive law is not very functional and can even be put aside, so that the process The resolution of the case is resolved through the application of law customs or customs of local customary law communities.¹⁴

In principle, this can be justified, because However, customary law is a system laws whose existence is recognized in the legal system in Indonesia, even its existence is recognized and guaranteed by state constitution with a note that customary law is still exists, is still alive and in accordance with developments society and the principles of the Unitary State of the Republic of Indonesia, as regulated in the provisions of Article 18B paragraph (2) of the Constitution of the Republic of Indonesia.

For this reason, in practice, although the solution to a cases, are required to be resolved by using customs or customs of local customary law communities, So, the resolution of the case must be in accordance with the values:

- 1) Pancasila, meaning in accordance with paradigm values moral, religious, humanitarian (humanist), national, and fair;
- 2) Human Rights, meaning not violating them provisions governing rights fundamental to life, protected by the constitution, which applies universally (International Declaration of Human Rights) and national in law The Foundation of the Republic of Indonesia in 1945.
- 3) Generally recognized legal principles universal, meaning referring to or originating from "the general principle of law recognized by the community of nation (general legal principles governing community of nations)" in Article 15 paragraph 2 ICCPR (UN International Covenant On Civil and Political Rights / International Covenant on Civil Rights and Political)

The three things mentioned above should be the basis in resolving cases or cases that have been carried out by a customary law community. Besides that, process The resolution of the case must go through a judicial procedure customary criminal law which has a philosophy of justice peace and restore and/or return the balance of customary law is disturbed in indigenous communities local. Substantial customary justice is actually implemented based on the values contained in a customary law community characterized by the principles of kinship, religion, communal with a starting point not on individual justice but justice together. Logical consequences of dimensions Thus, the imposition of sanctions in a society customary law is based on the dimensions of settlement bringing harmony,

¹⁴ Bripka Herman Mandosar, Kanit Identifikasi Satreskrim Polres Memberamo Raya, Interview result, 10 Agustus 2023.

harmony, balance as well harmonization of the environment of the customary law community itself.

Matter This is sometimes difficult to realize in the settlement process This is a problem, because sometimes customary sanctions are requested outside human reasoning. For example, demands for payment of losses immaterial in the form of “customary money” or “customary fines” which are too large in the traditional “broken arrow” procession, or the term “head pay head” in murder cases, usually the victim’s family will ask for change usually women in the hope that it will giving birth to a child as a replacement for the victim, if this is not the case If this is done, it will trigger new disputes, perhaps even to tribal war.

The complexity of this problem, which causes positive law, both material and formal criminal law, often times difficult to apply in the practice of investigating criminal cases crimes committed by investigators at the Police Criminal Investigation Unit Memberamo Raya. So for writers, practices like this, in itself is one of the factors that hinders the implementation of the principle of equality before the law in practice examination of general criminal cases by unit investigators Memberamo Raya Police Criminal Investigation Unit.

4. Conclusion

Based on discussion and research data the author obtained, then the conclusions that can be drawn in The writing of this thesis is as follows:

- 1) The application of the principle of equality before the law cannot yet be implemented as appropriate by the Police Criminal Investigation Unit Investigator Memberamo Raya Resort, in case examination practice general crime.
- 2) In the practice of examining general criminal cases, by There are three investigators from the Memberamo Raya Police Criminal Investigation Unit The main factors that hinder the implementation of the principles equality before the law, namely first, limited human resources investigators, both in terms of quality and quantity; second, minimal budget for operational costs for investigations; and third, demands for settlement of criminal cases based on custom customs by local customary law communities

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