

**SUPERVISION OF POLICE DUTIES AND AUTHORITIES BASED ON
LAW NUMBER 2 OF 2002 ON THE STATE POLICE OF THE REPUBLIC
OF INDONESIA IN *SIYASAH DUSTURIYAH* PERSPECTIVE**

THESIS

By :

NADYA BINTI MUKHTAROMA

19230054



CONSTITUTIONAL LAW DEPARTMENT (SIYASAH)

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY OF MAULANA MALIK IBRAHIM

MALANG

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STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**SUPERVISION OF POLICE DUTIES AND AUTHORITIES BASED ON
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OF INDONESIA IN *SIYASAH DUSTURIYAH* PERSPECTIVE**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 5 May 2023



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**SUPERVISION OF POLICE DUTIES AND AUTHORITIES BASED ON
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OF INDONESIA IN *SIYASAH DUSTURIYAH* PERSPECTIVE**

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3. Dr. Musleh Harry, S.H., M.Hum. as the Head of Constitutional Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang

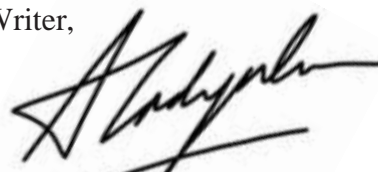
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Malang, 5 May 2023

Writer,



NADYA BINTI MUKHTAROMA

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TRANSLITERATION GUIDANCE

A. General

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not the translation of Arabic into Indonesian. Included in this category are the Arabic names of Arab nations, while the Arabic names of non-Arabic nations are written as the spelling of the national language, or as written in the book that is the reference. Writing book titles in footnotes and bibliography, still uses this transliteration provision.

There are many choices and provisions for transliteration that can be used in writing scientific papers, both those with international, national standards and provisions specifically used by certain publishers. The transliteration used by the Sharia Faculty of the State Islamic University (UIN) Maulana Malik Ibrahim Malang uses EYD plus, which is a transliteration based on the Joint Decree (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, January 22, 1998, No. 158/1987 and 0543.b/U/1987, as stated in the Arabic Transliteration Guide (A Guide Arabic Transliteration), INIS Fellow 1992.

B. Consonant

Arab	Latin	Arab	Latin
ا	Not symbolized	ط	T{
ب	B	ظ	Z{
ق	Q	ع	'
ج	S	غ	G
ح	J	ف	F
ح	H{	ق	Q

Arab	Latin	Arab	Latin
خ	Kh	ك	K
د	D	ل	L
ذ	Z	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	sy	أ/ء	'
ص	S{	ى	Y
ض	D{		

Hamzah (ء) which is often symbolized by an alif, if it is located at the beginning of a word then in transliteration it follows the vowel, it is not symbolized, but if it is located in the middle or at the end of a word, then it is symbolized by a comma above ('), reversed by a comma (') to replace the symbol “ع.”

C. Vowels, Length and Diphthongs

Every Arabic writing in the Latin written form of the vowel fathah is written with "a", kasrah with "i", dlommah with "u", while each long reading is written in the following way:

Long (a) vowel = â eg قال becomes qâla

Long (i) vowel = î for example قيل becomes qîla

Long (u) vowel = û for example دون becomes dûna

Specifically for reading the nisbat, it cannot be replaced with “i”, but it should still be written with “iy” so that it can describe the nisbat at the end. Likewise for the sound of diphthongs, wawudanya' after fathah is written with “aw” and “ay”. Consider the following examples:

Diphthong (aw) = *قو* for example *قول* becomes qawla

Diphthong (ay) = *ي* for example *خير* becomes khayrun

D. Ta' marbûthah (ة)

Ta' marbûthah transliterated with "t" if it is in the middle of a sentence, but if ta' marbûthah is at the end of the sentence, then it is transliterated using "h" for example *الرسالة للمدرسة* becomes al-risalat li al-mudarrisah, or when it is in the middle of a sentence consists of the mudlaf and mudlaf ilayh arrangements, then it is transliterated using t which is connected with the next sentence, for example *في الرحمة* becomes fi rahmatillâh.

E. Article and Lafdh al-Jalâlah

The article in the form of "al" (ال) is written in lower case, unless it is located at the beginning of the sentence, while "al" in the word jalâlah which is in the middle of the sentence it leans on (idhafah) is omitted.

Consider the following examples:

1. Al-Imâm al-Bukhâriy said...
2. Al-Bukhâriy in his muqaddimah book explains ...
3. *Masyâ' Allâhkânawamâ lam yasya' lam yakun.*
4. *Billâh 'azzawajalla.*

F. Indonesianized Arabic names and words

In principle, every word of Arabic origin must be written using the transliteration system. If the word is the Arabic name of an Indonesian or

Indonesianized Arabic, there is no need to write it using the transliteration system. Consider the following examples:

“...Abdurrahman Wahid, the fourth former President of the Republic of Indonesia, and Amin Rais, former Chairman of the MPR at the same time, have made an agreement to eradicate nepotism, collusion and corruption from the face of Indonesia's earth, one way is by intensifying prayers in various government offices. , However ...”

Pay attention to the writing of the names "Abdurrahman Wahid," "Amin Rais" and the word "salat" written using the Indonesian language writing procedure which is adapted to the writing of his name. Even though these words come from Arabic, they are in the form of Indonesian names and people and are Indonesianized, therefore they are not written in the way "Abd al-RahmanWahîd," "AmînRaîs," and not written with "shalât"

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ABSTRAK

Nadya Binti Mukhtaroma, 19230054, 2023, **PENGAWASAN TERHADAP TUGAS DAN KEWENANGAN POLISI BERDASARKAN UNDANG-UNDANG NOMOR 2 TAHUN 2002 TENTANG KEPOLISIAN NEGARA REPUBLIK INDONESIA PERSPEKTIF SIYASAH DUSTURIYAH**, Skripsi, Program Studi Hukum Tata Negara (Siyasah), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang,

Dosen Pembimbing: Dr. H. M. Aunul Hakim, S.Ag., M.H.

Penelitian ini membahas tentang Pengawasan Terhadap Tugas dan Kewenangan Polisi Berdasarkan Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia Perspektif Siyasah Dusturiyah. Adapun tujuan dari penelitian ini adalah untuk mengetahui dan menganalisis pengawasan terhadap tugas dan kewenangan di kepolisian perspektif Siyasah Dusturiyah.

Penelitian ini menggunakan penelitian hukum normatif, sedangkan pendekatannya menggunakan pendekatan kasus dan pendekatan perundang-undangan. Metode pengumpulan bahan hukum dirangkai melalui inventaris dan identifikasi peraturan perundang-undangan, serta mengklasifikasi dan analisis bahan hukum. Pengolahan data menggunakan metode validasi data, pengklasifikasian data, dan analisis data.

Kepolisian merupakan lembaga pemerintahan yang memiliki peranan penting dalam negara dengan tugas menjaga keamanan dan ketertiban masyarakat, melindungi, mengayomi, melayani masyarakat, serta menegakkan hukum. Namun dalam pelaksanaan tugasnya sering terjadi banyak penyalahgunaan kewenangan oleh anggota polisi. Pengaturan pengawasan terhadap tugas dan kewenangan di kepolisian diatur berdasarkan Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia yaitu dilakukan oleh pengawas internal dan pengawas eksternal. Pengawasan di kepolisian dilihat dari konsep *siyasah dusturiyah* yaitu *al-hisbah*, tetapi masih diperlukan peningkatan kualitas pengawasan di kepolisian untuk mencapai kemaslahatan

Pengawas di kepolisian tetap perlu meningkatkan perannya baik oleh pengawas internal maupun eksternal agar dapat membangun kepercayaan dan tidak lagi terjadi penyalahgunaan tugas dan wewenang oleh anggota polisi. Dan diharapkan tetap dapat menegakkan fungsi pengawasan secara konsisten sesuai petunjuk dan aturan yang diisyaratkan Al-Qur'an.

Kata Kunci: Pengawasan, Kepolisian, Siyasah Dusturiyah

ABSTARCT

Nadya Binti Mukhtaroma, 19230054, 2023, **SUPERVISION OF POLICE DUTIES AND AUTHORITIES BASED ON LAW NUMBER 2 OF 2002 ON THE STATE POLICE OF THE REPUBLIC OF INDONESIA IN *SIYASAH DUSTURIYAH* PERSPECTIVE**, Thesis, Department of Constitutional Law (Siyasa), Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang,

Supervisor: Dr. M. Aunul Hakim, S.Ag.,M.H.

This study discusses Supervision of Police Duties and Authorities Based on Law Number 2 of 2002 concerning the Indonesian National Police Perspective of *Siyasah Dusturiyah*. The purpose of this study is to find out and analyze the supervision of duties and authorities in the police from the perspective of *siyasa dusturiyah*.

This study uses normative legal research, while the approach uses a case approach and statutory approach. The method for collecting legal materials is structured through inventory and identification of laws and regulations, as well as classifying and analyzing legal materials. Data processing uses data validation methods, data classification, and data analysis.

Police is a government institution that has an important role in the country with the task of maintaining public order and security, protecting, nurturing, serving the community, and enforcing the law. However, in carrying out their duties, there is often a lot of abuse of authority by members of the police. Arrangements for supervision of the duties and powers of the police are regulated based on Law Number 2 of 2002 concerning the Indonesian National Police, namely carried out by internal supervisors and external supervisors. Supervision in the police seen from the *siyasa dusturiyah* concept that is *al-hisbah*, but it is still necessary to improve the quality of supervision in the police to achieve benefit.

Supervisors in the police still need to increase their role both by internal and external supervisors in order to build trust and prevent abuse of duties and authority by members of the police. And it is hoped that it will be able to uphold the supervisory function consistently according to the instructions and rules implied by the Qur'an.

Keywords: Supervision, Police, *Siyasah Dusturiyah*

مستخلص البحث

نادية بنتي مخترومة ، ١٩٢٣٠٠٥٤ ، ٢٠٢٣ ، الإشراف على مهام وسلطات الشرطة على أساس القانون رقم ٢ لعام ٢٠٠٢ المتعلق بشرطة الدولة لجمهورية إندونيسيا السياسة الدستورية ، برنامج دراسة القانون الدستوري (الشرعية) الجامعة الإسلامية فقيرة ،

المشرف: دكتور. م. أنول الحكيم ، بكالوريوس دين ، ماجستير في القانون

تناقش هذه الدراسة الإشراف على واجبات وسلطات الشرطة بناءً على القانون رقم ٢ لعام ٢٠٠٢ بشأن منظور الشرطة الوطنية الإندونيسية لسياسة دستورية. الغرض من هذه الدراسة هو معرفة وتحليل الإشراف على الواجبات والسلطات في الشرطة من منظور سياسة الدستور. تستخدم هذه الدراسة البحث القانوني المعياري ، بينما يستخدم النهج الحال والنهج القانوني. يتم تنظيم طريقة جمع المواد القانونية من خلال جرد وتحديد القوانين واللوائح ، وكذلك تصنيف وتحليل المواد القانونية. تستخدم معالجة البيانات طرق التحقق من صحة البيانات وتصنيفها وتحليل البيانات.

الشرطة هي مؤسسة حكومية لها دور مهم في الدولة مهمتها الحفاظ على النظام العام والأمن وحماية ورعاية وخدمة المجتمع وإنفاذ القانون. ومع ذلك ، أثناء قيامهم بواجباتهم ، غالبًا ما يكون هناك الكثير من إساءة استخدام السلطة من قبل أفراد الشرطة. تُنظم ترتيبات الإشراف على واجبات وسلطات الشرطة على أساس القانون رقم ٢ لعام ٢٠٠٢ بشأن الشرطة الوطنية الإندونيسية ، ولا سيما من قبل المشرفين الداخليين والمشرفين الخارجيين. يُنظر إلى الإشراف في الشرطة من مفهوم السياسة دستورية ، أي الحسبة ، لكن لا يزال من الضروري تحسين جودة الإشراف في الشرطة لتحقيق الفائدة.

لا يزال المشرفون في الشرطة بحاجة إلى زيادة دورهم من قبل المشرفين الداخليين والخارجيين من أجل بناء الثقة ومنع إساءة استخدام الواجبات والسلطات من قبل أفراد الشرطة. ومن المؤمل أن تكون قادرة على دعم الوظيفة الإشرافية باستمرار وفقًا للتعليمات والقواعد التي يتضمنها القرآن

الكلمات المفتاحية: إشراف ، شرطة ، سياسة دستورية

CHAPTER 1

INTRODUCTION

A. Research Background

The State of Indonesia is a legal state based on Pancasila and the 1945 Constitution, which upholds the rights of every citizen and can carry out the law as it should. The rule of law aims to ensure that the law is enforced without exception, meaning that all actions by citizens and government agencies must be based on applicable law, both from the law enforcers themselves. The 1945 Constitution clearly explains that the State of Indonesia is based on law (rule of law), not based on mere power (power state).¹

In the goals of the Republic of Indonesia, it means that there is protection for the community and there are people's rights that are guaranteed in every aspect of their life. goals of our country. Today, various kinds of legal problems begin to occur. The pattern of human behavior becomes increasingly deviant and inconsistent with the norms prevailing in society, which in turn can lead to violations and even crimes. One form of crime that develops in society is violence. Violence is an arbitrary act committed However, the facts that are happening in society are starting to be inversely proportional to the by a person or group of people to hurt other people both physically and psychologically.

¹ Kansil, *Introduction to Indonesian Law and Legal System*, (Jakarta: Balai Pustaka, 1989), 346.

The police are one of the government institutions that have an important role in the country, especially in a country based on law.² The National Police of the Republic of Indonesia as one of the organs of the Republic of Indonesia is in accordance with the mandate of Article 30 section (4) of the 1945 Constitution which states that "The National Police of the Republic of Indonesia as an instrument of the state that maintains security and public order is tasked with protecting, nurturing, serving the community, and enforcing the law" .

As an organized and structured institution within a state organization. The State Police of the Republic of Indonesia as a tool or organ of the state is further regulated in Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia Article 5 section (1) which states that the National Police as an instrument of the state plays a role in maintaining public security and order, enforcing the law, and provide protection, shelter, and service to the public in the framework of maintaining domestic security. The police are also known as the living law because enforcing the law and serving the interests of the general public are the main functions of the police.³ In short, it can be said that the task of the police is to prevent crime and provide protection to the community.

In accordance with the state's goal of providing protection for people's rights, the police as a law enforcement agency are expected to play a more active role as legal figures who in carrying out their duties to protect,

² Article 1 section (3) of The 1945 Constitution

³ Satjipto Raharjo, *Law Enforcement: A Sociological Review*, (Yogyakarta: Genta Publishing, 2009), 113.

protect and serve the community are based on the legitimacy of applicable law. However, problems began to arise with the existence of various cases of irregularities committed by the police, including abuse of authority, the police being military (militaristic), namely using weapons against enemies of society, to cases of wrongful arrests by members of the police. So that in order not to fall prey to behavior that is hated by the community, the police must act professionally and adhere to a code of ethics.

In line with this, Soerjono Soekanto is of the opinion that law and law enforcers are some of the law enforcement factors that cannot be ignored, because if ignored it will result in not achieving the expected law.⁴ Law is basically functioned as a tool to regulate social interaction. In its function either as a rule or as an attitude of action is to guide human behavior regarding what is permissible and what is not permissible to do in order to create an orderly society. In the case of an orderly society, law can also function as a means to create justice which is expected to be beneficial in society.

Building a strict, strong and effective control and supervision mechanism for the state is an important and fundamental principle in a democracy. This control and supervision is expected to prevent potential abuse of power and at the same time encourage and ensure state institutions carry out their functions and duties in a professional, transparent and accountable manner. Therefore, agendas for strengthening control and

⁴ Soerjono Soekanto, *Factors Influencing Law Enforcement*, print 5, (Jakarta: Rajawali, 2004), 5.

supervision of state institutions are a very important part. One of them is in the police institution.

Supervision in the context of law enforcement by the police is very necessary. Supervision or control in the Big Indonesian Dictionary means supervision and inspection, so that controlling can be interpreted as supervising or checking.⁵ Muchsan defines supervision as a form of activity to evaluate a task performance in fact, while the goal is only limited to matching whether the activity is in accordance with predetermined benchmarks.⁶ Supervision is said to be very necessary considering the many abuses committed by members of the police (persons) both in the form of violence when enforcing the law and violations of the law by members of the police themselves such as abuse of authority.

The corruption case involving the former Inspector General of Police Napoleon Bonaparte as the former Head of the International Relations Division of the Indonesian National Police can be related to the oversight function in the police, such as the lack of internal oversight where even though Napoleon has a high position, the corruption case shows a failure in overseeing actions and behavior its members.⁷ This highlights the importance of having an effective and strict oversight mechanism within the police to prevent and uncover corrupt practices.

⁵ Big Indonesian Dictionary, accessed on 1 September 2022, <https://kbbi.kemdikbud.go.id/>

⁶ Sirajun, *Public Service Law*, (Malang: Setara Press, 2012), 126.

⁷ CNN Indonesia, "Inspector General Napoleon Bonaparte Becomes a Suspect in the Djoko Tjandra Case", 10 August 2020, accessed on 10 September 2022, <https://www.cnnindonesia.com/nasional/20200814180905-12-535928/irjen-napoleon-bonaparte-jadi-tersangka-kasus-djoko-tjandra/>

Weaknesses in the complaint and reporting system are also still a problem in the form of oversight within the police, this can be seen when members of the police who are involved in acts of corruption can be protected by a closed internal environment and intervention from their colleagues (body spirits). This shows that the lack of role and function of oversight institutions in the police can provide loopholes for corrupt practices such as what happened in the case of Napoleon Bonaparte.

In addition, the lack of optimal police supervisors in carrying out their supervisory duties can be seen in the many reports related to police supervision received by the supervisory agency of the Indonesian National Police. In 2021, for example, based on data obtained through Presisi Edumas, there were 1,985 reports from the public. Of these, 991 of them were submitted to Professions and Security.⁸

The decline in the level of public trust in the Indonesian National Police as a law enforcer reached 12.3% from 66.7% in May 2022 to 54.4% related to the many cases of law violations, especially by the law enforcers themselves, one of which was the case of the former Kadiv Propam Mabes Polri Inspector General Pol Ferdy Sambo on 8 July 2022 related to the institution of the Indonesian National Police in carrying out security and public order and law enforcement duties.⁹ The authority of the internal

⁸ Nur Habibie, "Polri Receives 1,985 Public Complaint Reports Throughout 2021", Merdeka.com, 10 February 2022, accessed on 1 September 2022, <https://m.merdeka.com/peristiwa/polri-terima-1985-laporan-pengaduan-masyarakat-sepanjang-2021.html>

⁹ Deni Muliya, "Hacked by the Ferdy Sambo Case, Survey Results Say Public Trust in the Police Has Dropped to 54.4 Percent", Kompas.TV, August 25, 2022, accessed on August 30, 2022,

oversight body in the police is exercised by the Professional and Security Division (Propam) based on the Chief of Police Decree Number: Kep/53/X/2002.

Professional and Security Division is one of the organizational forums within the police in the form of a division that is responsible for professional development and security issues. Professional and Security Division has been used in an organizational structure within the police since 27 October 2002 as one of the implementing elements of the special staff of the Indonesian National Police at Headquarters level which is under the National Police Chief. Professional and Security Division duties in general are to foster and carry out the functions of professional accountability and internal security including upholding discipline and order, as well as being in charge of serving public complaints regarding irregularities in the actions of members of the police.¹⁰

The impact that occurs when there is a lot of abuse of duties and authority by members of the police, it is undeniable that things like vigilantism or vigilante behavior by the community will tend to occur frequently.¹¹ Vigilantism is a situation when people take on the role of law enforcement without being given legal authority and consideration of whether their actions are based on justice or not. If this situation is based on the

<https://www.kompas.tv/article/322443/diterjang-kasus-ferdy-sambo-hasil-survei-sebut-kepercayaan-publik-pada-polri-turun-jadi-54-4-persen>

¹⁰ Police Profession and Security, accessed on 1 September 2022, <https://propam.polri.go.id/>

¹¹ Aria W. Yudhistira, "The Danger of Erosion of Public Trust in the Police", Katadata, 26 October 2021, accessed on 21 March 2023 <https://katadata.co.id/ariayudhistira/analisisdata/6177986172479/bahaya-erosi-kepercayaan-publik-terhadap-polisi>

provisions in Article 30 section (4) of the 1945 Constitution as well as the number, extent and completeness of the duties, functions and powers of the police as regulated in Law Number 2 of 2002 concerning the Indonesian National Police, then an institution is urgently needed. external supervisor as a function check and balances to control and maintain balance in the police force.

As contained in Islam related to supervision as a procedure that has been determined and regulated in accordance with the plan and performance of the role that has been determined by the organization, which means that in carrying out ensuring that the results are in accordance with the plan based on *tuhid*.

Based on these descriptions, the author conducted research and wrote with the title "Supervision of Police Duties and Authorities based on Law Number 2 of 2002 On The State Police of Republic of Indonesia in *Siyasah Dusturiyah* Perspective".

B. Statement of Problem

1. How is the procedure for supervising the police duties and authorities in Law Number 2 of 2002 concerning the Indonesian National Police?
2. How is the *siyasah dusturiyah* perspective to the supervision of police duties and authorities based on Law Number 2 of 2002 concerning the Indonesian National Police?

C. Objective of Research

The objective to be achieved are as follows:

1. To find out and to analyze the procedure for supervising the police duties and authorities in Law Number 2 of 2002 concerning the Indonesian National Police.
2. To find out and to analyze the *siyasah dusturiyah* perspective against the supervision of police duties and authorities based on Law Number 2 of 2002 concerning the Indonesian National Police

D. Benefit of Research

The benefits of research contain what contribution will be made after the research is completed. Benefits or uses consist of theoretical and practical benefits, such as benefits for researchers, agencies, and society as a whole.

The benefits expected from this research are as follows:

1. Theoretical Benefits

The results of this study are expected to contribute ideas in the development of general legal knowledge and knowledge in the field of constitutional law related to police supervision based on the Police Law in *siyasah dusturiyah* perspective, and can also be useful as information and literature or scientific information materials needed to develop existing theories in the field of constitutional law.

2. Practical Benefits

This research is expected to contribute ideas, especially in the field of constitutional law related to police supervision under The Police Law in *siyasaah dusturiyah* perspective. It is also hoped that the results of this research will be useful for police practitioners as well as society in general.

E. Research Method

In guaranteeing a scientific truth in a research, it requires proper use of methodology as a guide in conducting research including analysis of research data. Methodology is a way of finding or carrying out an activity to obtain concrete results. The use of legal research methods in writing thesis is necessary to explore, process, and formulate the legal materials obtained so that conclusions will be obtained in accordance with scientific truth in answering the legal issues studied. Appropriate methods are expected to provide a coherent flow of thought in an effort to achieve assessment. The research method used in this study is as follows:

1. Types of research

Legal research is a process to find the rule of law, legal principles, and legal doctrines in order to address the legal issues at hand.¹² Based on the title and the issues that will be discussed regarding police surveillance in law enforcement, as well as in order to obtain useful result, a research was conducted using normative legal research

¹² Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Prenada Media Group), 2010, 35.

methods.. The normative legal research method is a legal research of literature which is carried out by examining library materials or secondary data.¹³

Normative legal research is legal research that proposes the development of law from a normative issue by focusing on issues of legal rules that are studied and analyzed by looking at concepts or other regulations in order to obtain a legal product that is scientifically correct.

Research that refers to normative aspects that contain legal or judicial issues that require a legal review is due to a vacuum of norm, vagueness of norm, or there is a conflict of norm.¹⁴

2. Research approach

The approach in normative legal research is used as a starting material and as a basis for a researcher's point of view and frame of mind for conducting analysis. In legal research, there are several types of research approaches, including the statutory approach, historical approach, case approach, and the conceptual approach.¹⁵ Based on the legal studies raised, the research approach used in this study is the case approach and statutory approach.

¹³ Soerjono Soekanto dan Sri Mahmudji, *Normative Legal Research, A Brief Overview*, (Jakarta: Raja Grafindo Persada, 2003), 13.

¹⁴ Bahder Johan Nasution, *Legal Research Methods*, (Bandung: Mandar Maju), 2016, 97

¹⁵ Peter Mahmud Marzuki, *Legal Research*, 93.

The statutory approach is carried out by examining all laws and regulations related to the legal issues studied. The results of the review of the regulations are an argument to solve the issues raised.¹⁶

3. Type of legal material

Legal materials are a means of a research that is used to solve existing problems while at the same time providing clues about what should be. The type of legal material used in this research is secondary legal material or literature study, which is carried out by collecting data contained in books, documents, records, and laws and regulations relating to the object under study. There are also legal materials used in this study are following:

a. Primary legal material

Primary legal materials are legal materials which are used as the basis for the preparation of thesis writing taken from the authoritative literature, namely having authority. Primary legal materials consist of laws and regulations, official records or treatises in making laws and judges' decisions. The primary legal materials that will be used in studying the problems in this study are:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law Number 2 of 2002 concerning the Indonesian National Police; (State Gazette of the Republic of Indonesia of 2002

¹⁶ Soerjono Soekanto, *Legal Research Methods: A Guide for Law Researchers and Students*, (Jakarta: Raja Grafindo), 2014, 54.

Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168);

3. Presidential Regulation Number 52 of 2010 concerning the Organizational Structure and Working Procedures of the Indonesian National Police;
4. Presidential Regulation Number 17 of 2011 concerning the National Police Commission;
5. Regulation of the Head of the Indonesian National Police Number 6 of 2017 concerning Organizational Structure and Work Procedures of Organizational Units at the Indonesian National Police Headquarters Level.

b. Secondary legal material

Secondary legal materials are legal materials obtained from supporting legal materials that explain primary legal materials. There are also secondary legal materials that can be obtained from literature, opinions of legal scholars, books, papers, and journals that are relevant to the title or previous research that is relevant to the problem under study, as well as several relevant sources from the internet.

c. Tertiary legal material

Tertiary legal material are obtained from supporting materials from primary and secondary legal materials, such as dictionaries and encyclopedias.

4. Legal material collecting methods

In this study, which uses a statutory approach with secondary legal materials, the method of collecting legal materials to be used is library research.¹⁷ This method is carried out by studying or reviewing books, journals, and literature that are relevant to the problem to be solved.

5. Legal material processing methods

After collecting legal materials, the next step is processing legal materials which are carried out in several stages, including:

- a. Re-examination of the data that has been obtained by conducting data validation with the aim that the existing data is complete and guaranteed.
- b. The process of classifying the data is by matching the data with the issues raised with the intention of facilitating the analysis.
- c. Record data in a systematic and consistent manner by pouring data into a conceptual plan which is then used as a basis in providing analysis until the realization of coherence between the data and the analysis provided.

The final stage of processing data materials is data analysis. Organizing the data is done by interpreting the data using qualitative analysis methods, namely by tracing laws and regulations and library materials which are then written descriptively so that correct

¹⁷ Peter Mahmud Marzuki, *Legal Research*, 141-169.

conclusions can be obtained regarding Polri supervision as findings from research results.

6. Previous Research

This research is basically a continuation of several previous studies. The results of this study are expected to complement these studies both in supporting research results and providing verification of them. As an illustration of the originality of this research, the researcher will describe some of the results of previous studies that have the same theme as the research that will be carried out. This presentation is also intended to avoid repeating studies of the same material. Some of the previous studies that have been conducted in this field of study are as follows:

- a. Saleh Tangke,¹⁸ *The Influence of Internal Oversight and Competence on Improving the Performance of Police Members in the Work Unit of the Regional Supervision Inspectorate of the Gorontalo Regional Police*, 2021. This thesis raises issues related to the impact of internal control and competence in improving the performance of police officers. It was found that the existence of internal supervision had a positive and significant influence in improving police performance within the Itwasda Polda Gorontalo work unit environment. The existence of competence also has a positive influence in terms of improving police work in

18 Saleh Tangke, *The Influence of Internal Oversight and Competence on Improving the Performance of Police Members in the Work Unit of the Regional Supervision Inspectorate of the Gorontalo Regional Police*, *MM Jurnal*, Volume 2 Number 2, 2021.

the Gorontalo Regional Police. However, based on observations that the percentage of supervision variables is lower than the competence variable.

- b. Kennedy Sitompul,¹⁹ *Enforcement of Code of Ethics Sanctions against Brimob Personnel by Propam in the North Sumatra Police Mobile Brigade Unit*, 2020. This thesis discusses how Propam as a police unit is tasked with fostering and carrying out the functions of professional responsibility and internal security including upholding discipline and order within the police in taking action against violations of the code of ethics. The research was carried out using normative juridical methods and also direct research by going into the field (*field reasearch*) and obtained the result that based on the Regulation of the Chief of Police Number 4 of 2011 concerning the Police Professional Code of Ethics, in terms of law enforcement violations of the code of ethics are carried out by the police division of propam area of responsibility for the Police.
- c. M. Alif Akbar,²⁰ *Juridical Review of Polri Members Who Carry Out Shootings that Result in Death (Analysis of Decision*

¹⁹ Kennedy Sitompul, "Enforcement of Sanctions of the Code of Ethics for Brimob Personnel by Propam in the North Sumatra Police Mobile Brigade Unit" (Thesis, University of Medan Area, 2020), <http://repository.uma.ac.id/bitstream/123456789/15810/2/181803041%20-%20Kennedy%20Sitompul%20-%20Fulltext.pdf>

²⁰ M. Alif Akbar, "Juridical Review of Police Members Who Carry Out Shootings that Result in Death" (Thesis, Muhammadiyah University of North Sumatra, 2019), <http://repository.umsu.ac.id/bitstream/123456789/1142/1/SKRIPSI%20ALIF%20AKBAR%20%282%29.pdf>

No.2353/Pid.B/2018/PN.MDN), 2019. This thesis raises the issue regarding the police mode of shooting to cause death by analyzing court decisions. The results of the research showed that in this case there was no specific motive for the murder but it happened because the police were experiencing severe mental disturbances so they shot spontaneously. In law enforcement, this case is examined in general courts, disciplinary hearings, and the trial of the Police Professional Code of Ethics.

- d. Lundu Harapan Situmorang,²¹ *The Function of the Police Code of Ethics in Preventing the Abuse of Authority as Law Enforcement Officials*, 2016. This journal examines the problems of enforcing the existing code of ethics in the police and discusses the obstacles encountered when imposing sanctions on members of the police who violate the police code of ethics.

No	Researcher Name and Title	Problem Formulation	Research Result	Difference
1.	Saleh Tangke, The Influence of Internal Oversight and Competence on Improving the Performance of Police Members in	1. Does internal control have a positive and significant effect on improving the performance of police members? 2. Does competence have a	1. Internal supervision has a positive and significant effect on improving Polri's performance. 2. Competence has a positive and significant effect on improving the performance of police members.	Previous research discussed how internal police supervisors can influence police performance using

²¹ Lunda Harapan Situmorang, *The Function of the Police Code of Ethics in Preventing the Abuse of Authority as Law Enforcement Officials*, Journal of Atmajaya University, 2016.

	the Work Unit of the Regional Supervision Inspectorate of the Gorontalo Regional Police, 2021.	positive and significant effect on improving the performance of Polri members?		empirical research methods. The difference with this research is related to the regulation of the police supervisory body using normative juridical research methods.
2.	Kennedy Sitompul, Enforcement of Code of Ethics Sanctions against Mobile Brigade Personnel by The Profession and Security Agency in the North Sumatra Police Mobile Brigade Unit, 2020	<ol style="list-style-type: none"> 1. What are the legal rules regarding the enforcement of ethical sanctions against police personnel? 2. What is the role of The Profession and Security Agency in enforcing the code of ethics sanctions? 3. What are the obstacles faced by The Profession and Security Agency in enforcing the code of ethics sanctions? 	<ol style="list-style-type: none"> 1. Legal rules regarding the enforcement of ethical code of conduct sanctions against police personnel are regulated in The Decision of The Police Chief of The Republic of Indonesia Number 14 of 2011 concerning The Police Professional Code of Conduct in Article 17 section (1) letter a and in Article 21. 2. The Profession and Security Agency of North Sumatra County Police has enforced the code of ethics sanctions in accordance with the applicable rules, although this has not been carried out optimally due to 	In the research that will be carried out, it discusses how ideally police supervision in law enforcement by the police is in <i>siyasaah dusturiyah</i> perspective.

			<p>several obstacles encountered.</p> <p>3. Some of the factors faced by The Profession and Security Agency in enforcing sanctions on the code of ethics include unclear and not detailing the rules for each type of violation, superiors who are not supportive, namely not being assertive in enforcing sanctions so that they do not have a disciplinary effect, there is solidarity among members to protect each other, there is intervention from other parties, especially intervention from the internal police, and the lack of The Profession and Security Agency personnel who are felt to be disproportionate.</p>	
3.	M. Alif Akbar, Juridical Review of Polri Members Who Carry Out Shootings that Result in Death (Analysis of Decision	<p>1. How was the shooting mode used by the Police that resulted in death?</p> <p>2. How is law enforcement against the police who carry out shootings that result in</p>	<p>1. The shooting was carried out spontaneously without a certain mode and was considered to be experiencing a mental disorder so that they cannot be held accountable, but their criminal actions violate Article 338 of the Criminal</p>	<p>In previous research, it discussed criminal acts committed by members of the police under the supervision of Divpropam, while the</p>

	No.2353/Pid. B/2018/PN. MDN), 2019.	death? 3. What is the analysis of decision No. 2353/Pid.B/2018/PN Mdn regarding the shooting of a member of the National Police against his brother-in-law?	Code. 2. Police are tried in general courts like other civilians, it was also examined at the disciplinary hearing and the police code of ethics hearing which was conducted by The Profession and Security Agency. 3. From the analysis of the decision, it was not certain whether the disease recurred when the shooting was carried out or not. In this case it was found that the judge did not consider the things that had been violated by the police regarding carrying firearms while on leave.	research that will be conducted will discuss the regulation of oversight institutions in law enforcement by the National Police.
4.	Lundu Harapan Situmorang, The Function of the Police Code of Ethics in Preventing Abuse of Authority as Law Enforcement Officials, 2016.	1. Does the police code of ethics function towards members of the police as law enforcement officers? 2. What are the obstacles in applying sanctions to police officers who violate the police code of ethics?	1. The Police Code of Ethics in the Chief of Police Regulation Number 14 of 2011 already functions for members of the police to suppress violations. 2. The obstacles are caused by the low understanding of the Police Code of Ethics and the slight difference between police internal regulations and the Professional Code of Ethics, as well as The Profession and	Previous research has discussed more about implementation and obstacles in enforcing the police code of ethics.

			Security Agency reluctance to examine its own colleagues.	
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Based on the descriptions of several previous studies, the most fundamental difference lies in the research focus. The first research conducted by Saleh Tangke focused on the problem of the influence of internal control within the police using empirical research methods, the third research by M. Alif Akbar focused on law enforcement on members of the police who committed criminal acts, while the second research was conducted by Kennedy Sitompul and the fourth study by Lunda hope Sitomurang focuses on enforcing the police code of ethics. While the research conducted by the author is focused on an analysis of law enforcement oversight procedures by the police, problems that arise due to legal uncertainty related to surveillance of law enforcement by the police in the Police Law, as well as an analysis of police oversight procedures from a *siyasa dusturiyah* perspective.

7. Structure of Discussion

The systematic discussion in this study consists of four chapters. Each chapter includes sub-chapters that are used to clarify the scope of the problems studied. The sequence of each chapter and its subject matter are as follows:

CHAPTER I Introduction This chapter is a guideline in the implementation of research and preparation of thesis. Contains background as a research reason that arises because of the lack of

clarity on the concept supervision of police duties and authority, causing many violations committed by the police as law enforcers. This background is explained broadly with the addition of an Islamic legal perspective that is still related to problems or anxiety about writing in research. This chapter also describes the problem formulation of the topic to be studied, explains the purpose, uses, research methods used, and previous research which has relevance to this research in order to avoid duplication and systematic discussion.

CHAPTER II Literature Review This chapter describe the data that has been obtained from the research results in the hope of providing an overview and even formulating a problem that is determined in the research motorcycle taxi used in each analysis process. The literature review described is based on a study of concepts and theories that are considered as a basis for research, namely the theory of supervision and the theory of *siyasah dusturiyah*. These two theories are used as an analyze the variables which will be explained later in the discussion.

CHAPTER III Research Results and Discussion This chapter contains data that has been obtained from the results of literature research which will then be analyzed in order to find answers to the formulation of the problem that has been determined, namely related to how police is supervised based on the Police Law from the *siyasah dusturiyah* perspective and future concepts regarding the

regulation of police surveillance. The discussion will be described by covering many things, but which are still in line with the problems that are the concern of the researcher and using the study of normative legal research methods, theories, and data obtained by the researcher in describing and discussing all the problems until they are finished.

CHAPTER IV Closing After the research has been carried out and the discussion has been described, the next stage is the preparation of the closing which is the last chapter. In this chapter, conclusions from the research that has been done and suggestions will be presented. The conclusion contains brief answers to the formulation of the problems that have been determined regarding supervisor of police duties and authorities based on the Police Law in *siyasah dusturiyah* perspective. The existence of this concluding chapter as a summary that can make it easier for readers to understand the contents of the discussion quickly through the concluding sub-chapters. In the sub-suggestions, proposals will be presented aimed at related parties or agencies so that they can provide solutions to the problems studied, as well as become suggestions for future research.

CHAPTER II

LITERATURE REVIEW

A. Supervision Theory

1. Definition of Supervision

The term supervision comes from the word "watch out" which is interpreted as being able to see well, sharp eyesight, sharp point, alert, careful, and so on.²² The word supervising can be interpreted as a form of carrying out an activity with great care and done carefully so that no errors or mistakes occur.

Basically, supervision has three steps. The three steps are setting standards, measuring results against standards, and taking the necessary corrective actions.²³

Sondang Paian Siagian provides a definition of supervision, namely "the process of observing the implementation of all organizational activities to ensure that all work being carried out goes according to a predetermined plan".²⁴ An important characteristic that can be understood from this definition is that supervision can only be carried out on work in progress and cannot be applied to work that has been completed.

Supervision can be said to be necessary in the management of an organization. Supervision is very necessary in the management of any

²² Indonesia Dictionary, <https://kbbi.kemdikbud.go.id/entri/Awas> accessed on 11 November 2022

²³ Angger Sigit Pramukti and Meylani Chahyaningingsih, *Legal Supervision of State Apparatuses*, (Jakarta: Media Pressindo, 2018), 3.

²⁴ Sondang P. Siagian, *Administrative Philosophy*, (Jakarta: Mount Agung), 1990, 107.

organization. Terry's view cited by Seojanto, management is divided into important empathy matters, namely planning, organizing, implementing, monitoring. Based on this, a good organization must have good supervision in order to ensure that what is done by an organization takes place according to what was planned at the original time.²⁵

The term supervision is known and developed in management science because this supervision is one of the elements in management activities. Naturally, the understanding of this term is given more by the science of management than the science of law. The definition related to supervision put forward by George Robert Terry in his book *Principles of Management* says that controlling can be defined as the process of determining what is to be accomplished that is the standart, what is being accomplished that is the performance, evaluating the performance, and if necessary applying corrective measure so that performance take palce according to plans, that is comfirmity with the standart.²⁶ Terry further stated that the supervision process is as follows:

- a. Determining this standart or basis for control,
- b. Measuring the performance,
- c. Comparing performance with the standart and ascerting the difference it any, and
- d. Correcting the deviation by menas of remedial action.²⁷

²⁵ Angger Sigit Pramukti and Meylani Chahyaningsih, *Supervision of State Apparatuses*, 3

²⁶ Sukarna, *Fundamentals of Management*, (Bandung: CV Mandar Maju), 110.

²⁷ Sukarna, *Fundamentals of Management*, 116.

Supervision can be defined as a process to ensure that organizational and management objectives can be achieved. This relates to ways of making activities according to plan. This understanding shows that there is a very close relationship between planning and supervision.

Supervision according to Praduji Atmosudirjo is defined as a process of activities that compares what is carried out, carried out, and carried out with what is desired, planned, or ordered.²⁸

According to Harahap, supervision is the whole system, technique, method that may be used by a superior to ensure that all activities carried out by and the organization really apply the principles of efficiency and lead to efforts to achieve the overall goals of the organization.²⁹

Another management expert stated that supervision is the process of determining what work has been carried out, assessing and correcting it with the intention that the implementation of the work is in accordance with the original plan. Planning and control are two sides of the same coin.

The above opinions show that there is a close relationship between supervision and planning. This means that a plan without supervision is meaningless in an activity being carried out. The plan is a guideline for carrying out supervision, while supervision is a tool to prevent deviations and deviations from the plans that have been set. So in

²⁸ S. Praduji Atmosudirjo, *State Administrative Law*, (Jakarta: Ghalia Indonesia, 1994), 81

²⁹ Sofyan Sari Harahap, *Management Oversight System (Management Control System)*, (Jakarta: PT Pustaka Quantum, 2001), 14

short that supervision is about actions in supervising and the goals to be achieved from the supervision carried out.

2. Supervision Function and Purpose

Supervision is the most important instrument in the management function that must be carried out in every activity carried out by the organization where supervision is a tool to ensure the realization of the plans that have been set.

The oversight function in management is a systematic effort in setting work standards and various planned goals, designing feedback information systems, comparing the performance achieved with previously set standards, determining whether there are deviations and the significant level of these deviations and taking the necessary actions to ensure that all company resources are used effectively and efficiently in achieving goals.³⁰

Supervision as one of the management functions is intended to achieve the objectives of what has been planned because the supervision and objectives to be achieved can be felt with the previously set planning guidelines.

In order for the implementation of the supervisory function to be used as an effective tool (instrument), the implementation of the supervisory function must pay attention to the following criteria:

- a. What will be monitored (objects to be monitored);

³⁰ Sule, Erni Tisnawati and Saifullah, *Introduction to Management First Edition*, (Jakarta: Kencana, 2006), 138

- b. Why is surveillance necessary;
- c. Where and when the supervision is carried out and by whom the supervision must be carried out;
- d. How can such supervision be carried out; And
- e. Such supervision must be rational, flexible, continuous, and pragmatic.

The purpose of supervision put forward by Arifin Abdul Rachman are:

- a. To find out if everything is going according to a predetermined plan.
- b. To find out whether everything has gone according to the instructions and principles that have been set.
- c. To find out what the weaknesses and difficulties and failures are, so that changes can be made to improve and prevent the repetition of wrong activities.
- d. To find out whether everything is running efficiently and whether further improvements cannot be made, so as to obtain truer efficiency.

Sujanto explained that supervision aims to find out and assess the actual reality of the implementation of tasks or work whether they are appropriate or not.³¹ It can be understood that the purpose of supervision is to try and ensure the implementation of work according to plan so that

³¹ Sujanto, *Some Definitions in the Field of Supervision*, (Jakarta: Ghalia Indonesia, 1986), 155

the goal is to improve any deficiencies or errors that may occur in the implementation of these tasks in order to improve the implementation of future activities.

B. Legal Certainty Theory

Common legal rules, both written and unwritten, are guidelines for every individual in behaving and become a limitation in doing something. The existence of rules and the implementation of these rules creates legal certainty.

Definitely according to the Big Indonesian Dictionary means it is fixed, certain, and must.³² Certainty is defined as a state of certainty, conditions, and provisions. The law essentially must be certain and fair. Only by being fair and implemented with certainty can the law carry out its functions. The word "certainty" when combined with the word "law" becomes "legal certainty" which is defined as a legal instrument in a country that is able to guarantee the rights and obligations of every citizen. Legal certainty is something that can only be answered normatively, not sociologically.³³

Normative legal certainty is when a rule is made clearly and logically so that it will not clash or cause conflict between norms. Legal certainty refers to the enactment of laws that are clear, permanent, consistent,

³² Big Indonesian Dictionary, <https://kbii.kemendikbud.go.id/entri/Pasti> accessed on 5 January 2023

³³ Dominikus Rato, *Philosophy of Law: Finding and Understanding Law*, (Yogyakarta: Laksbang Pressindo, 2010

and consequently the implementation of which cannot be influenced by subjective circumstances.

Hans Kelsen stated that law is a system of norms. Norms are statements that emphasize aspects of "should" or that should by including some rules regarding what to do. Existing rules and the implementation of these rules give rise to legal certainty.³⁴

The theory of legal certainty according to Utrecht has two definitions. First, legal certainty is the existence of rules that are general in nature so that individuals know what actions are permissible and what actions are not permissible. Second, legal certainty is a form of legal security for individuals from government arbitrariness.

The teachings of legal certainty originate from juridical-dogmatic teachings which are based on positivistic schools of law in the world of law, which tend to see law as something autonomous because law is nothing but a collection of rules. For adherents of this school, the purpose of law is merely to guarantee legal certainty which is embodied by law with its nature which only makes legal rules in general. The general nature of the rule of law proves that the law is not aimed at realizing justice or benefit, but merely for certainty.³⁵

C. Siyasah Dusturiyah

Siyasah dusturiyah is part of *fiqh siyasah* dealing with state legislation. Before discussing more understanding *siyasah dusturiyah*, better

³⁴ Peter Mahmoud Marzuki, *Introduction to Law*, (Jakarta: Kencana, 2008), 158

³⁵ Achmad Ali, *Changing the Veil of Law (A Philosophical and Sociological Study)*, (Jakarta: Gunung Agung Shop Publisher, 2002), 82

know first what is meant *fiqh siyasah*. *Fiqh* means to know and understand. In language *fiqh* is a deep understanding of the meaning of human words and actions.³⁶ Meanwhile, in terms, the *syara'* scholars explain that *fiqh* is knowledge about the laws that are in accordance with the *syar'a'* regarding deeds obtained from the arguments that fail (detailed), namely the proposition taken from the basis, the Al-Quran and Sunnah. So *fiqh* is knowledge about Islamic law that is sourced from the Al-Quran and Sunnah compiled by *mujtahids* through reasoning and *ijtihad*.³⁷

Word *siyasah* means to regulate, control, manage or make decisions. The meaning implies that the purpose *siyasah* is to organize and make policies on something that is political in nature to achieve something.³⁸ Abdul Wahab Khallaf defined *siyasah* as statutory arrangements created to maintain order and benefit and regulate conditions.³⁹ So *fiqh siyasah* can be understood as one of the aspects of Islamic law which discusses the regulation and management of human life in the state in order to achieve the benefit of the human being himself.

Ulama T.M. Hasbi Ash Shiddiegy divides the scope *siyasah dusturiyah* into eight fields:

- a. *Siyasah Dusturiyyah Shar'iyah* (policy on laws and regulations),
- b. *Siyasah Tasyri'iyah* (wisdom regarding the establishment of law),

³⁶ Suyuti Pulungan, *Fiqh Siyasah: Doctrine, History, and Thought*, (Jakarta: PT Raja Grafindo Persada, 2002), 21

³⁷ Djazuli, *Fiqh Siyasah: Implementation of Ummat's Interests in Sharia Signs*, (Jakarta: Prenadamedia Group, 2007), 27

³⁸ Muhammad Iqbal, *Fiqh Siyasah: Contextualization of Islamic Political Doctrine, print 2*, (Jakarta: Kencana, 2016), 3

³⁹ Muhammad Iqbal, *Fiqh Siyasah: Contextualization of Islamic Political Doctrine*, 4

- c. *Siyasah Maliyyah* (economic and monetary policy),
- d. *Siyasah Qaddlaiyyah Shar'iyah* (judicial policy),
- e. *Siyasah Idariyyah Shar'iyah* (state administration policy),
- f. *Dauliyyah politics* or *Kharijiyyah Shar'iyah politics* (foreign policy and international relations),
- g. *Siyasah Tanfidziyyah Shar'iyah* (law enforcement politics), and
- h. *Siyasah Harbiyyah Shar'iyah* (war politics).

In this study, analysis of *fiqh siyasah* that is used is the opinion of Imam Al-Mawardi, namely *siyasah dusturiyah*. The word “*dusturi*” comes from the Persian language which originally meant someone who has authority both in politics and religion. In subsequent developments, this word was used to refer to members of the Zoroastrian clergy (religious leaders). After being absorbed in Arabic, its meaning develops into principle, basis, or formation. In term, *dustur* means a collection of rules that govern the basis and cooperative relations between fellow members of society in a country, both unwritten (convention) and written (constitution). In Indonesian, said *dustur* interpreted as the constitution of a country.⁴⁰

Internal problem of *siyasah dusturiyah* is the relationship between leaders and the people and institutions in society. Discussion *siyasah dusturiyah* limited to regulating regulations and laws studied by state affairs

⁴⁰ Muhammad Iqbal, *Fiqh Siyasah: Contextualization of Islamic Political Doctrine*, 177

in terms of conformity with religious principles and is the realization of human benefit and fulfillment of needs.⁴¹

It can be said that *dusturiyah* is a statutory norm that is used as the main basis for all regulations in matters of the state so that it is in accordance with Sharia values. Thus, all laws and regulations must refer to the constitution of each country which is based on Islamic values in sharia law regarding faith, morals, worship, muamalah, and others. So that *siyasah dusturiyah* can be understood as a part *fiqh siyasah* which discusses statutory issues so that they are in accordance with Sharia values.

⁴¹ Djazuli, *Fiqh Siyasah: Implementation of Ummat's Interests in Sharia Signs*, 13

CHAPTER III

SUPERVISION OF POLICE DUTIES AND AUTHORITIES

A. Supervision of the Duties and Authorities of the Police based on Law Number 2 of 2002 concerning the Indonesian National Police

From an etymological point of view, the term police in several countries has dissimilarities, in Greece the term police is known as "politeia", in Germany it is known as "polizei", and in the United States it is known as "sheriff". According to the Big Indonesian Dictionary, the word Police is an agency tasked with maintaining security and public order (arresting people who violate the law), is a member of a government agency (public servant tasked with maintaining security and order).⁴²

The law states that the National Police of the Republic of Indonesia is a state instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, protection and service to the community in the context of maintaining internal security.⁴³

The function of the police according to Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia Article 2 is as one of the functions of the state government in the field of maintaining public security and order, law enforcement, protection, protection and service to the community.

The duties of the police in general as contained in Law Number 2 of 2002 concerning the Indonesian National Police, states that the main duties of the Indonesian National Police, namely:

⁴² Big Indonesian Dictionary, accessed on 14 April 2023, <https://kbbi.kemdikbud.go.id/>

⁴³ Article 5 section (1) Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168)

- a. Maintain public order and security;
- b. Upholding the law;
- c. Provide protection, shelter, and service to the community.⁴⁴

To support this main task, the police also have certain tasks as stated in Law Number 2 of 2002 concerning the Indonesian National Police Article 14 section (1), namely:

- a. carry out arrangements, guarding, guarding, and patrolling community and government activities as needed;
- b. carry out all activities in ensuring security, order, and smooth traffic on the road;
- c. fostering the community to increase community participation, awareness of community law and adherence of community members to laws and statutory regulations;
- d. participate in the construction of national law;
- e. maintaining order and guaranteeing public security;
- f. coordinate, supervise, and provide technical assistance to the special police, civil servant investigators, and other forms of self-defence;
- g. carry out investigations and investigations into all criminal acts in accordance with the criminal procedure law and other laws and regulations;
- h. carry out police identification, police medicine, forensic laboratories and police psychology for the purposes of police duties;

⁴⁴ Article 13 Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168)

- i. protecting the safety of body and soul, property, society and the environment from disturbances of order and/or disaster including providing aid and assistance by upholding human rights;
- j. serve the interests of the community members temporarily before being handled by the agency and/or the authorized party;
- k. provide services to the community in accordance with their interests within the scope of police duties; as well. carry out other tasks in accordance with statutory regulations.⁴⁵

This arrangement shows that the police have a very important role in maintaining security, enforcing the law, protecting, providing protection, and providing services to the community. These duties reflect the commitment of the Indonesian National Police to maintain security and provide good protection and service to the people of Indonesia. Besides having the above functions and duties, the police have the authority which is also regulated in Law Number 2 of 2002 concerning the Indonesian National Police Article 15 section (1), as follows:

- a. Receive reports and/or complaints;
- b. help resolve community disputes that may disturb public order;
- c. preventing and overcoming the growth of community diseases;
- d. oversee trends that may cause division or threaten the unity and unity of the nation;

⁴⁵ Article 14 section (1) Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168)

- e. issue police regulations within the scope of police administrative authority;
- f. carry out special investigations as part of police action in the context of prevention;
- g. take the first action at the scene;
- h. taking fingerprints and other identification and photographing a person;
- i. seek information and evidence;
- j. organizes the National Criminal Information Center;
- k. issue permits and/or certificates required in the framework of community service;
- l. provide security assistance during trial and implementation of court decisions, activities of other agencies, as well as community activities;
- m. Receive and temporarily store found items.⁴⁶

As law enforcers and maintainers of security and public order, the police institution is required to understand, trust, and uphold the law. Even so, police institutions that are carrying out their duties should not abolish discretion or completely close themselves off from the possibility of taking flexible steps.⁴⁷ By looking at the many important tasks and powers that the police have, this will have implications in their implementation. Thus, institutions are needed to monitor and regulate the implications of the negative traits that arise in the police.

⁴⁶ Article 15 section (1) Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168)

⁴⁷ Barkley George E, *The Democratic Policeman*, (Boston, Beacon Press), 1996.

The General Supervision Inspectorate (Itwasum) is an internal supervisory agency in the Indonesian National Police. Itwasum Polri is responsible for supervising the performance and integrity of personnel and other police functions.

In terms of supervision in the police, the functions of the General Supervision Inspectorate include:

- a. Internal Oversight: responsible for supervising the performance, discipline and ethics of the personnel of the Indonesian National Police.
- b. Prevention and Investigation: performs the task of preventing and investigating potential violations of law, violations of discipline, corruption and abuse of authority within the police force.
- c. Evaluation and Recommendations: provide evaluations and recommendations related to improving the performance and operational efficiency of the police.⁴⁸

Duties of the General Supervision Inspectorate:

- a. Examine and evaluate the performance of Indonesian National Police personnel.
- b. Investigate and follow up on complaints or reports of violations involving police personnel.
- c. Carry out internal investigations and examinations of indications of acts of corruption or abuse of authority by police personnel.

⁴⁸ Article 7 paragraph (2) Presidential Regulation Number 52 of 2010 concerning the Organizational Structure and Working Procedures of the Indonesian National Police

- d. Collect and analyze data and information related to the performance and integrity of police personnel.
- e. Provide recommendations for improvements and enhancements to the police leadership.

General Supervision Inspectorate Authority, among others:

- a. Carry out examinations, investigations, and investigations of police personnel.
- b. Provide administrative sanctions to police personnel who violate the police code of ethics and discipline.
- c. Collaborating with external oversight agencies, such as the Corruption Eradication Commission (KPK), in preventing and prosecuting criminal acts of corruption within the National Police.⁴⁹

The Professional and Security Division (Propam) at the Indonesian National Police is one of five divisions that work at the Headquarters level. This division is a supervisory and supporting element in the field of professional responsibility and internal security under the Head of the Indonesian National Police whose duties are to enforce discipline and order within the Indonesian National Police, as well as serving public complaints about the actions of members of the police force. In addition to the Professional and Security Division (Div propam), there is also a Legal Division (Div kum), Public Relations Division (Div Humas), International

⁴⁹ Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2017 concerning Organizational Structure and Work Procedures of Organizational Units at the Headquarters Level of the Indonesian National Police

Relations Division (Div Hubinter), and Technology, Information and Communication Division (Div TIK).⁵⁰

Prior to the separation of the Indonesian National Police and Republic Indonesian Army organizations during the early reform period, Professional and Security Division was known as the Provos Service or the Provos Polri Unit whose organization was still united with the Indonesian Military as Republic Indonesian Army. The Provos Polri is a unit of the coaching function of the Military Organizational Police (POM) or Military Police (PM). After the separation of the Polri and ABRI organizations, the Propam Division became an organizational forum at the Headquarters level which is directly under the Chief of the Indonesian National Police. The Head of Division known as Kadiv has the rank of Inspector General or Two Star.

In general, there are two tasks of Professional and Security Division, namely:

1. Fostering and carrying out the functions of professional accountability and internal security, including upholding discipline and order within the Police.
2. Service for public complaints about irregularities in the actions of members or civil servant of Indonesian National Police.⁵¹

In terms of its organizational structure and working procedures, Professional and Security Division consists of three bureaus, including: the Internal Security Bureau (Ropaminal), the Professional Accountability

⁵⁰ Indonesian National Police, accessed 14 April 2023 <https://polri.go.id/>

⁵¹ Division of Profession and Security, accessed on 16 April 2023, <https://propam.polri.go.id/>

Bureau (Rowabprof), and the Provos Bureau (Roprovos) which are responsible for upholding discipline and order within the Police.

Professional and Security Division of Indonesian National Police in carrying out their duties has the obligation to carry out/organize various activities as follows:

1. Development of Propam functions for all levels of the National Police, including:
 - a. Formulation/development of systems and methods including instructions for implementing the Professional and Security Division function.
 - b. Monitoring and supervision of staff including providing directions to ensure the implementation of Professional and Security Division's functions.
 - c. Providing support (back-up) in the form of both technical guidance and strength assistance in implementing the Professional and Security Division function.
 - d. Planning for personnel needs and budget including submission of suggestions/considerations for the placement/career development of personnel carrying out the Professional and Security Division function.
 - e. Collection, processing and presentation as well as statistics relating to resources and the results of carrying out the duties of Professional and Security Division organizational units.

- f. Implementation of the service function with regard to complaints/reports from the public regarding the attitudes and behavior of members or civil servant of Indonesian National Police, including centralization of data nationally and monitoring/controlling the handling of complaints/community reports by all levels of the Indonesian National Police.
2. Carry out research registration of the case handling process and prepare rehabilitation processes/decisions for members or civil servant of Indonesian National Police who are not proven to have committed an offense, or pardon/reduction of sentences (discipline/administration) as well as monitoring, assisting the process of executing sentences and preparing decisions on terminating sentences for personnel who are currently /has carried out the sentence (the convict).
3. Guidance and implementation of the professional responsibility function which includes the formulation/development of professional standards and code of ethics, assessment/accreditation of the application of professional standards, as well as the development and enforcement of professional ethics including investigative audits.
4. Development and implementation of the internal security function which includes safeguarding personnel, material, activities and information materials, including investigations into cases of violations/alleged violations/irregularities in carrying out Indonesian

National Police's duties at the central level within the stipulated limits of authority.

5. Fostering and implementing provos functions which include fostering/maintaining discipline/order, as well as law enforcement and settlement of cases of disciplinary violations at the central level within the stipulated limits of authority.⁵²

As an internal supervisor in the Indonesian National Police, the Professional and Security Division has various aspects that are important for maintaining the integrity, discipline and internal accountability of the Indonesian National Police with the main task of supervising the performance and behavior of police officers. The Professional and Security Division conducts inspections and evaluations of the implementation of duties, law enforcement, and compliance with the police's code of ethics and internal regulations. In addition, the Professional and Security Division also plays a role in investigating allegations of disciplinary violations, abuse of authority, or acts of corruption committed by members of the police.⁵³

The Professional and Security Division is also tasked with providing guidance and supervision of education, training and professional development in the police which plays a role in ensuring that members of the police have the necessary competencies and skills to carry out their duties professionally and effectively. So that the Professional and Security Division is also involved in the process of selecting, promoting and rotating the positions of

⁵² Division of Profession and Security, accessed on 16 April 2023, <https://propam.polri.go.id/>

⁵³ Article 12 paragraph (2) Presidential Regulation Number 52 of 2010 concerning the Organizational Structure and Working Procedures of the Indonesian National Police

members of the Indonesian National Police, with the aim of maintaining justice and meritocracy in the career development of members of the Indonesian National Police.

In terms of community aspirations, the Professional and Security Division has a role in managing public complaints regarding alleged violations or unprofessional police officers. The public can report suspected violations by members of the police to the Professional and Security Division, which will then carry out investigations and follow-up actions in accordance with applicable procedures. This task aims to ensure the public's trust and satisfaction with the performance of the police and to ensure the accountability of members of the police in carrying out their duties.

Regarding supervision in the Indonesian National Police, basically that supervision is all efforts or activities to find out and assess the actual reality regarding the implementation of police duties or activities, whether they are in accordance with what should be.⁵⁴ Thus the manifestation of oversight performance at the Indonesian National Police is an activity to evaluate an implementation of a task in a general way in fact, while the purpose of supervision is essentially as a limited media to do such things cross check or matching, whether the activities carried out are in accordance with predetermined benchmarks or not. Likewise, what about the follow-up of the results of the supervision.

⁵⁴ Sondang P. Siagian, *Administrative Philosophy*, 107

Supervision of the duties and authorities of the police in Indonesia is carried out by the internal oversight institutions, there are also external oversight agencies at the Indonesian National Police.

One of the external oversight agencies in the Indonesian National Police is the National Police Commission, which was established based on Law Number 2 of 2002 concerning the Indonesian National Police which acts as an independent institution tasked with overseeing police policies and performance in carrying out their duties.⁵⁵ The existence of an external police supervisory institution has been regulated in Law Number 2 of 2002 concerning the Indonesian National Police Article 37 states:

- (1) The national police agency, known as the National Police Commission, is under and responsible to the President.
- (2) The National Police Commission as referred to in section (1) is established by Presidential Decree.⁵⁶

The existence of the National Police Commission is further explained in Presidential Regulation Number 17 of 2011 concerning the National Police Commission Article 2 that the National Police Commission is a non-structural institution, which in carrying out its duties and authorities is guided by the principles of good governance, which is positioned under and is responsible to the President.

⁵⁵ National Police Commission, *Profile of the National Police Commission*, National Police Commission, 2019, accessed 31 March 2023 <https://kopolnas.go.id>

⁵⁶ Article 37 Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168)

As a non-structural institution that is under and responsible to the president, in general the National Police Commission has the task of assisting the president in various matters related to the Indonesian National Police. In Law Number 2 of 2002 concerning the Indonesian National Police Article 38 section (1) the duties of the National Police Commission are assist the President in setting policy directions for the Indonesian National Police; and give advice to the President in the appointment and dismissal of the Chief of Police.⁵⁷

In addition to these tasks, the National Police Commission has powers in carrying out its duties, including:

- a. collect and analyze data as material for providing advice to the President relating to the budget of the Indonesian National Police, development of human resources for the Indonesian National Police, and development of facilities and infrastructure for the Indonesian National Police;
- b. provide advice and other considerations to the President in an effort to create a professional and independent Indonesian National Police; And
- c. receive suggestions and complaints from the public regarding police performance and submit them to the President.⁵⁸

⁵⁷ Article 37 Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168)

⁵⁸ Article 38 paragraph (2) Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168)

Meanwhile, the function of the National Police Commission in the police is regulated in Presidential Regulation Number 17 of 2011 concerning the National Police Commission Article 3, which states that the National Police Commission carries out a functional oversight function over the performance of the Indonesian National Police to ensure professionalism and independence in the police which is carried out through monitoring and performance appraisal and the integrity of members and officials in the police in accordance with the provisions of laws and regulations.⁵⁹

In short, the National Police Commission as a police oversight agency has the authority to oversee police policies and performance, provide advice and recommendations to the president and ministers on matters related to the police, and provide recommendations to candidates for police leadership.

If its look at the oversight duties by the National Police Commission on the Indonesian National Police in Presidential Regulation Number 17 of 2011 concerning the National Police Commission Article 4 which states that the National Police Commission is tasked with assisting the President in setting policy directions in the police, and providing consideration to the President in appointing and dismissing Police chief.⁶⁰

Article 7 of Law Number 17 of 2011 concerning the National Police Commission states that in carrying out its duties, the National Police

⁵⁹ Article 3 Presidential Regulation Number 17 of 2011 concerning the National Police Commission

⁶⁰ Article 4 Presidential Regulation Number 17 of 2011 concerning the National Police Commission

Commission has the authority to: collect and analyze data as material for providing advice to the President relating to the budget of the Indonesian National Police, the development of Polri human resources, and the development of Indonesian National Police facilities and infrastructure; provide suggestions and other considerations to the President in an effort to create a professional and independent Indonesian National Police; and receive suggestions and complaints from the public regarding police performance and submit them to the President.⁶¹

While the authority of the National Police Commission is explained in more detail in subsequent articles that the National Police Commission can request data and information from members and officials within the police, government agencies, the public and/or other parties as deemed necessary, as well as members and officials within the police according to with its duties and functions to provide data and information requested by the National Police Commission, the implementation of which is carried out in accordance with the provisions of laws and regulations.⁶² And in carrying out the authority to receive suggestions and complaints from the public regarding police performance, the National Police Commission can carry out activities:

- a. receive and forward suggestions and complaints from the public to the National Police for follow-up;

⁶¹ Article 7 Presidential Regulation Number 17 of 2011 concerning the National Police Commission

⁶² Article 8 Presidential Regulation Number 17 of 2011 concerning the National Police Commission

- b. request and/or together with the National Police to follow up suggestions and complaints from the public;
- c. clarification and monitoring of the follow-up process on community suggestions and complaints conducted by the National Police;
- d. request a re-examination or additional examination of the inspections that have been carried out by the Polri internal oversight unit on members and/or Polri officials who are suspected of having committed a violation of discipline and/or professional ethics;
- e. recommend to the National Police Chief that members and/or Polri officials who violate discipline, professional ethics and/or are suspected of having committed a crime, are processed in accordance with the provisions of the applicable laws and regulations;
- f. participated in court proceedings, Disciplinary Sessions, and Police Professional Code of Ethics Commission Sessions.
- g. following the examination of alleged violations of discipline and the code of ethics committed by members and/or Indonesian National Police officials.⁶³

In short, the National Police Commission as a police oversight agency has the authority to oversee police policies and performance, provide advice and recommendations to the president and ministers on matters related to the police, and provide recommendations to candidates for police leadership. And in supporting the four areas of transformation namely,

⁶³ Article 9 Presidential Regulation Number 17 of 2011 concerning the National Police Commission

organization, operations, public services and supervision as per the concept of Precision (Predictive, Responsible and Transparency, Justice and Archipelagic Insight), there are also other external institutions apart from the National Police Commission including:

- a. KPK (Corruption Eradication Commission): In charge of preventing and taking action against criminal acts of corruption, including within the scope of the police.
- b. Setneg (State Secretariat): Has a role in overseeing and providing direction regarding the implementation of public policies, including policies related to the police.
- c. BPKP (Financial and Development Supervisory Agency): In charge of supervising finance and development, including in terms of the use of the budget by the police.
- d. Kemenpolhukam (Ministry of Politics, Law and Human Rights): Has a role in overseeing the implementation of policies in the field of law and human rights, including in the case of the police.
- e. LKPP (Institute for Government Procurement of Goods/Services Policy): Supervises the procurement of goods and services within the government, including procurement by the police.
- f. BPK RI (Republic of Indonesia Financial Audit Agency): In charge of conducting audits of state financial management, including financial management by the Indonesian National Police.

- g. RI Ombudsman: Has a role in receiving, following up, and resolving public complaints regarding public services, including services provided by the police.
- h. Komnas HAM (National Human Rights Commission): Supervises and protects human rights violations, including in the context of police duties.⁶⁴

Although the above institutions are referred to as external oversight agencies in the Indonesian National Police which have a role in supervising and handling cases such as abuse of duties and authority in the police, the need for an independent oversight agency in the police goes beyond the role of these institutions.

The need for an independent oversight body within the police refers to the need for an institution that is specifically dedicated to overseeing and auditing police activities independently, separate from the internal police structure, and works independently without dependence on the internal interests of the police which may affect its objectivity. Its main objective is to increase the transparency, accountability and effectiveness of the police in carrying out their duties and functions.

The independent oversight institution in question is an institution that specifically focuses on police oversight, has broad powers to supervise, examine and investigate police activities, and has institutional and financial

⁶⁴ Division of Public Relations of the Indonesian National Police, <https://tribrataneews.polri.go.id/> accessed on 26 May 2023

independence that allows it to operate independently from the police.⁶⁵ Independent institutions can provide additional benefits in police oversight by strengthening existing oversight mechanisms, increasing objectivity, and providing more protection for the public and members of the police force with integrity. It can also strengthen public trust in police institutions and increase accountability within the police.⁶⁶

In line with George Robert Terry's view regarding supervision that supervision is always concerned with determining what standards must be achieved, evaluating performance, even corrective measures are needed for performance to conform to standards.⁶⁷ In the context of internal and external oversight agencies in the police in Indonesia, several things that can be analyzed with Terry's theory regarding oversight are that internal oversight institutions such as the General Supervision Inspectorate and the Professional and Security Division are responsible for overseeing and ensuring compliance with the standards and procedures set forth in the police. This is in line with the aspects of performance measurement and comparison with standards described in Terry's theory. By conducting internal inspections, investigations and imposing sanctions, the internal oversight agency can provide direct oversight of the actions of members of the police force. However, it is certainly understandable that there will be challenges in terms of the independence of the internal oversight institutions because they are part of the

⁶⁵ Sobur, *Revealing the Relevance of External Oversight Mechanisms to Human Rights Violations by Police Officers in Indonesia*. *Journal of Legal Dynamics*, 16(3), 440.

⁶⁶ Law Enforcement and Oversight. Questions and Answers on Independent Civilian Oversight of the Police. United Nations Human Rights Office of the High Commissioner (2017).

⁶⁷ Sukarna, *Fundamentals of management*, 110.

internal structure of the police, so that there may be a risk of intervention or influence from interested parties. This can hinder the objectivity and effectiveness of supervision.

In addition, the existence of an external monitoring institution has an important role in outside police supervision. They are tasked with ensuring accountability and transparency in police actions and dealing with lawlessness, including corruption cases. External oversight agencies can strengthen oversight by providing an independent and objective view of police action. They can also assist in performance measurement and assessment of compliance with established standards and procedures. However, good coordination and cooperation between external monitoring agencies and the police is the key to achieving optimal results.

Overall, the internal and external oversight agencies of the police in Indonesia play a role in maintaining accountability, preventing violations, and ensuring effective performance. However, if you look at George R. Terry's statement, one important aspect in his theory is performance measurement and comparison with established standards.⁶⁸ In the police context, performance measurement can be a complex challenge. This is because police performance cannot only be measured by quantitative parameters such as the number of cases resolved, but also involves qualitative aspects such as public trust and the feeling of security in the community. Therefore, comprehensive

⁶⁸ George R Terry, *Principles of Management*, (Homewood: Cengage Learning), 2017, 93.

and objective performance measurement in the police context can be a challenge for both internal and external oversight agencies.

In theory of supervision Terry emphasizes the need to take corrective action if there is a discrepancy with the standards set.⁶⁹ However, the success of surveillance depends on cooperation and coordination between internal and external monitoring agencies and the police. Discrepancies in police oversight in practice occur when there are constraints in coordination and communication between the oversight agency and the police, which can hinder the taking of effective corrective action.

George Robert Terry also underlined the importance of independence and objectivity in supervision.⁷⁰ Although internal and external oversight institutions have a role in police oversight, linkages with police structures can present a risk to the independence and objectivity of oversight. Dependence on the budget and resources provided by the police, as well as intervention or pressure from certain parties, can affect the independence of the oversight agency and objectivity in carrying out its duties. So in facing this challenge, it is important to continue to develop and strengthen oversight mechanisms, both internal and external oversight institutions, to increase the effectiveness of police oversight. Improvement efforts may include increasing the independence, transparency and accountability of oversight institutions, as well as increasing coordination and cooperation between internal and external oversight institutions and the police.

⁶⁹ George R Terry, *Principles of Management*, 98.

⁷⁰ George R Terry, *Principles of Management*, 98.

B. The *Siyasah Dusturiyah* Perspective Against Supervision of Police Duties and Authorities based on Law Number 2 of 2002 concerning the Indonesian National Police

The discussion of *fiqh* in Islamic Sharia has various legal rules regarding many things in human life, one part of the various discussions of *fiqh* is *fiqh siyasah*. According to Abdul Wahab Khalaf, the term *fiqh siyasah* is a part of the science of *fiqh* that discusses the legal arrangements created to maintain order and welfare as well as regulate the situation in society.⁷¹ It was further clarified by Suyuti Pulungan's opinion that *fiqh siyasah* is a discussion about the ins and outs of managing the affairs of the people and the state with all forms of laws, regulations, and policies made by those in power that are in line with the principles of sharia teachings to realize the welfare of the people.⁷²

The *fiqh siyasah* chapter that will be used in studying this research is the concept of *fiqh siyasah dusturiyah*. The main study in the concept of *siyasah dusturiyah* is to discuss legislation or the constitution, the relationship between state institutions, as well as the relationship between state institutions and their people. *Siyasah dusturiyah* in general discusses the relationship between leaders and their people as well as the institutions that exist in the country in accordance with the needs of the people for the benefit and fulfillment of the needs of the people themselves.⁷³ In *fiqh siyasah*

⁷¹ Muhammad Iqbal, *Fiqh Siyasah Contextualization*, 4

⁷² J. Suyuti Pulungan, *Fiqh Siyasah: Doctrine, History, and Thought*, (Jakarta: Raja Grafindo Persada, 1994), 26

⁷³ Wahyudin et al. *Islamic Religious Education for Higher Education*, (Jakarta: Grafindo, 2006), 127

dusturiyyah itself, the power of the state that has been discussed since the time of the caliphate includes the legislative body (*al-sulthah al-tasyri'iyah*), executive branch (*al-sulthah al-tanfidziah*), and the judiciary (*al-sultah al-qadhaiyah*).

a. *Siyasah tasyri'iyah*

Discusses legislative power, namely the power that has the authority to make and establish rules or laws in a country. This power also has the authority to solve problems *ahlul halli wa aqdi*, namely the relationship between Muslim citizens and non-Muslims and also the regulations that apply in a country.⁷⁴

b. *Siyasah tanfidiyah*

Discusses the executive power that includes the problem *imamah, ba'iah, ministry, and wali al ahdi*. According to Al Maududi this power in Islam is called *ulul amri* headed by a caliph. The task of the legislative power is regarding the implementation of legislation and has the authority to inform citizens and the institutions under them about the legislation that has been formulated.⁷⁵

c. *Siyasah qadlaiyyah*

A judicial institution established to handle cases that require decisions based on Islamic law. This institution is referred to as the judiciary which has the task of being a control related to the legislation

⁷⁴ Muhammad Iqbal, *Fiqh Siyasah Contextualization*, 162

⁷⁵ Muhammad Iqbal, *Fiqh Siyasah Contextualization*, 162

in force in a country which includes criminal, civil, administrative cases in the constitution of a country.⁷⁶

Al-Mawardi mentioned that supervisors at the Indonesian National Police have the same function as *wilayah al-hisbah* namely as a supervisory and law enforcement authority within the police and to ensure that it is created *amar ma'ruf nahi munkar* in the Islamic state administration system.

Many terms in *siyasah dusturiyyah* which shows the functions and duties as well as supervisor of police in Indonesia. Abd al-Qadir Awdah mention *al-muraqabah wa al-taqwim*. Meanwhile, al-Mawardi mentioned the area *al-hisbah*. Both have the same function as supervisory and law enforcement authorities in the state system.

Al-Muraqabah wa al-taqwim according to Awdah it is the responsibility of all people to supervise the government as their responsibility for the mandate of the representatives given. This supervisory power, according to Awdah is based on two things, namely community oversight obligations to government is part of *al-amr bi al ma'ruf wa nahy an al munkar* which has been made obligatory by Allah and the power possessed by the government is basically the power of the people who are represented to them. On this basis, the ruler (government) has an obligation to be accountable for this matter.⁷⁷

While al-Mawardi explain the oversight function more thoroughly by using terms *wilayah al-hisbah*. *Wilayah al-hisbah* derived from the word

⁷⁶ Muhammad Iqbal, *Fiqh Siyasah Contextualization*, 163

⁷⁷ Abd Al-Qadir Awdah, *Al Islami wa Awda'una Al-Siyasah*, (Beirut: Mua'assah Al-Risalah), 1981, 196.

al-Wilayah which means power or authority. Whereas *al-Hisbah* has many different meanings depending on the context in which it is used. *Al-hisbah* means reward, test of doing an act with full calculation, supervision and calculation.⁷⁸ *Al-hisbah* is a religious duty, with a mission to perform *al-amr bi alma'ruf wa nahy an al-munkar* (ordering people to always do good and prevent doing bad deeds). This task is an obligation that must be carried out by the government in power.⁷⁹

For this reason, the ruler appoints this office from people who are seen as eloquent, honest, and disciplined, as well as having a high responsibility. People who are adopted become officers *al-Hisbah* not from among those who are easily bribed by legalizing all means.⁸⁰ In contrast to what was stated by Ibn Taimiyah by adding in the definition *Wilayah al-Hisbah* whose authority is not included in the authority of the authorities, ordinary courts and *Wilayah al-Ma'zalim*.

The legal basis underlying the duties *amr ma'ruf nahy munkar*, whether done personally or through an institution, such as a *wilayah al-hisbah*, there are quite a lot of them in the Qur'an and the Sunnah, among which Allah SWT says:

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ

⁷⁸ Islamic Encyclopedia Editorial Board, *Encyclopedia of Islamic Law*, (Jakarta: Van Hoeve's New Ichtiar), 2008, 1939

⁷⁹ A. Rahmat Rosyadi and M Rais Ahmad, *Formalization of Islamic Shari'ah in the Perspective of the Indonesian Legal System*, (Bogor: Ghalia Indonesia), 2006, 61.

⁸⁰ A. Rahmat Rosyadi and M Rais Ahmad, *Formalization of Islamic Sharia*, 62.

Meaning: "And let there be among you a people who call to goodness, enjoy what is good and forbid what is evil. And they are the lucky ones."

This sentence emphasize the importance of Muslims to play a role in spreading goodness, ordering good, and preventing bad. In carrying out this task, they will become lucky and successful people.

Allah says in Surah Al-A'raf 157:

الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ
بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ
وَالْأَعْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ ۗ فَالَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ ۗ
أُولَٰئِكَ هُمُ الْمُفْلِحُونَ

It means: "Those who follow the Messenger, the Ummi Prophet whose (name) they find written in the Torah and the Injil that they have, He enjoins on them what is good and forbids what is evil, and makes lawful for them everything good and forbids for them all that is bad, and frees them from the burdens and shackles that are on them. So those who believe in Him, respect and help Him and follow the bright light revealed to him (Al-Qur -an), those are the lucky ones."

The verses above explain that every Muslim has an active role in *amr ma'ruf nahly munkar*. But according to the consensus of the clergy fiqh, obligation form *amr ma'ruf nahly munkar* is a collective obligation for

Muslims (*wajib kifayah*). So when the task *amr ma'ruf nahy munkar* if it is only carried out by one or several people, then the obligation falls from the person who does not carry it out.

The hadith narrated by Abu Sa'id Al-Khudri radiyallahu'anhu, Rasullulah SAW, said:

عن أَبِي سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ:

"مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ، وَذَلِكَ

أَضْعَفُ الْإِيمَانِ". رواه مُسْلِمٌ

Meaning: "I heard the Messenger of Allah say, whoever of you sees evil, change it with his hands, if you can't, change it with his words, if you can't deny it with his heart, and that is the weakest faith.: (HR Muslim)

The state has been ordered to institute an act to control the implementation of the obligation *amr ma'ruf nahy munkar*. This can be seen during the Prophet's time besides paying attention to noble morals, Rasulullah also paid attention to the institutionalization of enforcement and preservation by ordering everyone to carry out *amr ma'ruf nahi munkar*. He himself often conducted market inspections to check whether the traders were cheating or not. Whenever he found someone who was cheating, he would immediately ban them.⁸¹

⁸¹ Ibn Taymiyyah, *Duties of the State According to Islam*, Trans. Arif Maftuhin (Yogyakarta:Student Library), 2004, 21.

The duties he carried out both in terms of his certainty as a prophet or as head of state. In this case the prophet is referred to as *al-Muhtasib* first in the history of Islam. Further, when his personal duties increased, he appointed his friend Sa'ad Ibn al-Ash ibn Umayyah as *al-Muhtasib* in Makkah and Umar Bin Khattab in Medina.⁸²

The actions of the Prophet SAW in delegating tasks *al-Hisba* to the friends considered by scholars *fiqh* as a start *wilayah al-hisbah*. Therefore, they argue that what the Prophet SAW did gave a signal that the offenders in the cases related to *amar ma'ruf nahi munkar* need to be taken seriously. Case handling *al-Hisbah* at the time of Abu Bakr as-Siddiq it continued to run as the Prophet Muhammad had done, although sometimes it was delegated to Umar bin Khattab.⁸³

During the time of Umar bin Khattab as caliph, a strict division of judicial authority began to be carried out. For region *al-hisbah*, Umar bin Khattab pointed out several people *al-Muhtasib*, among others Sa'ad bin Yazid, Abdullah bin Utbah, and Ummi al-Shyfa' (woman) who was mentioned last *asal-Muhtasib* to supervise traders in the market of Medina.⁸⁴

In general regional institutions *al-hisbah* continued until the Umayyad dynasty (661-750). Regional-*hisbah* in this period it has become a special institution of the judiciary whose authority is to regulate and control the market from acts that are not in accordance with Islamic law. After *Dawlah Islamiyah* collapsed and replaced by *The Abbasids* from the period

⁸² Ibn Taymiyyah, *Duties of the State According to Islam*, 21.

⁸³ Islamic Encyclopedia Editorial Board, *Encyclopedia of Islamic Law*, 1940.

⁸⁴ Islamic Encyclopedia Editorial Board, *Encyclopedia of Islamic Law*, 1940.

750 AD-1225 AD (132 H–656 H), the existence of this institution during the Abbasid period was already institutionalized like other government institutions, which were structurally under the judiciary.⁸⁵

Likewise *wilayah al-hisbah* became an important department during the Fatimid, Ayyub, and Ottoman dynasties. In India, though department *wilayah al-hisbah* official did not exist, but during the period of the sultanate, *al-Muhtasib* and *old man* equally appointed every time there is a new territory controlled by the state. Institution *wilayah al-hisbah* still remains popular throughout the history of Muslims, although there are different names in various places. For example, the eastern and western provinces of Baghdad, the enforcement officers are named *al-Muhtasib*, in North Africa it is called *Shahib al-Suq*, in Türkiye it is called *Muhtasib Aghasi* and in India it is called *Kotwal*.⁸⁶ Whereas in Indonesia the task of supervision has different terms in each department, for example in the Indonesian National Police it is termed several institutions, such as the General Supervision Inspectorate (Itwasum), the Professional and Security Division (Propam), the National Police Commission (Kopolnas), and several other supervisory agencies.

Broadly speaking the duties of the institution *al-hisbah* namely providing assistance to people who cannot restore their rights without assistance from institutional officials *al-hisbah*. While the task of *al-Muhtasib* is overseeing the enforcement of general laws and morals that cannot be

⁸⁵ Iin Solikhin, "Hisbah Areas in a Historical Review of Islamic Governance" Jurnal Ibda, Vol. III, No. 1, 2005, 12.

⁸⁶ Iin Solikhin, "Islamic Government Hisbah Region, 13.

violated by anyone. Sometimes *importantit* provides decisions in matters that need to be resolved immediately.⁸⁷

In *al-Ahkam al-Sultaniyyah*, Imam Mawardi explained more broadly that the task *al-Muhtasib*. There are two, namely enjoining good and forbidding evil. Each of these tasks is divided into three parts:

- a. Enjoin good and forbid from evil related to the rights of Allah.
- b. Enjoining good and forbidding evil associated with human rights.
- c. Enjoining good and forbidding evil associated with shared rights between the rights of God and human rights.⁸⁸

Wilayah al-hisbah entered almost all joints of social life. This serves to maintain the public good. Among them preventing laborers and slaves from carrying too many loads or beyond their capacity. As it is narrated in the hadith that Umar bin Khattab once hit a camel tenant because the rental burdened the camels, while also preventing residents from building their houses or placing their merchandise in places that could block traffic and result in narrow roads.⁸⁹

So, *wilayah al-hisbah* have a duty to take care of *amr ma'ruf nahy munkar*, there is no Sharia issue that escapes his heart. *Wilayah al-Hisbah* is an institution that raises awareness of Islamic law every day and oversees its implementation in society.

⁸⁷ Muhammad Hasbi Ash-Shiddieqy, *Islamic Judiciary and Procedural Law* (Jakarta, Pustaka Rizki Putra), 1997, 96.

⁸⁸ Al Mawardi, *Al-Ahkam Al-Sultaniyyah Wa Al-Wilayah Ad-Diniyyah*. 235.

⁸⁹ Muhammad Hasbi Ash-Shiddieqy, *Islamic Judiciary and Procedural Law*. 99.

Beside *wilayah al-hisbah* tasked with supervising, awakening, and fostering, the *wilayah al-hisbah* also has the authority to impose punishment on those who are proven to have violated Sharia. Scholar *fiqh* stipulates that any violation of the case *al-hisbah* subject to ta'zir punishment, namely punishment that is not determined by type, level and amount by syara', but is left entirely to law enforcers (*al-Muhtasib*) to choose the appropriate punishment for the offender. There are a number of steps that can be taken by *al-Muhtasib*.⁹⁰

These steps can take the form of necessary suggestions, reprimands, criticisms, straightening out by force (*taghyir bi al-yad*), threats of imprisonment, and expulsion from the city. *Al-Muhtasib* are required to choose the harshest sanction only when the lesser sanction is ineffective or appears to have no effect on the person being punished.⁹¹

But one *al-muhtasib* not only resolving a dispute or complaint, it is even permissible to make a decision on a matter that falls within their respective fields, even though it has not been complained about. Will but *al-muhtasib* do not have the right to hear witness testimony in order to decide on a law and do not have the right to order people to refuse a lawsuit, because this is the duty of a judicial judge.⁹² Therefore, *al-muhtasib* are free to choose the punishment for violators *al-Hisbah*, ranging from the lighter punishment to the heaviest punishment. According to scholars *fiqh*, *al-muhtasib* must

⁹⁰ Ibn Taymiyyah, *Duties of the State According to Islam*, 14.

⁹¹ Ibn Taymiyyah, *Duties of the State According to Islam*, 14.

⁹² Islamic Encyclopedia Editorial Board, *Encyclopedia of Islamic Law*, 1941.

consider that with this punishment the offender can be deterred and not repeat his actions again.

The oversight function possessed by supervisors in the police is almost the same as that of an institution *al-hisbah*. Together in charge of taking care of its creation *amar ma'ruf nahi munkar* in the Islamic State Administration System, however, the area of authority possessed by supervisors in the police in enforcing the law is only limited to the issue of violations of duties and authorities within the scope of the Indonesian National Police.

CHAPTER IV

CLOSING

A. Conclusion

Based on the results of research and discussion on Supervision of the Duties and Authorities of the Police based on Law Number 2 of 2002 concerning the Indonesian National Police Perspective of *Siyasah Dusturiyah*, it can be concluded that supervision of the duties and powers of the police is carried out by internal supervisors in the police, namely the General Supervisory Inspectorate and the Professional Division and Security. In addition, there are also external oversight institutions in the police, namely nine institutions. However, there is still a need for an independent oversight agency within the police so that it can have a more significant role than the existing institutions.

Based on *siyasah dusturiyah*, supervision in the Indonesian National Police is in accordance with Islamic law, namely *al-hisbah*, where the tasks mandated to supervisory agencies both internal and external includesupervising, awakening, fostering, and imposing punishment on those who are proven to have violated the sharia, as well as menjoin goodness and forbid evil..

B. Suggestion

The National Police of the Republic of Indonesia should improve the oversight function by both internal and external supervisors of the duties and

powers of the police in order to build trust and prevent abuse of duties and authority by members of the police.

It is hoped that the supervisory agencies in the Indonesian National Police in their respective positions will be able to uphold the supervisory function consistently according to the instructions and rules implied by the Qur'an. Supervision should start from oneself inherently with the belief that whatever is done is always supervised by Allah SWT, and has implications for punishment and reward both in this world and in the hereafter.

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