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## Juridical analysis for the authority of national police as legal advisors in general courts based on Indonesian Regulations

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### Abstract

The police as a law enforcement agency is at the stage before the General Court is taken. The General Court is one of the executors of judicial power for people seeking justice to examine and adjudicate cases of a general nature, namely criminal and civil. The structure of completeness in the trial does not involve the Police absolutely, only includes Judges, Public Prosecutors and Legal Counsels. Formulation of research problems *First*, how is the authority of the National Police as Legal Counsel in Law Enforcement in Indonesia? *Second*, how is the legality of the regulations regarding the legalization of the Police as Legal Counsel within the scope of the General Courts reviewed based on the Laws and Regulations? Research objectives to obtain answers to the formulation of this problem. The research method is normative legal research referring to positive law, using secondary data, namely primary, secondary and tertiary legal materials. Data collection through *Library Research* and processed with descriptive analysis.

Research results are *First* data obtained that Polri was given the authority to become Legal Counsel through PP Number 3 of 2003 and Perkap Number 7 of 2017 Concerning Legal Aid. *Second*, data obtained related to the validity of the legalization regulations for the Police as Legal Counsel within the scope of the General Court based on legislation in principle causes a conflict. General Justice should be based on formal law, namely the Criminal Procedure Code and the Civil Code. Implementing regulations may not conflict with regulations above it.

**Keywords:** General Court, Legal Counsel, Police

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### 1. Introduction

As an independent and sovereign country, Indonesia has a basic principle in being a state that has always been used as a characteristic of the Indonesian nation according to the mandate of the 1945 Constitution, namely, Indonesia is a state of law. This is a designation for countries that make statutory regulations as the main reference that have been formulated by *political trias* his own nation. (Indonesia knows *Distributions of Power*). Within the country, it has an independent judicial power overseeing the implementation of laws and regulations. Countries that adhere to such beliefs must uphold the lofty ideals possessed by a regulation *as legal standing*.

This judicial power has been legitimized in advance in the Indonesian Constitution which explains the independence of the Supreme Court and the judicial bodies under it. These powers include the general judiciary, religion, military and state administration. In addition, there is also the authority of the Constitutional Court as a judicial institution that examines and decides cases that are absolutely related to the Constitution, such as Election Result Disputes, *Conflict of Regulations* between statutory regulations and the 1945 Constitution as *basic standard* and *state fundamental norm* Indonesia. This is confirmed in Article 1 point 1 of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, which states that the term is defined as an independent state power to administer justice to uphold law and justice based on Pancasila and the 1990 Constitution of the Republic of Indonesia. 1945, for the sake of the implementation of the Republic of Indonesia Legal State. (Kariadi, 2020) <sup>[8]</sup>.

General Justice is a process of seeking justice for society in the context of cases that are general in nature. This is also part of the judicial power system under the auspices of the Supreme Court which functions for people seeking justice in general. This institution examines, adjudicates and decides cases of a general nature, namely criminal and civil. Examination of cases is part of the procedural law which is independent and free from the influence of power. Initially this institution was still associated with the relevant government power. During the Old Order era, the Chief Justice of the Supreme Court also held a concurrent position as a minister in the cabinet who was automatically responsible to the Executive, namely the President. Therefore it can be said that the General Judiciary or Judicial Power at that time were not independent from government power.

The independence of the judiciary is the goal of law enforcement reform in Indonesia. This institution has provisions that are standard and must be respected by all parties. In a constitutional state with strong judicial power, there are judicial institutions that are independent and always maintain the noble dignity of the judiciary. The process of law enforcement before entering the realm of the judiciary, must first go through the stages, among others, Investigation and Investigation by the Police Institution. After the stages at the Police are completed, the files are handed over to the Attorney General's Office to carry out the Prosecution process. The party authorized by the Criminal Procedure Code (KUHAP) to carry out the prosecution process is called the Public Prosecutor. If the file is complete, the Public Prosecutor will transfer the file to the District Court for trial. From this explanation, it can be seen that the portion of the main tasks and functions (tupoksi) of each law enforcement institution.

General court institutions as part of the judiciary have rules of procedure that must be considered by all parties, without exception by law enforcement institutions other than the District Court. When examining the institutional structure in general courts, in general it consists of a Panel of Judges, Public Prosecutors for criminal cases, Legal Counsel and Registrars. Each of these parties has terms and conditions to become a complement to the general judiciary. If you study about Legal Counsel as part of the completeness of the general judiciary, of course it has a very vital function.

A legal adviser identical to a suspect as described in Article 1 Number 13 of the Criminal Procedure Code is someone who fulfills the requirements determined by or based on law to provide legal assistance, one of which is through assistance at trial. This rule shows that Legal Counsel must be an independent person and free from other powers. Phrase sound "someone" can be interpreted as independent individuals in providing legal assistance. Legal advisors are explained in Article 32 Paragraph 1 of Law Number 18 of 2003 concerning Advocates that Legal Advisers must be declared as Advocates as regulated in this Law. From the sound of the rule it was concluded that the Legal Counsel was an Advocate appointed and sworn in under the Advocate Law. It is not possible if the person occupying the position of Legal Counsel is not an Advocate, but someone who is a member of the State Police can act as an Advocate in the trial. While the legal requirements to become an Advocate are someone who does not have a background in civil servants or state officials. This is contained in Article 3 Paragraph 1 letter c of the Advocate Law. This is a confusion that occurs in the process of law enforcement in Indonesia.

*Conflict of regulations* between laws and regulations has occurred. This concerns the legality of active members of the National Police who act as legal advisers in the general court process. The judge allowed the Legal Division of the East Java Regional Police (Bidkum Polda Jatim) to become Legal Counsel for the Police who were tried for their involvement in the tragedy at the Kanjuruhan Stadium. This has caused various parties to raise objections to this matter. (Afandi, Fachrizal; Kurniawan, 2023) <sup>[1]</sup>.

This event illustrates the friction between regulations as seen from the mandate of Article 13 Paragraph 3 of Government Regulation Number 3 of 2003 Concerning the Technical Implementation of Institutional General Courts for Members of the Indonesian National Police, explaining that legal assistance as referred to in Paragraph 2 is carried out by utilizing legal advisers from the Indonesian National Police. Indonesia and/or other Legal Advisors. Meanwhile, the preamble states that this regulation functions as an implementing regulation for Law Number 2 of 2002 concerning the National Police. According to Article 1 point 5 of Law Number 12 of 2011 concerning the Formation of Legislation, it states that *Government Regulations are statutory regulations stipulated by the President to carry out laws as they should*. Article 29 Paragraph 1 of the Police Law states that the Police are subject to the powers of the general judiciary. Meanwhile, the General Court is subject to the applicable procedural law according to the provisions in Article 68 of the Law on General Courts.

On the basis of *Conflict of regulations* which has implications for the ambiguity of the law enforcement process. Thus the author is interested in conducting research entitled *Juridical Analysis For the Authority of National Police as Legal Advisors in General Courts Based on Indonesian Regulations*. Therefore, obtained the formulation of this research problem namely *First*, related to the authority of the National Police as Legal Counsel in Law Enforcement in Indonesia? *Second*, how is the legality of the regulations regarding the legalization of the Police as Legal Counsel within the scope of the General Courts reviewed based on the Laws and Regulations?.

## 2. Research Methodology

Normative legal research is used as the basic method in this research. This legal research that focuses on material studies or secondary data is known as normative legal research. For example, normative legal research includes studies related to legal principles, systematics, level of harmony, comparison and legal history. Data or materials that include primary, secondary and tertiary legal materials are referred to as secondary data. (Soekanto, 2019) <sup>[12]</sup> Library research or known as *Library research* used to collect data to accommodate theoretical or doctrinal results, opinions or conceptual thoughts and previous research on the subject matter of this research study. Laws and regulations, court decisions, books and scientific papers used in this research. This research data was obtained by first searching for data through library research related to books, scientific works such as journals, accessing information sources from internet media, and seeking decisions from judicial institutions as a reference for strengthening data. The data obtained will be sorted based on its suitability with the topics discussed.

This research uses primary, secondary and tertiary data. Primary legal materials are legal materials obtained from regulatory sources such as the 1945 Constitution, Law

Number 8 of 1981 concerning Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), Judicial Powers Law, General Court Law, Law Police, Advocate Law, Government Regulation Number 3 of 2003 Concerning the Implementation of General Judicial Institutions for Police Members, Perkap Number 7 of 2017 concerning Legal Aid and other regulations. Second, Secondary Legal Materials are legal materials to provide explanations regarding primary legal materials. This legal material as the main reference source includes books and scientific papers on law along with other sources related to the context discussed. Third, Tertiary Legal Materials, serves to complement the previous legal materials namely Primary and Secondary, including internet articles, legal dictionaries and encyclopedias.

All types of data are processed by descriptive analysis, especially by focusing on hypotheses, legal principles, Indonesian positive law and other guidelines related to research. Understanding the relationship between the various types of information described subjectively and objectively will also be introduced comprehensively and described effectively. In addition, all data is processed and then presented through descriptive so that in addition to giving *legal standing* the strong one. However, it offers solutions related to the problems discussed.

### 3. Results of Research and Discussions

#### 3.1. Police Authority as Legal Adviser in Law Enforcement in Indonesia

The term Police literally comes from the Ancient Greek ie *Politeia* which means the Government of a Police or City. WJS Poerwadar Minta figure defines the Police as a government agency whose job is to maintain security and public order, such as taking action against violators of the law. Pancasila and the 1945 Constitution have stated that the main requirement for supporting the realization of a civil society culture that is just, prosperous and upholds adab is to provide regional and national security maintenance. As one of four *Dynasty chess* law enforcers and including Pembina Kambibmas. The conception of the main tasks and functions and roles of the Police originates from the existing foundation, but must always be oriented towards the rapid development of human civilization. This is in line with the intensity of crime which is also increasing. (Alfian, 2020) <sup>[2]</sup> Polri has a strategic role, namely:

1. Community protection;
2. Law enforcement (*law enforcement*);
3. Prevention of violations of the law, and
4. Fostering security and public order.

Public security and order is a dynamic (reciprocal) condition of society as one of the prerequisites for the implementation of national development in the framework of achieving national goals which are characterized by guaranteed security, order and law enforcement. The police institution is required to have the authority to develop the potential and strength of the community component in preventing, preventing and overcoming all forms of law violations that can cause public unrest. The police, in carrying out their duties, always prioritize persuasive efforts carried out in order to monitor and help successful community activities be carried out safely without any excesses. (Muarmar, 2022) <sup>[10]</sup> Article 1 Point 6 of the Police Law explains that domestic security is a condition that marked by guaranteed Kamtibmas,

orderly and upholding the rules.

Police authority in *arule of law* (state of law) is regulated in the Legislation. The authority of this institution in law enforcement is regulated in the Police Act in Article 16 to Article 19 relating to the authority of Investigation, Investigation, Search, Confiscation, Arrest, Detention, Reconstruction, Examination of parties related to criminal acts, preparing files the case is then forwarded to the Public Prosecutor for further processing. This authority in principle includes the process of enforcing criminal procedural law at the stage prior to entering general justice (litigation).

The police carry out tasks outside the general court as stated in the law, it does not rule out the possibility that this institution can enter the general court, as is the case in the pretrial process which places it as one of the parties to the dispute in the district court. The process of law enforcement which creates problems in it such as termination of prosecution by the authorities, causing losses to victims of criminal acts or to the principle of legal certainty. This requires the Polri institution to submit a pretrial request with the prosecutor as the respondent. In addition, this institution can be made a respondent by a victim of a crime or someone who is made a suspect without sufficient evidence. So far, this has become the authority of this institution in the realm of general justice.

The human tragedy that occurred in East Java provides *warning* to legal practitioners and academics. This is because the judicial process that was held was only based on the Internal Regulations of the Police Institution to legalize its role in general justice. The involvement of this institution as part of *law enforcement officials* regulated the authority to be directly involved in litigation in court. This is indicated by the active role of Polri members as legal advisers in the law enforcement process at the District Court. Juridically, this is part of "Legal Aid", which has been regulated in the Chief of Police Regulation Number 2 of 2017 concerning Legal Aid. Organizing Providing legal assistance to citizens is an effort to fulfill and guarantee the human rights of citizens regarding the need for access to justice (*access to justice*) and equality before the law (*equality before the law*). (Elcaputera & Suherman, 2021) <sup>[3]</sup> Member of state institutions *personality* are citizens whose rights are guaranteed in the 1945 Constitution, such as guaranteeing that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law, as explained in Article 28D. In addition, every citizen has the same position before the law, government and is obliged to uphold the law and government without exception. This is explained in Article 27 Paragraph 1.

Based on the Perkapolri Regarding Legal Aid Number 2 of 2017 in Article 1 Number 3 it is stated that all efforts, efforts, activities in order to help resolve legal issues through the courts or outside the courts are called Legal Aid. Article 1 Number 6 Perkapolri, this term in practice is emphasized that legal aid requires the assistance of legal advisors who are parties to the trial process. This party is a Civil Servant at the National Police who gets an order/task or power of attorney from the leadership to provide legal assistance. This regulation is in line with Government Regulations Concerning the Technical Implementation of Institutional General Courts for Police Members.

Legal advisers have the right to provide legal assistance in the form of accompanying active police officers who are made suspects or defendants when they commit criminal acts

related to the interests of their duties. This is as explained in Government Regulation Number 3 of 2003 concerning Institutional Technical Implementation in General Courts for Police Members. Legal assistance must be provided to all members who are made suspects or accused at all levels of justice. Legal advisers are generally provided independently or voluntarily by the courts under their jurisdiction. However, Legal Counsel is available from the police or other institutions.

Article 13 Paragraph 3 of the PP explains that legal assistance, especially for members of the police who are made suspects or defendants, obtain legal assistance by utilizing legal advisers from the National Police and/or other legal advisers. Based on the wording of the paragraph, it does not require legal counsel from the police institution, but can also come from outside the police force. Therefore, the Panel of Judges should always consider the appropriate principles and regulations to be used in the trial process of suspects or defendants from members of the police. This is due to the fact that the legalization of Polri as Legal Counsel is not regulated in the Indonesian Criminal Procedure Code. Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that live in society. (Hamzah, 2019) <sup>[5]</sup>.

### 3.2. Legitimacy of Regulations Concerning Police Legalization as Legal Counsel in the Scope of General Courts Reviewed Based on Laws and Regulations

The Police of the Republic of Indonesia have the role of protecting, protecting the people and law enforcement institutions. This institution stands responsible to the President of the Republic of Indonesia. The concept of Chess Praja and Van Vollenhoven's Theory of the Police are so familiar. The theory divides government power into four parts, namely: *Administration, police, judiciary, and Regulation. Police* according to Vollenhoven is part of the Government which is obliged to supervise policies. Every effort to improve or regulate the structure of people's lives is called Police according to Charles Reith in his book entitled *The Blind Eye of History*. (Latukau, 2019) <sup>[9]</sup>.

In principle, the police carry out the function of enforcing criminal or formal criminal procedural law. Simon is of the opinion that the Criminal Procedure Code regulates how the state, through the intermediaries of its power tools, exercises its right to convict and sentence and thus includes the criminal procedure. *Formal criminal law regulates how the State, through its organs, enforces its right to punish and punish, and thus includes the criminal process*. (Hiariej, 2005) <sup>[7]</sup> This institution is given the authority to be maximized in order to achieve the principle of justice (*philosophical*), certainty (*juridical*) and legal benefits (*sociologist*). The exercise of that authority has limitations that must also be maintained by him. The limitations in question can be implemented into the general court process, then the Police can act as one of the parties to the dispute.

Pretrial becomes a litigation arena for the Police in general judicial practices which have been guaranteed by procedural law, as stipulated in Article 14 of the Police Chief Regulation Number 2 of 2017 stipulating the provision of legal assistance in pretrial cases namely contacting the parties involved in the case, making pretrial requests, responding Exceptions, replicas/duplicates, evidence and conclusions, conciliation, filing extraordinary legal remedies accompanied by a review memory. In addition, the police are also given the authority

to sit in courts of Human Rights, General Civil, Special and State Administration (TUN). This is explained in Articles 14, 15, 16, and 17 of the Police Chief of Police Number 2 of 2017 concerning Legal Aid.

Police involvement in the world of general justice (*litigation*) reap the pros and cons. The police essentially uphold the joint law of criminal procedure at the stage of Investigation and Investigation of Criminal Acts. All roles of state institutions including the police have *legal standing* in carrying out each of its main duties and functions. Law as one of them is a product of legislation under the 1945 Constitution and MPR Decrees. This is as explained in Law Number 12 of 2011 concerning the Formation of Legislation, specifically Article 7 Paragraph 1 confirms the types and hierarchy of Legislation, consisting of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Law;
- d. Government Regulation in place of Law/Law;
- e. Government regulations;
- f. Presidential decree;
- g. Provincial Regulation; And
- h. Regency/City Regional Regulations;

The Indonesian Constitution legalizes every citizen, whether police personnel or not, always has equal rights before the law and government and is obliged to uphold them without exception. This is regulated in Articles 27 and 28D of the 1945 Constitution. The highest regulations will be further regulated through implementing regulations in accordance with the hierarchy of Indonesian laws.

The legalization of Polri as Legal Counsel is stated in Government Regulation Number 3 of 2003 concerning the Technical Implementation of General Court Institutions for Polri Members to be precise on Article 13 Paragraph 1 which explains that a suspect or defendant who is a member of the Indonesian National Police has the right to receive legal assistance at all levels of examination in the judicial process. Paragraph 2 states that the National Police is obliged to provide legal assistance for suspects or accused members of the National Police who are suspected or charged with committing criminal acts related to the interests of their duties. Paragraph 3 explains that the legal assistance referred to in Paragraph 2 is carried out by utilizing legal advisors from the National Police institution or from others. In addition to the PP, the role of the Police in general justice is regulated in Perkapolri Number 2 of 2017 Concerning Legal Aid, Article 1 Number 3 confirms that all efforts, efforts, activities in order to help resolve legal issues through the judiciary or outside the judiciary are called Assistance. Law. Article 1 Number 6 of this term in practice emphasizes that legal aid requires the services of a Legal Counsel who are parties to the trial process. Article 5 Paragraph 2 letter a of the Perkapolri explains that Polri members and/or Polri Civil Servants who act as Legal Counsel/Legal Counsel/ Companion based on an Order from the authorized Polri leadership. Furthermore, it is stated in the regulation that legal assistance provided by Polri personnel as Legal Counsel is in the form of applying the law in the form of clarification, legal studies providing opinions and juridical suggestions on general, special, specific crimes, human rights and the disciplinary code of ethics of required institutions. Article 2 of the regulation explains that the provision of legal assistance by the National Police includes consultation,

advice, suggestions and legal opinions, providing advocacy and assistance.

Juridically, Polri as Legal Counsel for suspects/defendants from active police elements who are suspected or charged with committing criminal acts related to their duties at public trials, is automatically obliged to be given legal assistance, this legality is very weak. This is because Article 68 of Law Number 2 of 1986 concerning General Courts states that provisions regarding procedural law that apply to general courts are regulated by a separate law. Or in other words that the General Court is carried out based on procedural law, one of which is criminal procedural law. The legalization of Polri as Legal Counsel is not regulated in the Criminal Procedure Code (KUHAP). Because of this, the trial process for a crime against humanity in East Java was controversial, because the Judge allowed members of the Active Police to become Legal Counsel for a suspect who was a member of the Police, was considered procedurally flawed.

Article 3 of the Law on Judicial Powers Number 48 of 2009, Paragraph 1 mandates that in carrying out their duties and functions, Judges and Constitutional Justices are required to maintain the independence of the judiciary. The independence of the judiciary is in accordance with the nature of the court which has a complete structure within the scope of the judiciary. Like having a Panel of Judges, Public Prosecutors and Legal Counsel. The meaning of the independence of the judiciary is not bound by powers other than the orders of the law. This power legitimizes the role of Legal Counsel to be independent and not bound by any power. General courts which allow members of the police to become legal advisers in courts, which in fact are not regulated in the law, must be interpreted as something that *Obscure dragonfly*. Criminal justice institutions in particular are a means to enforce criminal procedural law (formal criminal).

Crime is essentially public law, which means that its content is in the interests of the state and concerns the rights of many people, or the rules governing the relationship between the people and the state. In the trial of criminal cases, the state is represented by the Attorney General's Office as the State Attorney. (Yuniastuti, 2021) Meanwhile, individual and group people are represented by legal advisers who are free and independent. It means that legal advisers come from professionals, not from state institutions. This condition illustrates that the state gives freedom to every citizen to fight for their legal rights, because all citizens have equal rights before the law according to the mandate of the Constitution. In line with the previous rules, Paragraph 2 of the Law states that all interference in judicial matters by other parties outside the jurisdiction of the judiciary is prohibited, except in cases referred to in the 1945 Constitution. State court raises problems. Polri is not part of the judicial power as referred to in the law. This institution is interpreted as a component that comes from outside the judicial power.

Police Law Number 2 of 2002 Article 29 Paragraph 1 confirms that Polri members are subject to the powers of the general judiciary. This indicates that Polri complies with the procedural law that applies to general courts as stated in the regulation. As explained above, general trials are carried out based on the applicable procedural law, in this context the Criminal Procedure Code. Government Regulations and Perkapolri should be Implementing Regulations from the above regulations. In addition, the Perkapolri is an internal institutional regulation issued by the highest leadership of the

institution. So that between the Act and the regulations under it must be in line and mutually *check and balance*, not the other way around.

The Criminal Procedure Code does not explain the authority of the Police in general courts, in particular the role of this institution as Legal Counsel. KUHAP Article 1 Number 13, only defines that a legal adviser is someone who fulfills the requirements determined by or based on law to provide legal assistance. (Soesilo, 2015) <sup>[13]</sup> However, Government Regulation Number 3 of 2003 and the Police Headquarters Number 2 of 2017 concerning Legal Aid are considered inconsistent (*conflict of regulations*) with the Police Law which states that the institution is subject to the General Court. This event has violated a principle known as *Lex Superiori derogate legi inferiori* which means that laws and regulations that have a higher position will override lower regulations, or with another definition, the regulations below are the executors of the rules above them. (Thalia Mustika & Faishal, 2021) <sup>[14]</sup> For example, a law will be regulated further through government regulations and so on, it is not allowed *obscure dragon fly* let alone contradictory.

The principle of Law, *The higher law overrides the lower law* refers to two or more laws and regulations that have the same hierarchical position. However, the scope of content material is not the same between laws, according to Peter Mahmud Marzuki. For example, one rule is specific and the other is general. This opinion contradicts the thoughts of Bagir Manan and Oka Mahendra who say that this principle regulates the vertical relationship between higher regulations that will override lower rules. *Stufenbau der Rechtsordnung* which explains the binding power of rules or norms lies in higher rules. Lower rules may not conflict with higher rules. Therefore, the Police Law as the main regulation in the body of the institution, must be further explained through Government Regulations and Regulations of the Highest Leaders (Perkapolri).

There are two regulations that legalize the Police to hold court in general courts, namely Government Regulation Number 3 of 2003 and Police Chief of Police Number 2 of 2017 concerning Legal Aid. This regulation is not in line with the mandate of the Police Law which states that Polri is subject to the authority of the general judiciary. In addition, according to the General Court Law, it explains the mechanism in court proceedings as a whole based on the applicable procedural law. The national criminal procedural law does not regulate the authority of the National Police as Legal Counsel in general court proceedings. The regulation regarding the authority of the police also contradicts the Advocate Law which stipulates that a legal adviser must have the status of an independent Advocate and not the status of a state employee. While the Police are civil servants regulated in the law.

Judges as God's representatives on earth must make decisions that are fair and wise. Judges must be able to provide maximum legal considerations, starting from the identity of the parties in the trial and so on. In addition, it must be independent, impartial, and independent from the intervention of any party. (Hazmi, 2018) <sup>[6]</sup> Judges are only bound by events, relevant facts and also related laws and regulations. Perkapolri is an internal regulation of the police which cannot be used as a reference for judges in the context of allowing legal advisers from members of the police in general court trials. The police internal regulations should only apply to these institutions and other related parties. Not

necessarily become *legal standing* in the General Court. PP Number 3 of 2003 and Police Chief of Police Number 2 of 2017 have contradicted various laws and regulations. Including the Advocate Law Number 18 of 2003. In Article 32 Paragraph 1 it states *Advocates, Legal Counsels, practicing lawyers and legal consultants who have been appointed at the time this Law comes into effect are declared as Advocates as regulated in this Law*. Therefore, it can be concluded that Legal Advisors are Advocates who are appointed and sworn in under the Advocate Law and become one of the pillars of upholding the rule of law. (Farahwati, 2021) <sup>[4]</sup> It is not possible, active members of the Police can act as advocates, while the position of advocate and the Police are the same as *Dynasty chess* law enforcer. In addition, as an advocate is not bound by government power. The requirement to become an Advocate is not a civil servant or a state official. Meanwhile, the Police based on the Police Law Article 1 Number 2 states that the status of a member of the Indonesian National Police is a civil servant. Therefore, this condition has created contradictions between laws and regulations which have damaged the spirit of unity between law enforcement agencies and the independence of the judiciary.

In a rule of law state, according to Gustav Radbruch in a theory known as *Radbruch Formula*, explains that the law has a goal, namely to achieve justice (basis *philosophical*), certainty (basis *juridical*), and legal expediency (basis *sociologist*). (Rachmandita, 2021) <sup>[11]</sup> The basis of legal certainty regulates that all components of the nation create definite rules to regulate various criminal acts. The process of law enforcement with certainty will provide peace and public order. Legal certainty is needed in a rule of law country. However, maximizing various contents of laws and regulations is also an absolute thing. This is intended so as not to create a blurry meaning in the regulations issued in the future.

#### 4. Conclusion

Based on the discussion on the topic of Juridical Analysis for the Authority of National Police as Legal Advisors in General Courts Based on Indonesian Regulations, two conclusions were obtained, namely The authority of the Police as Legal Counsel in Law Enforcement in Indonesia is regulated in Government Regulation Number 3 of 2003 concerning the Technical Implementation of Institutional General Courts for Members of the Police and Police Chief of the Indonesian National Police No. 2 of 2017, with the condition that legal assistance is given to parties regulated by that regulation, especially active members. This is a constitutional mandate because all citizens have equal rights before the law and are obliged to obtain legal assistance. The Legitimacy of Regulations Concerning the Legality of Police Members as Legal Advisors within the Scope of the General Courts under Review Based on Laws and Regulations is very weak. Legality granted by Government Regulation Number 3 of 2003 Concerning the Technical Implementation of General Court Institutions for Members of the National Police and Police Chief of the Indonesian National Police No. 2 of 2017 concerning Legal Aid conflicts with various regulations such

as the Law on Criminal Procedure, the Law on the National Police No. 2 of 2002, the Law on Judicial Power, the Law on General Courts and the Law on Advocates. Principle *The higher law overrides the lower law* states that the regulations below are the implementers of the rules above. Concrete regulations will create legal certainty that is just. In addition, suggestions for judicial institutions to consider the application of regulations that are still contradictory to one another. Input for all parties to maintain the noble dignity of an independent and independent judiciary.

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