

Selective Enforcement in the Criminal Justice System: Between Discretion and Abuse of Authority

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Abstract: Selective enforcement has become an increasingly prominent phenomenon in the practice of criminal justice systems, particularly alongside the expansion of discretionary powers held by law enforcement authorities. While discretion is fundamentally necessary to ensure flexibility and substantive justice, in practice it often evolves into selective application of the law toward normatively similar criminal acts. This study aims to analyze the position of selective enforcement within the frameworks of criminal law and administrative law and to determine the normative boundary between lawful discretion and abuse of authority. This research employs a normative juridical method using statutory, conceptual, and case approaches. The findings reveal a significant ambiguity of norms governing law enforcement discretion under the Criminal Procedure Code, Law Number 11 of 2021 on the Prosecutor's Office, and Law Number 1 of 2023 on the National Criminal Code. Such normative ambiguity creates opportunities for abuse of authority as prohibited under Law Number 30 of 2014 on Government Administration. Selective enforcement has been shown to undermine the principles of equality before the law, legal certainty, and the legitimacy of the rule of law. This study concludes that selective enforcement constitutes a serious normative problem that requires clear regulatory limits on discretion and the strengthening of accountability mechanisms within the criminal justice system.

Keywords: Abuse of Authority; Criminal Justice System; Discretion; Rule of Law; Selective Enforcement

INTRODUCTION

Criminal law enforcement in practice is never entirely mechanical or uniform. Law enforcement officials at the stages of inquiry, investigation, prosecution, and sentencing are granted a degree of discretion to determine the most appropriate legal action in response to concrete situations. Normatively, such discretion is understood as a consequence of the inherent limitations of written law in anticipating the full range of criminal

events that may occur in society. However, within the criminal justice system, the

exercise of discretion often develops into selective enforcement, namely the unequal application of the law to criminal acts that are normatively similar in character.¹ Selective enforcement becomes apparent when one case is pursued intensively and proceeds to judicial adjudication, while other cases with relatively similar legal constructions are discontinued, resolved

¹ Pevko, S., "Ontology of Discretion in Criminal Procedural Law Implementation," *Dialogues in Humanities and Social Sciences* 3, no.

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through non-litigation mechanisms, or not pursued at all. Such differential treatment is frequently justified on grounds of public interest, efficiency in law enforcement, or the application of restorative justice. Nevertheless, when such differentiation is not based on clear and measurable legal grounds, selective enforcement risks generating injustice, undermining the legitimacy of the criminal justice system, and eroding public trust in law enforcement authorities.²

In the Indonesian context, the phenomenon of selective enforcement has become increasingly relevant alongside the expansion of discretionary powers granted to law enforcement agencies. The Criminal Procedure Code under Law Number 8 of 1981 provides broad authority to investigators and public prosecutors in determining the continuation of a criminal case. This authority has been further expanded through Law Number 11 of 2021 concerning the Public Prosecution Service of the Republic of Indonesia, which recognizes the termination of prosecution based on restorative justice, and reinforced by Regulation of the Attorney General Number 15 of 2020. On the other hand, the Indonesian National Police, through Regulation of the Chief of the National Police Number 6 of 2019, also opens avenues for resolving criminal cases outside the formal judicial process.

The expansion of such discretionary powers reflects a paradigmatic shift in criminal law enforcement from a purely repressive approach toward corrective and restorative approaches. However, this development has not been accompanied by the formulation of clear normative boundaries distinguishing lawful discretion from abuse of authority. Accordingly, the principal legal issue explicitly addressed in this study is the normative ambiguity concerning the boundary between legitimate law enforcement discretion and abuse of authority within the criminal justice system. This normative ambiguity creates excessive interpretive space and opens the possibility for selective enforcement that cannot be objectively reviewed or assessed.³

From a constitutional perspective, uncontrolled selective enforcement contravenes the principle of the rule of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The rule of law requires the limitation of power through law, legal certainty, and equal treatment before the law. Differential legal treatment of legal subjects who are in equivalent conditions also potentially violates the principle of equality before the law as guaranteed by Article 27 paragraph (1) of the 1945 Constitution.⁴

² Shadiq, A., dan M. Alladuniah, "The Principle of Legal Certainty in the Shadow of Discretion: A Critical Review of the Criminal Investigation Stage," *International Journal of Multidisciplinary Research and Analysis* 8, no. 5 (2025). <https://doi.org/10.47191/ijmra/v8-i05-60>

³ Republik Indonesia, Undang-Undang Nomor 11 Tahun 2021 tentang Kejaksaan Republik Indonesia

⁴ Republik Indonesia, Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif

This issue becomes increasingly complex with the enactment of Law Number 1 of 2023 concerning the National Criminal Code. The new Criminal Code embodies the spirit of criminal law reform by emphasizing corrective, restorative, and rehabilitative justice. Nevertheless, the law does not formulate clear normative parameters regarding standards for the exercise of law enforcement discretion. As a result, a more flexible sentencing orientation may inadvertently expand selective enforcement practices if not accompanied by adequate oversight mechanisms.⁵

From the perspective of administrative law, law enforcement discretion should, in principle, be subject to review through the concept of abuse of authority as regulated in Law Number 30 of 2014 concerning Government Administration. This law prohibits acts that exceed authority, involve the misuse of authority, or are carried out arbitrarily. However, in practice, the application of administrative law mechanisms to review discretion exercised in criminal cases remains highly limited. Consequently, many selective decisions in criminal law enforcement escape effective accountability mechanisms.⁶

Academic studies on law enforcement discretion generally position

discretion as an inevitability within the criminal justice system. Fuad, Putra, Permata, and Asri, in their study entitled *Police Discretion in Investigating Document Forgery and False Information Cases in Indonesia* (2025), emphasize the importance of police discretion in addressing case complexity, but do not examine the risk of selective enforcement as a form of abuse of authority.⁷ Furthermore, Shadiq and Alladuniah, through their article *The Principle of Legal Certainty in the Shadow of Discretion: A Critical Review of the Criminal Investigation Stage* (2025), critique discretion from the perspective of legal certainty, yet their analysis does not integrate administrative law concepts relating to abuse of authority. Meanwhile, Koni, in *The Concept of Police Justice in Law Enforcement of Minor Criminal Offenses Through Discretion* (2025), frames discretion as an instrument of substantive justice without addressing the normative limits at which discretion transforms into selective enforcement that violates the rule of law.⁸

These three studies demonstrate a clear research gap. First, there is a lack of normative analysis that systematically positions selective enforcement as a legal problem directly related to abuse of authority. Second, existing studies have not

⁵ Kepolisian Negara Republik Indonesia, Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana.

⁶ Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 ayat (3) dan Pasal 27 ayat (1).

⁷ Fuad, I., C. Putra, D. Permata, dan B. Asri, "Police Discretion in Investigating Document

Forgery and False Information Cases in Indonesia," *International Journal of Science and Society* 7, no. 1 (2025). <https://doi.org/10.54783/ijssoc.v7i1.1396>

⁸ Koni, A., "The Concept of Police Justice in Law Enforcement of Minor Criminal Offenses Through Discretion," *Strata Law Review* 3, no. 1 (2025). <https://doi.org/10.59631/slr.v3i1.336>

integrated criminal law and administrative law perspectives in determining the lawful boundaries of law enforcement discretion. Third, there is a scarcity of normative criteria that can be used to distinguish justified selective enforcement from unlawful practices. This gap underpins the urgency of the present study.

Based on the foregoing, this research aims to analyze the position of selective enforcement within the framework of criminal law and administrative law, as well as to formulate normative boundaries between legitimate law enforcement discretion and abuse of authority. The novelty of this research lies in its integrative approach combining criminal law and administrative law to examine selective enforcement as a normative problem that threatens the principles of the rule of law and legal certainty within Indonesia's criminal justice system.

METHOD

This study employs normative juridical legal research with a prescriptive-analytical character. The focus of the research is directed at analyzing the normative ambiguity governing law enforcement discretion and the prohibition of abuse of authority within the Indonesian criminal justice system.⁹ The approaches used include a statutory approach by examining Law Number 8 of 1981 concerning Criminal Procedure, Law Number 1 of 2023 concerning the Criminal Code, Law Number 11 of 2021 concerning the Public Prosecution Service of the

Republic of Indonesia, Law Number 30 of 2014 concerning Government Administration, and Law Number 2 of 2002 concerning the Indonesian National Police along with their implementing regulations. In addition, a conceptual approach is employed to examine the concepts of discretion, abuse of authority, the rule of law, and equality before the law, as well as a case approach through the analysis of relevant court decisions.

Legal materials consist of primary legal materials in the form of statutes and court decisions, secondary legal materials in the form of legal literature and scholarly journals, and tertiary legal materials such as legal dictionaries and encyclopedias. The analysis is conducted normatively and systematically using grammatical, systematic, and teleological interpretation to formulate normative boundaries for legitimate law enforcement discretion.

RESULT AND DISCUSSION

Normative Ambiguity of Discretion in the Criminal Justice System and the Potential for Selective Enforcement

Law enforcement discretion constitutes an inseparable element of the criminal justice system, particularly because written law cannot comprehensively regulate every factual variation encountered by officers in practice. Within the framework of Indonesian positive law, discretion is implicitly recognized through the authority granted to investigators and public prosecutors under Law Number 8 of 1981

⁹ Marzuki, P. M., *Penelitian Hukum*, Edisi Revisi (Jakarta: Kencana, 2017).

concerning the Criminal Procedure Code. Investigators are authorized to determine whether a case is suitable to proceed, while public prosecutors possess the authority to assess the sufficiency of evidence and the public interest in prosecution. However, such recognition of discretion is not accompanied by the formulation of clear and measurable normative boundaries.¹⁰

The absence of normative limits gives rise to normative ambiguity in the exercise of law enforcement discretion. The Criminal Procedure Code does not provide objective parameters to determine when discretion is exercised lawfully and when it transforms into selective and discriminatory action. As a result, discretion often depends on the subjective judgment of law enforcement officers, which is heavily influenced by institutional factors, external pressures, and non-legal interests.¹¹ Under such conditions, discretion loses its legal character as an instrument of justice and risks functioning as a mechanism of selective enforcement. Normative ambiguity surrounding discretion has intensified following the enactment of Law Number 11 of 2021 concerning the Public Prosecution Service of the Republic of Indonesia. This law provides normative legitimacy for prosecutors to terminate prosecutions based

on restorative justice considerations. Such authority is operationalized through Regulation of the Attorney General Number 15 of 2020. Although this policy is intended to promote substantive justice and efficiency in law enforcement, it lacks uniform and binding normative indicators for determining which cases qualify for termination of prosecution. Consequently, the practice of discontinuing prosecutions is prone to inconsistent application across regions and across cases.¹²

At the investigation stage, Regulation of the Chief of the Indonesian National Police Number 6 of 2019 similarly opens avenues for resolving criminal cases through a restorative justice approach. However, this regulation emphasizes procedural and administrative aspects rather than the formulation of substantive normative criteria. Investigators' discretion in determining case resolution pathways is often not accompanied by effective external evaluation mechanisms. This condition broadens interpretive space and increases the risk of selective enforcement in criminal cases with normatively similar characteristics.¹³

The enactment of Law Number 1 of 2023 concerning the National Criminal Code further accentuates the paradox of discretion. While the new Criminal Code

¹⁰ Pevko, S., "Ontology of Discretion in Criminal Procedural Law Implementation," *Dialogues in Humanities and Social Sciences* 3, no. 2 (2025): 11–18. <https://doi.org/10.71261/dhss/3.2.11.18>

¹¹ Shadiq, A., dan M. Alladuniah, "The Principle of Legal Certainty in the Shadow of Discretion: A Critical Review of the Criminal Investigation Stage," *International Journal of*

Multidisciplinary Research and Analysis 8, no. 5 (2025). <https://doi.org/10.47191/ijmra/v8-i05-60>

¹² Republik Indonesia, Undang-Undang Nomor 11 Tahun 2021 tentang Kejaksaan Republik Indonesia;

¹³ Yasa, K., dan I. Sugama, "Kewenangan Diskresi Kepolisian sebagai Sub-Unsur Struktur Sistem Peradilan Pidana di Indonesia," *Journal of Contemporary Law Studies* 2, no. 1 (2024). <https://doi.org/10.47134/lawstudies.v2i1.3235>

introduces a more corrective, restorative, and rehabilitative orientation of punishment, it fails to formulate operational standards governing law enforcement discretion at the pre-adjudication stage. The absence of such standards allows progressive sentencing orientations to be misused as normative justifications for selective legal treatment.¹⁴

Accordingly, selective enforcement within the Indonesian criminal justice system emerges as a direct consequence of normative ambiguity surrounding discretion. Without clear and reviewable normative boundaries, law enforcement discretion tends to operate within a grey area between lawful policy choice and arbitrary action. This condition threatens legal certainty and opens space for inequality in criminal law enforcement.

Selective Enforcement as an Abuse of Authority in the Perspective of Administrative Law and Criminal Law

From the perspective of administrative law, discretion constitutes authority granted by law to government officials to act under specific conditions. However, discretion is not absolute. Law Number 30 of 2014 concerning Government Administration explicitly prohibits abuse of authority, which includes

acts that exceed authority, involve the misuse of authority, or are carried out arbitrarily. These prohibitions apply to all government officials, including law enforcement officers performing public functions within the criminal justice system.¹⁵

Selective enforcement driven by non-legal considerations may be qualified as a form of abuse of authority. When law enforcement officers apply the law differently to cases that share equivalent normative characteristics without an objective legal basis, such actions can no longer be justified as legitimate discretion. In this context, selective enforcement reflects a shift in the function of discretion from an instrument of justice to an instrument of selective power.¹⁶

The core problem lies in the weakness of mechanisms for reviewing discretionary decisions in criminal proceedings. Unlike administrative decisions, which may be challenged before administrative courts, discretionary decisions in criminal law enforcement are often regarded as policy decisions beyond the reach of judicial review. As a result, practices of selective enforcement tend to be insulated from legal accountability mechanisms, even though substantively they fulfill the elements of abuse of authority.¹⁷

¹⁴ Hasbullah, "Criminal Procedure Law Reform on Non-Imposing of Penalty in Judicial Decisions Following the Enactment of Law Number 1 of 2023 on the Indonesian Criminal Code," *Pena Justisia* 24, no. 2 (2025). <https://doi.org/10.31941/pj.v24i2.6386>

¹⁵ Republik Indonesia, **Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan**, Pasal 17–18.

¹⁶ Kadir, Z., "Kriminalisasi Tanpa Batas: Mengurai Penyalahgunaan Kekuasaan dalam Legislasi Kodifikasi Hukum Pidana Modern," *Presidensial: Jurnal Hukum, Administrasi Negara, dan Kebijakan Publik* 2, no. 2 (2025). <https://doi.org/10.62383/presidensial.v2i2.665>

¹⁷ Khan, M., T. Rehman, dan A. Saeed, "Abuse of Discretionary Powers in Pakistan: Legal Loopholes, Institutional Weaknesses, and the Crisis

To clarify the distinction between lawful discretion and selective enforcement as a form of abuse of authority, a normative comparison is presented below.

Table 1. Distinction between Lawful Discretion and Selective Enforcement

Aspect	Lawful Discretion	Selective Enforcement
Normative basis	Clearly grounded in statute and principles	Lacks clear legal justification
Decision criteria	Objective, proportional, and reasoned	Subjective and non-judicial
Accountability	Open to review and oversight	Difficult to review
Legal impact	Supports justice and efficiency	Undermines legal certainty

The table demonstrates that the fundamental distinction lies in normative grounding and accountability. Lawful discretion is always traceable to a clear legal basis and remains subject to rational scrutiny, whereas selective enforcement tends to operate outside effective oversight mechanisms.¹⁸

From the perspective of criminal law, selective enforcement directly implicates violations of the principle of equality before the law. Differential treatment of

normatively equivalent cases generates legal uncertainty and inconsistency in law enforcement across regions and institutions. In the long term, such conditions risk undermining the integrity of the criminal justice system and eroding public trust in law enforcement authorities.¹⁹

Accordingly, selective enforcement must be understood as a cross-regime legal issue encompassing both criminal law and administrative law dimensions. Without integrating these two perspectives, efforts to limit discretion and prevent abuse of authority in criminal law enforcement will continue to encounter structural obstacles.

The Impact of Selective Enforcement on the Rule of Law and Legal Certainty

Selective enforcement should not be understood merely as a variation in law enforcement practice, but as a structural problem with direct implications for the rule of law and legal certainty. In a state governed by the rule of law, law enforcement authority must be exercised on the basis of legal norms that are clear, rational, and predictable. When law enforcement is carried out selectively without firm normative parameters, law loses its primary function as a constraint on power and instead becomes an instrument for legitimizing subjective decision-making.²⁰

of Accountability,” *Indus Journal of Social Sciences* 3, no. 4 (2025). <https://doi.org/10.59075/ijss.v3i4.1962>

¹⁸ Crummett, D., “Prosecutorial Discretion and Republican Non-Domination,” *Ethical Theory and Moral Practice* 23 (2020): 965–985. <https://doi.org/10.1007/s10677-020-10122-y>

¹⁹ Pramono, G., H. Hidayatullah, dan A. Munawar, “Judge Freedom Versus Accountability on Oversight System and Ethics Enforcement Mechanism in Criminal Justice in Indonesia,” *Jurnal Akta* 12, no. 1 (2025). <https://doi.org/10.30659/akta.v12i1.42391>

²⁰ Crummett, D., “Prosecutorial Discretion and Republican Non-Domination,” *Ethical Theory*

The first major impact of selective enforcement is the violation of the principle of equality before the law. This principle requires that all individuals situated in legally equivalent conditions be treated equally. Selective enforcement, however, produces differentiated legal treatment that is not grounded in legally relevant distinctions, but rather in external factors such as social status, political proximity, or institutional interests. Under such circumstances, law ceases to function as a general norm and instead operates as a selective mechanism targeting particular legal subjects.²¹

Selective enforcement also directly undermines legal certainty. Legal certainty requires that individuals be able to anticipate the legal consequences of their actions based on applicable norms. When law enforcement outcomes depend heavily on unmeasured discretion, legal consequences become unpredictable. Two normatively identical acts may result in vastly different legal outcomes. This condition creates structural uncertainty that weakens the binding force of criminal law.²² Over time, such uncertainty contributes to the delegitimation of the criminal justice system. Public trust in law enforcement authorities is shaped not only

by the severity of sanctions imposed, but also by consistency and fairness in their application. Selective enforcement that persists without normative control reinforces the perception that the law operates selectively and lacks neutrality. This perception is particularly dangerous, as it fosters cynicism toward the law and weakens public compliance with legal norms.²³

From a constitutional perspective, selective enforcement also contradicts the principle of the rule of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The rule of law requires the supremacy of law, limitation of power, and accountability of state authorities. When law enforcement discretion is not constrained by clear normative standards and cannot be effectively reviewed, the supremacy of law shifts into the supremacy of discretionary authority. In this context, selective enforcement constitutes a tangible threat to constitutionalism.²⁴ Furthermore, selective enforcement generates inconsistencies in law enforcement across regions and institutions. The absence of binding national normative standards allows individual agencies or officials to interpret discretion according to internal policies or

and Moral Practice 23 (2020): 965–985. <https://doi.org/10.1007/s10677-020-10122-y>

²¹ Ramlan, D., “Analisis Hukum Undang-Undang Pemilihan terhadap Pelanggaran Kampanye di Tempat Ibadah dalam Perspektif Equality Before the Law,” *Referendum: Jurnal Hukum Perdata dan Pidana* 2, no. 1 (2025). <https://doi.org/10.62383/referendum.v2i1.442>

²² Shadiq, A., dan M. Alladuniah, “The Principle of Legal Certainty in the Shadow of Discretion: A Critical Review of the Criminal Investigation Stage,” *International Journal of*

Multidisciplinary Research and Analysis 8, no. 5 (2025). <https://doi.org/10.47191/ijmra/v8-i05-60>

²³ Hernandez, E., et al., “The Public Health Consequences of Officer Discretion in Arrests Affecting LGBTQ+ Communities in the United States: A Scoping Review,” *Health & Justice* 13 (2025). <https://doi.org/10.1186/s40352-025-00378-w>

²⁴ Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 ayat (3).

interests. As a result, the criminal justice system loses coherence as an integrated legal system. Such inconsistency not only harms seekers of justice, but also impedes the development of stable jurisprudence that can serve as reliable legal guidance.²⁵

Therefore, selective enforcement must be positioned as a critical issue in criminal law and administrative law reform. Without the formulation of clear normative limits on discretion and the establishment of effective oversight mechanisms, selective enforcement will continue to reproduce structural injustice within the criminal justice system. Selective law enforcement ultimately represents not merely a technical problem, but a crisis of legitimacy for the rule of law itself.

CONCLUSION

Selective enforcement constitutes a tangible phenomenon within the practice of Indonesia's criminal justice system and is inseparable from the exercise of discretion by law enforcement authorities. This study demonstrates that selective enforcement arises from normative ambiguity regarding the boundary between lawful discretion and abuse of authority, both within the criminal law regime and the administrative law framework. The absence of clear normative parameters allows discretion to evolve into an arbitrary space that is difficult to hold legally accountable.

This normative ambiguity is further exacerbated by regulatory developments following the enactment of Law Number 1 of 2023 concerning the National Criminal Code and Law Number 11 of 2021 concerning the

Public Prosecution Service, both of which expand discretionary authority without being accompanied by adequate oversight mechanisms. Under such conditions, selective enforcement risks shifting from an instrument of justice into an instrument of power selectivity.

Accordingly, selective enforcement must be recognized as a serious threat to the principles of the rule of law, legal certainty, and equality before the law. The formulation of firm normative boundaries for discretion, the integration of criminal law and administrative law perspectives, and the strengthening of accountability mechanisms are essential to ensure that discretion functions as a tool of justice rather than as a means of abusing authority within the criminal justice system.

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²⁵ Pramono, G., H. Hidayatullah, dan A. Munawar, "Judge Freedom Versus Accountability on Oversight System and Ethics Enforcement

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