

# LEGAL ANALYSIS ON POLICE ACTIONS IN HANDLING MASS ACTIONS: HUMAN RIGHTS REVIEW

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## ABSTRACT

*Data taken from Indonesian National Police Profession and Internal Affairs Division shows a 67.8% decrease in cases of abuse of authority in 1,269 in 2020 compared to 408 in 2021. However, such cases are still encountered, such as the action of Police Brigadier NP who slammed a student of the State Islamic University of Banten, Muhamad Fariz, during a demonstration in front of Tangerang Regent's Office, on Wednesday, October 13, 2021, and it is viral on social media. The study aims to answer (1) the authority of the Indonesian National Police in cracking down on demonstrations, and (2) the legal responsibility of the members of the Indonesian National Police who commit violence when securing a demonstration within the framework of human rights law. The study employs a socio-legal method that provides more comprehensive and easy-to-understand information. The results of the study show that (1) Indonesian National Police has the authority to implement security and public order under Law No. 2/2002, and (2) individuals who violate SOPs and violate human rights will be given sanctions under the relevant laws.*

**Keywords:** *Indonesian National Police, authority, SOP, human rights*

## 1. INTRODUCTION

The development of turmoil in the economy, politics, society and culture caused by government policies has led to various mass actions to express opinions in public. In these actions, there are several demands and not every government officials are eager to meet the protestors so that a tense situation occurs in which the people cannot control themselves and trigger actions from the police who are in charge of carrying out

security. Then, there is an unavoidable clash between the police with the mass. In such a situation, many people become the objects of excessive actions by police personnel who are not following SOPs (Standard Operational Procedures) and human rights when conducting security.

The conflict between the protestors and the police occurred again during the 399<sup>th</sup> Anniversary of Tangerang Regency in front of

the Tangerang Regent's office, Wednesday, October 13, 2022. The main reason was that the Regent did not want to go out of his office to meet the protestors so students finally and forcefully tried to enter the Regent's office. As a result, clashes broke out between students and police officers who secured the scene. Physical clashes were unavoidable and caused Muhammad Fariz (the coordinator of the Himata action) to be pulled over and slammed by a member of the National Police until he was unconscious (mediaindonesia.com, 2021).

Conflict and violence are closely related. Violence is a manifestation of unmanaged conflict. Violence is in the form of physical actions carried out by individuals or groups of people against other individuals. The National Police is a state instrument that is responsible for ensuring stability and public order without exception. This work is very important because it relates to the dignity of the individual's life as a human being as well as a member of society. For this reason, the state surrenders its power resources to the police institution in upholding stability, security and order by legalizing the police institution using violent means, using legal instruments as guidelines and assisted by other law enforcement officers (Bambang Budiono 2013).

The central freedom in a democratic society is freedom of expression. Both European Conventions and International

Covenants relate to civil and political rights, which discuss the provisions of the right to express opinions and the implications of the responsibility of everyone in exercising these rights. The main international legal instrument, states that there are no limitations regarding the provisions of the right of all people to seek, receive and impart information and opinions. Every individual has the right to freedom of opinion, which includes the freedom to hold opinions without interference, freedom to seek, receive and impart information and opinions in various ways and without limitation under Article 19 of the Universal Declaration of Human Rights (DUHAM 1948).

Human rights will protect and give respect to individual rights in society by upholding the principles of equality and freedom as well as a balance between rights and obligations for the creation of justice in all aspects of national and state life following the formulation of human rights in Islam and the conception of human rights in the 1945 Constitution (Muhsinin 2018).

However, freedom is not limitless. The norm of freedom in the 1945 Constitution Article 28 E paragraph (3) has been limited by Article 28 J of the 1945 Constitution which states that everyone in exercising their rights must respect the human rights of others in social life. Freedom must be subject to the limitations that have been set by law (Sistawan,

2019). Freedom, indeed, cannot be realized in the sense without any limitations, because such freedom is only possible in the *in-abstract* human condition that has not yet been assembled into society and the state (Achmad Hariri and Ani Purwanti, 2020).

The European Convention states that the provisions for the fulfilment of rights are absolute without interference from state authorities. However, the international covenants on civil and political rights, the European Convention and the American Convention and the African Charter provide for certain restrictions or prohibitions on these freedoms. The basis of statutory provisions and aims to respect the rights or reputation of others and to protect national security or public order is a reason for the limitation of rights. In Indonesia freedom of expression is regulated in Law No. 9/1998 concerning the Freedom to Express Opinions in Public (Nasution, 2006).

The position of the police in handling anarchic demonstrations has been explained in a case study of students of UMI Makassar who engaged in a brawl when expressing their opinion in public (Prasetyo 2017). However, the explanation from this research is only from one point of view that the role of the National Police is to provide a law enforcement process for the parties to the conflict. This research does not discuss the legal basis for the police's authority in securing demonstrations and civil

rights that must be respected within the human rights framework. Thus, in this study, we aim to explain (1) the authority of the National Police in taking action against demonstrations; and (2) the legal responsibility of the members of the National Police who commit violence when holding security within the framework of human rights law.

## 2. METHODS

The authors employ the socio-legal legal research method, in which the identification is carried out not only in text, but also explains the context that includes all processes so that it is more comprehensive and information provided is wider and the readers will be able to accept it well. Data is collected through several techniques such as literature review and internet studies.

## 3. LITERATURE REVIEW

The opinion of several figures related to social controls, including the concept of social facts from Emile Durkheim. Durkheim states that social facts can be known from the external coercive power that it carries out or which it can run against individuals certain sanctions or resistance given to any individual attempt to violate social facts. Durkheim also argues that social facts are outside the individual and have a coercive power to control the individual, which means that individuals must obey several rules contained in

society and that society exercises social control over individuals (Sunarto, 2004).

Article 3 of the Code of Conduct for Law Enforcement Officials (1979) emphasizes that law enforcement officers are allowed to use violence in carrying out their duties if they are urgent and can be accounted for. The use of firearms by members of the Indonesian National Police is also regulated in the United Nations Congress on the Prevention of Crime and Treatment Offenders in Havana in Cuba in 1990 (Head et al., 2017).

Brigitte Berger argues that the last way in the form of physical coercion can be used by the state to bring order to disobedient members of society (Santika, 2017). The National Police also has an SOP contained in the regulations made by the Head of Police following the Police Law which contains the stages of the use of force in police actions which include 6 levels ranging from pre-emptive actions to repressive actions which are coercive measures or other actions according to applicable law and carried out responsibly to inhibit, prevent or stop actions taken by criminals that threaten or endanger safety, body, property and moral honour, to realize the maintenance of public order and law enforcement as well as the establishment of a peaceful community situation (Polri Chief, 2009).

Article 9 Paragraph (1) of Law No. 9/1998 states that the

freedom to express opinions in public can be carried out in various ways, such as public meetings and/or free pulpits, marches or taking action with demonstrations or demonstrations. These various actions sometimes do not always run in an orderly manner, there are times when there is an anarchic conflict that endangers order and safety which has resulted in many victims. Therefore, everyone needs a place of shelter so the right place for them to take shelter is the Police. The police also act as protectors, servants and creators of a sense of security for the community, in addition to protecting the community from violence or threats of violence (Priyantoko, 2017).

The National Police (Polri) is a state instrument, not a government tool, which has three important roles maintaining public security and order, law enforcement and providing protection, protection and service to the community to create a safe atmosphere in the country as stated in Article 5 Law No. 2/2002 concerning the Indonesian National Police. The police, in dealing with problems related to security and public order; do not have certain sizes and limitations. It can be seen from the demonstration conditions which were initially conducive and controllable (green situation); can drastically change from time to time to become tense conditions (red situation). A red situation can be seen when the crowd cannot be controlled, such as throwing stones

or other objects at homes, offices or other strategic places, so that the escalation of the problem calculation has the potential to result in property loss or loss of life. At this stage, the team of negotiators no longer gave any advice, and for *Dalmas* (Mass Control) to make cross changes with *Brimob* (Mobile Brigade), they still backed up on the right and left sides to assist the security movement. At this stage, members have permission to take legal action following the application of the law and applicable procedures (Kadek et al., 2020).

In dealing with the masses who violate the law in the implementation of the delivery of opinions in public, following Article 14 paragraph (3) Polri Chief Regulation No. 9/2008, the National Police also has the authority to give warnings to the person in charge or the field coordinator for the masses who commit criminal acts, will get an additional 1/3 of the principal punishment, termination of activities that violate the law, arrest of perpetrators of law violators and detention, if necessary, to disbursement mass.

Prosecution of violations of the expression of opinions in public is carried out early by applying a sequence of actions from the softest method to the most firmly adapted to the development of the situation and taking into account the principles, namely the principle of legality, protection of human rights, expediency, legal certainty, justice,

public interest, efficiency and proportional. The use of force must be proportional, that is, the level of force used must be reasonable with the threats faced so that there will be no loss or excessive casualties and suffering and what the Police have done can be accounted for (Education and Training Department, 2020).

In the context of service, protection and security, the National Police must pay attention to three main principles in their duties, namely, first, the principle of legality as a reference for actions taken by the Police must comply with applicable legal procedures and rules, both in national and international laws and regulations. The second is the principle of necessity, which means that the actions of members of the National Police are something that must be done to achieve the goal of law enforcement, to limit a person's freedom because he has violated the law. And third is the principle of proportionality, namely the balance between the level of force used must be reasonable with the threats faced so that there will be no loss or excessive casualties and suffering (Siregar, 2015).

For the expression of opinions in public which disturbs public order, persuasive action shall be taken to stop the activities and if it fails, it will be followed up with proportional force efforts to stop the disturbance of order that occurs. If anarchy occurs, action can be taken by stopping the anarchist action through appeals,

invitations and understanding. The application of coercive measures is the last resort after pre-emptive and persuasive efforts have failed. The National Police can also carry out legal action in a professional, proportional and necessary manner that is adapted to the situation and conditions. In carrying out legal action, efforts must be made to collect evidence and activities to support efforts to take action in the future (e.g., recording the identity of the target, taking photos, recording activities). After carrying out the activities, rehabilitation and consolidation of the situation were carried out (Polri Chief, 2008).

Legal responsibility for members of the National Police who commit violence during security within the framework of human rights law can be explained as follows. The United Nations (UN) in the Universal Declaration of Human Rights has declared that freedom of expression is part of human rights. Meanwhile, in the Constitution of the Unitary State of the Republic of Indonesia, Article 28 F of the 1945 Constitution, which contains freedom of expression, is further developed in freedom to express opinions in public in Law Number 9/1998. Article 1 paragraph (1) of the Law, This law states that the freedom to express opinions is the right of every citizen who is free and responsible for following the provisions of the applicable laws and regulations in the form of thoughts orally or in writing (Priyantoko, 2017).

#### **4. RESULTS & DISCUSSIONS**

The obligation of the Indonesian state towards human rights is regulated in Article 28I paragraph (4) of the 1945 Constitution that the Government or the state is responsible for the protection, promotion, enforcement and fulfilment of human rights. This is also stated in Article 8 of the Human Rights Law. Then Article 71 of the Human Rights Law also states that the Government is obliged and responsible for respecting, protecting, upholding, and promoting human rights as regulated in laws and international law governing human rights that have been accepted by the Republic of Indonesia (Freedom of Opinion, Expression, and Farida 2022)

Based on the Polri Chief Regulation Number 8/2009, understanding human rights and their relation to police duties is a legal obligation that must be owned by every member of the National Police. The National Police personnel are required to comply with international and national instruments relating to the National Police members and human rights which contain minimum standards for the protection of citizens (Siregar, 2015).

In carrying out its duties, the National Police may use force/repressive measures following articles 50 and 51 of the Criminal Code, namely carrying out regulations under statutory

regulations and on the orders of positions. Then it is also strengthened in Article 18 paragraph (1) of the Police Law which states that for the public interest, Polri officials can use police discretion, namely when carrying out their duties to act according to their interests.

However, the discretion of the police is not merely an absolute authority, this can be done when the situation is urgent or to avoid victims/big losses. In addition, discretion must be following the norms that apply in society and be guided by the legislation. Forced efforts must be guided by their duties and authorities in the law and uphold human rights. In several mass actions, it is not uncommon for a member of the National Police to take excessive action so that it becomes the spotlight of the media and the public; some even mention it as a violation of human rights. With this incident and based on the fact that violations caused by the use of excessive force causing injury and even death can occur, it is necessary to have a policy of using force that is good and can be understood by all parties.

Cases of human rights violations by members of the National Police have backfired when the Police are carrying out their main functions. On the other hand, the National Police has been indoctrinated to be fully responsible for social problems related to security and safety. This can trigger Polri members in the field to treat reactive actions

without taking into account the indications of human rights violations in them.

The existence of an understanding of freedom of expression by the majority of the community as freedom without limits, and the obligation of the Police to guard or secure various forms of demonstrations is a challenge where in these activities it is not uncommon for demonstrations to be carried out that are not under legal provisions and the Police must be able to control them and are required to guarantee the protection of human rights.

The excessive action of members of the Police by Brigadier NP against M. Fariz (the coordinator of the Himata action) until he became unconscious is an example of an act that violates human rights because Brigadier NP's response should not be excessive and not follow the principle of proportionality and not under the SOP for securing the mass action following statutory regulations. The Banten Regional Police Chief in responding to the behaviour of the members who carry out their duties does not comply with the SOP that applies within the Polri environment. It is not following the SOP on how to handle demonstrations. Of course, for his actions, the chief of the police region will give sanctions according to the law.

It didn't take long for Brigadier NP to undergo a trial which was supervised directly by

the Propam Police Division and attended by Fariz as the victim and three of his friends. The trial stated that Brigadier NP had legally and convincingly violated the disciplinary rules for members of the Police, Brigadier NP was given the heaviest sanctions in layers ranging from detention in a special place for 21 days, then demotional transfer to *Bintara* Polresta Tangerang without a position and gave a written warning which administratively will result in the NP Brigadier being delayed in the promotion and constrained to follow further education. The weight of this case is that the excessive actions of the Brigadier NP, outside of procedures, caused victims and could bring down the good name of the Police.

This excessive incident violated the police code of ethics and even entered into a criminal act that tarnished the image of the police and caused a loss of public trust in the police. Thus the Chief of the National Police Chief of Police General of Police Listyo Sigit Prabowo, M.Sc., through the Letter Telegram Number: ST/2162/X/HUK.2.8./2021 by giving orders to regional police chiefs to anticipate repressive cases of violence or excessive actions of the Police against the community. With this policy, Polri personnel are more mature and wise in making decisions, understand actions that are under SOPs and are more guided by the Polri professional code of ethics because there will be strict actions when

violating them and sanctions that include disciplinary sanctions, administrative sanctions, code of ethics as well as criminal sanctions under PP No. 1, 2 and 3 of 2003.

Police personnel who have violated the Disciplinary Regulations will be subject to sanctions in the form of disciplinary action or disciplinary punishment. Disciplinary action is given in the form of a verbal warning or physical action. If disciplinary action has been taken, Ankom still has the authority to impose disciplinary penalties. Disciplinary sanctions include written warnings, postponement of periodic salary increases, postponement of promotions for a maximum of one year, delays in attending education for a maximum of one year, demotional mutations, release from positions, placement in special places for a maximum of 21 days (Government, 2003a).

Personnel who have been disciplined more than three times and have been deemed inappropriate to maintain their status as members of the Indonesian National Police may be dismissed through the Commission for the Professional Code of Ethics for the Indonesian National Police with respect or may be dismissed concerning the law (Government, 2003c). If a member of the National Police is proven to have committed a criminal offence, the applicable judicial process is carried out according to the procedural law in the general court (Government, 2003b).



## 5. CONCLUSIONS & IMPLICATIONS

### 5.1 Conclusions

- a. Indonesian National Police (Polri) is a state instrument. It is not a government instrument, which has three important roles maintaining public security and order, law enforcement and providing protection and services to the community to create a safe atmosphere in the country.
- b. The authority of the National Police in disbursing demonstrations containing standard procedures for service, security and handling cases of public opinion submission has been regulated in the National Police Regulation. Police actions are carried out from soft to hard forces by applying the principle of proportionality, where Polri response is following the threats that occur. Repressive measures must be following Articles 50 and 51 of the Criminal Code. It is also strengthened by Article 18 Paragraph (1) of Law Number 2/2002 stating that Polri officials

can use police discretion when carrying out their duties to act according to their interests for public and urgent interests.

- c. Understanding human rights and their relation to the duties of the police is a legal obligation that must be owned by every member of the police. Polri personnel are required to comply with international and national instruments relating to Polri's members and human rights which contain minimum standards for the protection of citizens. For members of Polri who violate the SOP for safety/law enforcement and violate human rights, they will be given sanctions following the law. Sanctions for Polri include disciplinary sanctions, administrative sanctions, code of ethics sanctions and criminal sanctions as regulated in PP Numbers 1, 2 and 3 of 2003.

### 5.2 Implications

Based on the conclusions above, the authors recommend Indonesian National Police:

- a. improve the knowledge and understanding of its personnel on the SOP of handling and disbursing

- chaotic situations caused by demonstrations;
- b. revise its SOP on handling and disbursing chaotic situations caused by demonstrations; and
- c. improve the knowledge and understanding of its personnel on human rights in handling and disbursing chaotic situations caused by demonstrations.

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