



Legal Protection Against the Police in Applying Force Means During Demonstrations Which Are Ongoing Anarchy

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Abstract

The police are an institution responsible for carrying out law enforcement and protecting the community. In carrying out their security duties during demonstrations, many of them became victims of anarchy. The issue of legal protection for demonstrators has been widely discussed in previous studies, while there is still very little research on forms of protection for police when faced with demonstrations. The aim of this research is to find out what kind of protection is given to the police when implementing coercive measures against demonstrations that are taking place in anarchy. The type of research used is normative and the approach used is a statutory approach and a conceptual approach. So the results of this research can be concluded that forms of legal protection can be provided in the form of consultations and assistance at trials, legal regulations and state obligations can be developed for demonstrations that result in fatalities from the police as well as clear law enforcement instructions for the authorities. to ensure legal protection.

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Introduction

Protests or demonstrations are a democratic way of life that channels ideas and thoughts to society. A country can be said to be democratic if its people can freely express their aspirations and opinions, either directly or indirectly.(Suryadinata & Michael, 2023) Protests/demonstrations are usually carried out to convey the opinion of a group or opponents of a party's policies, but can also be carried out with the aim of exerting political pressure on the interests of that group. Demonstrations should not only be considered as a normal expression of society, but also as an indicator of how "democratic principles" are applied in the life of a pluralistic society. Basically, a demonstration is a form of expression of a group of people which contains demands regarding the situation, reality, awareness and even a form of national critical education.(Rahman, Sahidin, & Nazahah, 2022).

Demonstrations are generally carried out by citizens who do not agree with the government and who oppose government policies. However, demonstration were also carried out by other groups with other aims. So in this case, in fact, in terms of language, demonstrations are not limited to long marches, shouting, burning tires, theatrical actions, damaging fences, or other actions that have been attached to the word demonstration.(Mandang, Gerungan, & Karwur, 2023) In the current era of reform accompanied by the opening of the doors to freedom, many people participate in demonstrations to express their desires for government policies nationally and regionally. When political communication by other means was deemed to have failed, demonstrations were organized. It is assumed that protests will make people's wishes known and heard, allowing the government to change its policies.

Demonstrations/rallies often turn into acts of anarchy. Tens of thousands of student demonstrators on the streets of Jakarta in 1998 when President Soeharto stepped down. This is a time when demonstrations can escalate into unlawful acts such as theft, looting, arson and death. From the explanation above, the government promulgated Law of the Republic of Indonesia Number 9 of 1998 concerning Freedom to Express Opinions in Public (hereinafter referred to as Law No. 9/1998) regulating the rights, obligations and responsibilities of citizens in expressing opinions in public. From the description of the examples above, not all community demonstrations strictly comply with this law. Many people have seen or witnessed acts of lawlessness in the media, this is actually not a reflection of our nation's cultural wisdom. Almost all demonstrations that tend to be anarchist inevitably result in loss of property and even loss of life, whether for the demonstrators themselves, the police, or even other citizens who do not take part in the anarchist demonstration. It would be good if demonstrators and other police knew their own obligations in every action they carry out, because in principle the actions of citizens are regulated in law as a form of maintaining order in the life of the nation and state, and of all parties. the actions they carry out in carrying out their functions are regulated by law. Both citizens and police officers have rights that are regulated by law. Although the police have the right to protect themselves against possible mob attacks, citizens protesting have the right to express their opinions.(Hanna Theresia Febiola Toha, 2024).

Anarchists can be defined as supporters (adherents) of anarchism or people who practice anarchy. We know about anarchism and this is related to demonstrations. The police as guards and parties tasked with maintaining security and order in this country have always paid attention to acts of anarchy. Anarchism is an ideology that only destroys our country, a vision that imposes itself and is integrated into our society, a model of thought that only solves problems through violent action (Kadir, Marthen Moonti, Kasim, Tumuhulawa, & Bunga, 2022) It is deemed necessary to take firm action to overcome this, considering that this is of course a problem of great concern for security and public order.

In Article 13 of Law of the Republic of Indonesia Number 2 of 2002 concerning the State Police of the Republic of Indonesia (hereinafter referred to as Law No. 2/2002) explains that the police have the task of maintaining the welfare and harmony of society, namely creating, conditioning, maintaining security which is a basic need, as well as maintaining the environment and conditions for orderly behavior of society. Mass action to uphold law and order will clearly demonstrate the implementation of respect for human rights in the field. The police are always faced with a choice in such circumstances. Police are obliged to protect human rights, but they also face mass actions, sometimes violent, that can threaten the safety of police officers on duty. The law issued by the Chief of Police of the Republic of Indonesia (Kapolri) is expected to provide an answer to this problem. Police handling procedures during demonstrations are regulated in the Regulation of the Head of the

National Police of the Republic of Indonesia Number 7 of 2012 concerning Procedures for Providing Services, Security and Handling Cases of Expressing Opinions in Public (hereinafter referred to as Perkapolri No.7/2012). During the demonstration, the police were tasked with securing the masses so that the demonstration could take place without any acts of anarchy. In Article 24 paragraph (4) letter b of National Police Chief Regulation No.7/2012, if anarchy occurs during a demonstration, the police can use force as a last resort if persuasive efforts do not produce results in stopping the anarchic crowd. Forced measures are all forms of action taken by police officers against a person's freedom of movement or control of an object and a person's personal freedom so that no one is disturbed.(Roberts, 2020).

In carrying out coercive measures, the police often experience problems where anarchic masses often fight back which causes riots. Not only that, in carrying out coercive measures, the police are often seen as violating human rights by the community, where this coercive effort is the last resort if persuasive efforts do not produce results. When the demonstration took place, there were still many who did not know about the coercive measures implemented by the police to protect the police in securing the demonstration. Protesting masses act in a way that is not in accordance with the moral message conveyed to the government in accordance with citizens' expectations, so that it often results in protests/demonstrations that cause danger or threats to the lives of other people. Many previous studies have focused on the issue of legal protection for demonstrators or demonstrators, but only a few studies have examined how the police carry out coercive measures and obtain legal protection for carrying out coercive measures against demonstrations that are taking place in anarchy. Based on the background description above, the problem formulation is: What is the form of legal protection for the police when applying coercive measures in demonstrations that are taking place in anarchy?

Materials and Methods

This research is normative legal research. Specifically conduct legal research to identify norms, doctrines, and principles that answer existing legal questions. To overcome the legal problems faced, normative legal research is carried out. Normative legal research is carried out to provide solutions to existing legal issues. (Peter Mahmud Marzuki, 2005).

Results and Discussions

Police Authority in Securing Demonstrations/Demonstrations

There is no special authority given to the police to carry out demonstrations in Law No.2/2002, but only the authority of the police as a whole, as stated in Article 15 (2) of Law No.2/2002 which states "The State Police of the Republic of Indonesia has the authority to other statutory regulations". Thus, the police can be given the authority to establish regulations relating to demonstrations or demonstrations.

Article 15 (1) letter a, Law no. 2/2002, reads that "the police have the authority to give approval and supervise public crowd activities and other community activities", if this article is linked to article 10 paragraph (1) of Law no. 9/1998, which states: "expressing opinions in public must notify the police in writing", this shows that the police have the authority to supervise demonstrations and grant permission or not for community activities.

Article 14 (1) letter e, Law no. 2/2002 concerning the Police of the Republic of Indonesia, reads "the police have the task of maintaining order and ensuring public security", if this article is linked to Law no. 9/1998, in Article 13 (3) which reads "in carrying out expressions of opinion in public, the National Police is responsible for providing security to ensure security and public order in accordance with applicable procedures", here it can be interpreted that the police are responsible for maintaining the welfare and sense of security. safe during demonstrations. From the explanation above, the police's authority when tasked with securing demonstrations according to Law no. 2/2002 namely:

1. The police have the authority to grant permission (community activities) or not for demonstration activities.
2. The police have the authority to maintain order and security at demonstrations.
3. The police have the authority to supervise the demonstration.
4. The police have the authority to organize, guard and escort demonstration participants.

Violence can be justified against protesters who break the law if it is carried out within reasonable limits, but violence must always be carried out in a strict and organized manner. Firm police action needs to be based

on existing laws and uphold human rights. The police must investigate protesters who commit anarchy and violate the law in accordance with applicable regulations, but in certain conditions in the field, they sometimes have to make decisions that exceed the limits of their authority and are beyond the orders of their leaders. pemimpinnya. (Syahbana, 2013) The police force during the demonstration was very large. The police have work protocols to implement security at every demonstration. The Mass Control Force (Dalmas) is a branch of the police that plays an important role in securing demonstrations. The National Police Unit organized Dalmas activities to control the large number of demonstrators. (Saputro, 2015)

After receiving reports of demonstrations from demonstrators in accordance with the procedures stated in Law No. 9/1998 to the police, the police in the area where the demonstration was held must prepare themselves. The obligations of mass controllers or Dalmas to maintain demonstrations are as follows:

1. Organize and organize demonstrations in accordance with regulations;
2. Respect the Human Rights of every individual participating in the demonstration;
3. Obey and obey orders from the head of the field unit who is responsible according to his/her level;
4. Protect life and property;
5. Monitor and maintain the situation until the demonstration ends.

Forms of Police Force Against Anarchy Demonstrations

UU no. 8/1981 does not explain in detail the nature of the meaning of coercive measures, but coercive measures are a collection of actions carried out by investigators to carry out investigations, such as arrest, detention, search, confiscation and examination of documents. If the act is carried out without legal basis, then under normal circumstances it can be considered a violation of human rights, especially the personal rights and freedoms of the person who is the victim.

Chapter V of Law No. 8/1981 regulates coercive measures, including arrest, detention, body search, confiscation:

1. Arrest

Based on article 1 point 20 of UU.No. 8/1981, it reads: "arrest is an investigator's action in the form of temporary restraint on the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and/or justice in cases and according to the method regulated by law. This". According to Article 16 of Law No. 8/1981, investigators have the right to make arrests to carry out investigations, provided that the investigator first issues an order. Investigators and assistant investigators have the right to make arrests for investigative purposes. People who are strongly suspected of committing a criminal offense will be arrested based on sufficient evidence. Sufficient preliminary evidence is sufficient to enable a criminal offense to be suspected. (Sari, 2020)

2. Detention

Detention is the activity of moving a suspect or defendant to a special place at the discretion of the public prosecutor, investigator or judge, in accordance with the guidelines and procedures described in Law No. 8 / 1981 Article 1 number 21. The purpose of detention is regulated in Article 20 of the Law. No.8/1981, namely:

- a. To carry out an investigation, the investigator or deputy investigator has the authority to carry out detention on the investigator's orders. The extent of investigative interests is primarily determined by the objective needs of the investigation. This depends on the level of effort required by the investigator to complete the investigation. Detention is no longer necessary once the investigation is complete.
- b. Detention carried out by the judiciary is intended to be examined at the judicial level. In a court hearing, the judge has the authority to decide whether or not detention is necessary in accordance with the interests of the examination
- c. The purpose of detention carried out by the prosecutor is to advance the prosecution's objectives.

3. Search

A search is an examination that aims to collect elements, evidence and information related to a legal matter. Investigators have the authority to use coercive measures in carrying out searches. Examinations are carried out on a person's body or closed places (houses, buildings and their types).

Based on Article 32 of Law No. 8/1981, investigators are able to carry out body and clothing searches for investigative purposes in accordance with the policies regulated in this law. A body search as mentioned is defined in Article 1 point 18 of Law No. 8/1981 which reads: "a body search is the action of an investigator

to carry out an examination of a suspect's body and/or clothing to look for objects that are strongly suspected to be on his body or carried by him and to be confiscated."

4. Foreclosure

Confiscation according to article 1 number 16 of Law No. 8/1981 is "a series of actions by investigators to take over and/or keep under their control movable or immovable objects, tangible or intangible, for the purposes of evidence in investigations, prosecutions and trials". According to M. Yahya Harahap, for evidentiary purposes, confiscation is usually carried out as evidence before a judicial hearing

Forms of Legal Protection for the Police When Applying Coercive Measures to Secure Anarchy Demonstrations

Even though Indonesia is a rule of law country, the concept of a rule of law changed along with amendments to the 1945 Constitution.(Michael, 2020) The police profession is carried out by police officers who basically have obligations and responsibilities to carry out their profession. However, they also have basic rights as citizens to be protected by law, even though their profession contains the duty and authority to provide legal protection for society. Strangely, when they become police, they are required to protect and serve the community, but the police do not have legal protection from the government or state on their side.

True legal justice is seeking justice for all parties. Individuals who desire legal justice, namely reconciling the wishes of the State.(Michael, 2019) It is important to guarantee legal protection for police officers so they can carry out their profession, because it fulfills the interests of citizens, especially guaranteeing public welfare. Based on human rights, police officers have the right to receive legal protection in carrying out their duties, as explained in Article 5 (1) (Law No. 39 of 1999 concerning Human Rights which states "before the law, every individual is respected for his or her human dignity and "Therefore, it is necessary to guarantee legal protection for police officers who carry out their duties, while on duty and after completing their duties, so that police officers receive equal treatment and protection before the law.

There are two criteria for legal protection for the police, the first concerns individual rights and the second concerns legal protection in carrying out their work. Legal certainty regarding a person's rights, namely guarantees, is related to his nature as an individual who has rights as a citizen in a country regulated by law. At the same time, security is maintained in carrying out the profession, namely protection against risks, duties and authority.

The police, who carried out their duties in accordance with the provisions of the law, were legally protected when providing security for demonstrations but ended up becoming victims of the anarchic crowd. They have the right to receive legal assistance while taking into account their human rights, which include the right to be recognized as equal before the law, the right to be excluded from retroactive legislation, the right to receive legal assistance from the investigation stage to the right to be tried, as well as other rights that in accordance with their status as citizens of a legal state.(Pandelaki, 2018)

In carrying out the police's duties and authority, proportionality does not always mean using the same tools as those used by the suspect; for example, if the suspect uses a knife, the police do not use the knife directly.(Kristianita, 2022) Furthermore, the use of weapons and violence must be stopped if the goal is achieved. Proportionality is the use of appropriate force equivalent to the target to be achieved and without exceeding limits. It is important to confront coercive measures taken by the police to protect the public interest when de-onstration takes too many risks and risks leading to anarchy.

The existence of the police institution as an organization that carries out the police profession will have an impact on defending the rights of police officers. Because the police have dominant influence over members, they are the ones who determine legal protection for members. Even though policies are within the discretion of the police, if they are based on applicable laws and regulations, procedural actions will be legal.(Pandelaki, 2018) Although the protection of the rights of police officers as individuals and as workers is actually not comparable to the human rights of other people, this gives the impression that the rights of citizens or other people are more important and that the rights of the police are cancelled. Therefore, this paradigm must be changed to guarantee legal protection for police officers, because this is very detrimental to the police and shows a lack of respect for the human rights of its members.

Based on the description and discussion regarding the role of the police in handling lawless demonstrations based on permanent regulations, it can be assumed that Indonesia is a rule of law country, therefore it is guided by the law. If the police's task of securing demonstrations results in actions that cause pressure on demonstrators or make them feel that their rights as citizens are entitled to the right to express opinions in

public, police officers act based on the procedures in Law no. 2/2002, then it is impossible to say that his actions were qualified as violating the human rights of the demonstrators. So that when applying coercive measures and riots occur and cause police casualties, police like this deserve legal protection. Of course it is difficult for the public to understand, because the media always focuses negatively on the police's efforts to secure demonstrations, in the sense that when the police secure a demonstration but the course of the demonstration continues to be anarchy, the police have to apply coercive measures where the demonstrators often attack the police, this is considered something that is wrong. This is commonplace, but the real fault lies with the anarchic masses, forcing the police to use coercion and the efforts to secure the demonstration which were carried out in accordance with applicable procedures.

If we compare it with the theory of legal protection mentioned above, we can conclude that if the law has the function of protecting human security, then the law must be applied professionally. The implementation of the law can proceed safely and in a normal orderly manner. Law enforcement must enforce laws that are violated. Legal certainty is necessary for the application of the law and to protect arbitrary actions. The public hopes for legal certainty because it will make society orderly, safe and calm. (I Wayan Artawan, Made Sugi Hartono, & Ni Ketut Sari Adnyani, 2022).

Conclusion

Consultation and assistance at trial are forms of legal protection that can be provided. There is a need for legal defense and protection for the actions of innocent members, because assertiveness will have a psychological influence on police officers in carrying out their profession and will raise courage and enthusiasm in their work. Legislation and citizens' obligations can be developed in a balanced manner towards demonstrations that result in police casualties, as well as clear law enforcement instructions for the authorities to ensure legal protection.

References

- Hanna Theresia Febiola Toha, C. D. M. and G. Y. B. (2024). TANGGUNG JAWAB OKNUM KEPOLISIAN YANG BERTINDAK REPRESIF DALAM PENGAMANAN DEMONSTRASI ANARKIS. *Jurnal FakultasnHukum Unsrat Lex Privarium*, 13(2).
- I Wayan Artawan, Made Sugi Hartono, & Ni Ketut Sari Adnyani. (2022). ASAS PRADUGA TIDAK BERSALAH DALAM MEMBERIKAN PERLINDUNGAN HUKUM TERHADAP TERSANGKA PIDANA PENCURIAN DI POLSEK SAWAN. *Jurnal Komunitas Yustisia*, 5(3). <https://doi.org/10.23887/jatayu.v5i3.51874>
- Kadir, Y., Marthen Moonti, R., Kasim, R., Tumuhulawa, A., & Bunga, M. (2022). PENERAPAN PROSEDUR TETAP NOMOR 1 TAHUN 2010 TENTANG PENANGULANGAN ANARKIS. *Journal Evidence Of Law*, 1(2). <https://doi.org/10.59066/jel.v1i2.43>
- Kristianita, F. (2022). Legal Authority of Indonesian National Police in Handling Rally or Demonstrations. *UMPurwokerto Law Review*, 3(1). <https://doi.org/10.30595/umplr.v3i1.11114>
- Mandang, O. A., Gerungan, C. A., & Karwur, G. M. F. (2023). Penegakan Hukum Terhadap Pelaku Demonstrasi Bersifat Anarkis Yang Berakibat Pada Pengerusakan Barang Milik Negara 1. *Karya Ilmiah*, 12(5), 2.
- Michael, T. (2019). HUMANITY IN THE ENFORCEMENT OF ANTI-CORRUPTION LAWS. *Jurnal Hukum Bisnis Bonum Commune*, 2(2). <https://doi.org/10.30996/jhbcc.v2i2.2597>
- Michael, T. (2020). Bentuk Pemerintahan Perspektif Omnibus Law. *Jurnal Ius Constituendum*, 5(1). <https://doi.org/10.26623/jic.v5i1.2222>
- Pandelaki, G. R. (2018). Peran Polisi dalam Pengendalian Massa Berdasarkan Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia. *Lex Et Societatis*, VI(5).
- Peter Mahmud Marzuki. (2005). *Penelitian Hukum*. Jakarta: Prenada Media.
- Rahman, R. A., Sahidin, A., & Nazahah, I. (2022). AKSI UNJUK RASA BELA ISLAM DI INDONESIA PADA KASUS AHOK DALAM PERSPEKTIF MAQASHID AL-SYARI'AH. *Istinbath*, 20(2). <https://doi.org/10.20414/ijhi.v20i2.391>
- Roberts. (2020). PERLUASAN KEWENANGAN PRAPERADILAN DALAM MENENTUKAN TERSANGKA PELAKU TINDAK PIDANA. *Reformasi Hukum*, 23(2), 132–148. <https://doi.org/10.46257/jrh.v23i2.92>
- Saputro, L. (2015). DISKRESI ANGGOTA KEPOLISIAN NEGARA REPUBLIK INDONESIA DALAM PENANGANAN

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- AKSI UNJUK RASA DAN IMPLIKASINYA TERHADAP KETAHANAN WILAYAH (STUDI DI KEPOLISIAN RESORT KOTA YOGYAKARTA). *Jurnal Ketahanan Nasional*, 21(2). <https://doi.org/10.22146/jkn.10153>
- Sari, E. Y. (2020). Upaya Paksa terhadap Tersangka Terorisme dalam Perspektif Perlindungan Hukum. *Jurist-Diction*, 3(3). <https://doi.org/10.20473/jd.v3i3.18631>
- Suryadinata, M. R., & Michael, T. (2023). Hak Kebebasan Berpendapat di Media Elektronik Ditinjau dari Pasal 27 Ayat (3) Nomor 19 Tahun 2016 Undang-Undang Informasi dan Transaksi Elektronik. *Innovative: Journal Of Social Science ...*, 3(3), 4606-4613. Retrieved from <http://j-innovative.org/index.php/Innovative/article/view/4779%0Ahttps://j-innovative.org/index.php/Innovative/article/download/4779/3809>
- Syabhana, R. (2013). Penerapan Prosedur Tetap Dalam Penanggulangan Unjuk Rasa Anarki. *Jurnal Ilmu Hukum Legal Opinion*, 1(9).