



Discretionary Authority of the Indonesian National Police in the Implementation of Demonstrations

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ABSTRACT

This study aimed to find out the provisions for the use of the discretionary authority of the police as regulated in laws and regulations and to find out the operational standards for implementing police discretion in securing demonstrations/demonstrations. The type of research used in this research was normative research. The results of this study indicated that the provisions for the use of the discretionary powers of the Police are regulated in Article 5, paragraph 1, letter a number 4 of Law Number 8 of 1981 concerning the Criminal Procedure Code, Article 16, paragraph 1, Article 5 paragraph 1 letter a number 4 of Law Number 8 of 1981 concerning the Criminal Procedure Code and Article 16 paragraph 1 of Law Number 2 of 2002. And operational standards for the implementation of Police discretion in securing mass actions when expressing opinions in public (demonstrations), namely the Dalmas unit is prohibited from carrying sharp weapons or firearms, mobile units by order of the commander and in a unit bond. Dalmas members are prohibited from arguing with the masses (submitted by the negotiating team), using the "T Stick" only to encourage the masses not to beat, using hollow bullets and rubber bullets at the request of the regional head of regional police and carried out by the action unit, and checking individual/unit equipment.

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1. Introduction

In the 1945 Constitution of the Republic of Indonesia it is emphasized that the National Police of the Republic of Indonesia as an instrument of the state that maintains security and public order are tasked with protecting, protecting, serving the community, and upholding the law.³ Based on these provisions, it appears that the National Police of the Republic of Indonesia both as an institution and as individuals have the duty to protect, protect, serve and enforce the law, and are obliged to maintain security and public order. Therefore,

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³ Article 30 paragraph 4, Constitution of the Republic of Indonesia.

according to Satjipto Rahardjo explained that with the existence of each law enforcement agency which has different functions, in its implementation it requires organization to achieve the same goals within the framework of criminal justice.⁴

The organizing process is basically a management activity, by utilizing all institutional resources through people, techniques and information carried out within the framework of the organizational structure. According to Muladi, law enforcement is a system, sub-system and inter-subsystem, which in reality is always in process.⁵ Thus, the goal of law enforcement does not only include law enforcement but also peace maintenance. Therefore, the main task of law enforcement is to achieve justice.

One of the main tasks that must be carried out by the Indonesian National Police is to maintain security and public order.⁶ The simplest benchmark that creates safe and orderly conditions in community⁷ life is the absence of quarrels, fights or commotion, and there is no theft in the community.⁸ However, the most profound meaning of the task of maintaining security and order is a means of realizing justice, prosperity and social welfare.

In carrying out their duties, the National Police divides each of these tasks into functional units to facilitate coordination and focus on the cultivation of their respective fields, although overall the Police have the same tasks and the same working hours, namely 24 hours attached to both on and off duty hours. Policing duties are still carried out by every member of the Police.⁹

Judging from the aspect of policing duties carried out by the Police, it is known that the duties and powers of the Police are very broad. For this reason, the laws and regulations regarding Indonesian Republican Police regulate a lot about the duties and authorities of Indonesian Republican Police in carrying out their duties.¹⁰ Besides that, Indonesian Republican Police has the authority to exercise discretion in carrying out these tasks.

The discretionary authority given to the Police institution is inseparable because of the universal nature of the Police as law enforcers.¹¹ As explained in Article 18 paragraph 1 of Law Number 2 of 2002 that in the public interest, officials of the Indonesian Republican Police in carrying out their duties and authorities can act according to their own judgement.¹²

Any major authority will work well if carried out in accordance with correct and professional procedures. However, many law enforcers also use their authority to seek personal gain or commit abuse of authority, which can be used as a method or mode by Indonesian Republican Police investigators in carrying out criminal law enforcement, namely mainly in carrying out investigations and investigations. This raises the question how are the provisions for the use of the discretionary authority of the Police regulated in laws and regulations?

⁴ Rahardjo, S. (2010). *Penegakan Hukum Progresif*. Jakarta: Penerbit Buku Kompas, p. 16.

⁵ Muladi. (2002). *Politik dan Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro.

⁶ Arif, M. (2021). Tugas dan fungsi kepolisian dalam perannya sebagai penegak hukum menurut Undang-Undang Nomor 2 Tahun 2002 tentang kepolisian. *Al-Adl: Jurnal Hukum*, 13(1), 91-101.

⁷ Widodo, P., & Baharudin, B. (2022). Implementation of Community Policing Program using Problem-Solving Approach by Bhabinkamtibmas. *Amsir Law Journal*, 4(1), 32-41.

⁸ Wahyu, Moh. Eka. (2022). *Tinjauan Hukum Diskresi Kepolisian Dalam Pengamanan Demonstrasi di Polres Sidenreng Rappang*. Parepare: Fakultas Hukum Institut Ilmu Sosial dan Bisnis Andi Sapada.

⁹ Asba, P., Syahril, M. Akbar Fhad., & Makkarawa, I. (2022). The Pollution of The Role of The Polri in The Prevention of Commotion in Demonstration. *Traditional Journal of Law and Social Sciences (TJLSS)*, 1(2), 53-72.

¹⁰ Purwanda, S., Bakhtiar, H. S., Miqat, N., Nur, R., & Patila, M. (2022). Formal Procedure Versus Victim's Interest: Antinomy of Handling Sexual Violence Cases In East Luwu. *Jurnal Hukum Volkgeist*, 6(2), 116-122.

¹¹ Asriyani, A., & Dwiyanti, A. (2022). Efektivitas Kepolisian dalam Melakukan Penyelidikan Tindak Pidana Penipuan Online Melalui Media Elektronik Internet. *Jurnal Litigasi Amsir*, 10(1), 140-145.

¹² Article 18 paragraph 1, Law Number 2 of 2002 concerning the Police.

2. Method

The type of research used in this research was normative research. Normative research is an approach that is carried out by studying legislation, theories and concepts related to the problem to be studied.¹³

3. Provisions for the Use of Police Discretionary Authority Regulated in Laws and Regulations

The authority of the police to use violence in maintaining public order and security, is justified as stated by Satjipto Rahardjo, the police are the embodiment of the state monopoly to commit violence, to represent us all being neutral in dealing with social conflicts.¹⁴ The police are a living law, because it is in their hands that law (which is abstract) experiences manifestation, at least in the field of criminal law.

Police is an institution that plays a role in upholding law and norms that live in society (Police as an enforcement officer), who in their duties can enforce the law. If the law is violated, the role of the Police is needed to restore a forced situation so that those who break the law will bear the consequences of their actions. Police duties, both pre-emptive, preventive and repressive, often have to be carried out with violence, so that violence can be said to be the garment of carrying out Police's duties. So almost all of Police's tasks have the potential to violate Human Rights. Here is the point of contact between Human Rights and the Police, which if you are not wise will easily say that the Police are government officials who have the most potential or the greatest violation of human rights, where the human rights related to the Police are almost all of the first-generation types which are fundamentals.

Not much is known about discretionary authority by every member of the Police and how a member of the Police performs this discretion. Indonesian Republican Police members only know about discretion but it is not clear how to implement it and what the consequences will be if this discretion is misused. The practice in question can continue until the Police Law is replaced.¹⁵ In terms of loading:¹⁶

- 1) In the public interest, officials of the State Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgement;
- 2) The implementation of the provisions referred to in paragraph 1 can only be carried out in very necessary circumstances by taking into account the laws and regulations as well as the professional code of ethics for the Indonesian National Police.

In Article 16 paragraph 1 letter 1 of Law Number 2 of 2002 concerning the Police which reads that the Police have the authority to take other actions according to the law that are responsible and in Law Number 8 of 1981 concerning the Criminal Procedure is contained in Article 5 paragraph 1 letter a point 4 which reads the investigator can take other actions according to the law who are responsible.

Other actions referred to in Article 16 of Law Number 2 of 2002 concerning the Police and the Criminal Procedure Code are investigative and investigative actions that are carried

¹³ Sampara, S., and Husen, L. O. (2016). *Metode Penelitian Hukum*. Makassar: Kretakupa Print, p. 34.

¹⁴ Rahardjo, S. (2007). *Membangun Polisi Sipil: Perspektif Hukum, Sosial, dan Masyarakat*. Jakarta: Gramedia Pustaka Utama, p. 17.

¹⁵ Arifin, Z. (2020). *Penggunaan Diskresi Kepolisian Dalam Pengamanan Penyampaian Pendapat Dimuka Umum (Unjuk Rasa) Ditinjau dari Aspek Hak Asasi Manusia*. Tegal: Universitas Pancasakti Tegal.

¹⁶ Law Number 2 of 2002 concerning the Police.

out if the conditions are met. In this article, the substance is almost the same as discretion, but there are clear limits that aim to prevent investigators from abusing their authority.¹⁷

The investigator's actions are limited by the following conditions:

- 1) Does not conflict with a rule of law;
- 2) In line with legal obligations that require the action of office;
- 3) The action must be appropriate and reasonable and included in the scope of his position;
- 4) Upon reasonable consideration based on force majeure; and
- 5) Respect Human Rights.

The complete reading of the provisions of Article 16 paragraph 1 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, is as follows, in the context of carrying out their main duties and carrying out their duties, the Police of the Republic of Indonesia have the authority to:¹⁸

- 1) Arrest, detain, search and confiscate;
- 2) Prohibit any person from leaving or entering the scene of the case for the purposes of investigation;
- 3) Bringing and presenting people to investigators in the context of investigations;
- 4) Ordering the suspect to stop and asking and checking personal identification;
- 5) Examination and confiscation of letters;
- 6) Summon people to be heard and examined as suspects or witnesses;
- 7) Bring in the necessary experts in connection with the examination of cases;
- 8) Holding an investigation termination;
- 9) Submit case files to the public prosecutor;
- 10) Submit a request directly to the authorized immigration official at the immigration checkpoint in an urgent or sudden situation to prevent or deter people suspected of committing a crime;
- 11) Provide instructions and assistance with investigations to civil servant investigators and receive the results of investigations by civil servant investigators to be submitted to the public prosecutor; and
- 12) Take other responsible actions according to law.

Some of the conditions contained in the provisions of Article 16 of Law Number 2 of 2002 and the provisions in this Article of the Criminal Procedure Code are of the opinion that it is within the scope of discretion, but there are those who say that it is not the scope of discretion so that further in-depth studies are still needed regarding other actions and this discretion. But according to Toni Ariadi, that Article 16 of Law Number 2 of 2002 and Article 5 of the Criminal Procedure Code are included in the discretion on the grounds that other actions place more emphasis on law enforcement, there are clear restrictions, the actions taken are within the scope of his position, these actions are not planned and pay attention to human rights, all of which are almost the same as the conditions contained in Article 18 of Law Number 2 of 2002 concerning the Police.

In addition to the requirements contained in Article 16 of Law Number 2 of 2002 concerning the Police and Article 5 and Article 7 of the Criminal Procedure Code, there are conditions contained in Police law, namely:¹⁹

¹⁷ Manalu, S. (2020). Analisis Yuridis Tindakan Diskresi Kepolisian pada Tahap Penyidikan. *Fiat Iustitia*, 1(1), 109-125.

¹⁸ Article 16 paragraph 1, Law Number 2 of 2002 concerning the Police.

¹⁹ Article 5 and 7, Law Number 8 of 1981 concerning the Criminal Procedure.

- 1) Actions must be absolutely necessary (*noodzakelijk, notwendig*) or the principle of necessity;
- 2) The actions taken are truly in the interests of the Police's duties (*zakelijk, sachlich*);
- 3) The most appropriate action to achieve the target is the disappearance of a disturbance or the absence of something that is feared. In this case what is used as a measure is the achievement of goals (*zweckmassig, doelmatig*);
- 4) The principle of balance (*even redig*). In taking action, a balance must always be maintained between the nature (hardness) of the action or the means used and the size of the disturbance or the severity of the object to be dealt with.

Based on the provisions and explanations above, it is known that discretion rests on the moral considerations of the Police in making decisions in the midst of any complex situation that does not only fulfill the juridical element, but also the values of wisdom (moral). Because discretion can only be exercised in an autonomous sociocultural environment thereby giving authority to police officers who are intelligent and confident to take the initiative (not always waiting for instructions).

Law enforcement as a process is essentially the exercise of discretion which involves making decisions that are not strictly regulated by the rule of law, but have personal judgments. Discretion is essentially between law and morals.

4. Conclusion

Provisions for the use of the discretionary powers of the Police are basically regulated in laws and regulations such as Article 5 paragraph 1 letter a number 4 of Law Number 8 of 1981 concerning Criminal Procedure Code, Article 16 paragraph 1, Law Number 2 of 1981 2002 and Article 5 paragraph 1 letter a number 4 of the Criminal Procedure Code and Article 16 paragraph 1 of Law Number 2 of 2002.

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Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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