



Legal Analysis of Standard Operating Procedures for Regional Police Crowd Control in Handling Mass Demonstrations

Gale Adhyasta Adikara

Faculty of Law, Universitas Widya Gama Malang, galeadyasta80@gmail.com

Fatkhurohman

Faculty of Law, Universitas Widya Gama Malang, fatkhur@widyagama.ac.id

Zulkarnain

Faculty of Law, Universitas Widya Gama Malang, zulkarnain@widyagama.ac.id

ABSTRACT

The police as law enforcers carry out legal efforts with an emphasis on preventive efforts before a criminal act occurs and, repressive efforts if a criminal act happens or has taken place. One form of protection, protection and service to the community is Community Control. This study is aimed to find out the hierarchy of fixed procedures for mass control for Indonesian National Police personnels in handling mass demonstrations and to know the position of fixed procedures for mass control of the Indonesian Regional Police in relation to handling mass demonstrations.

This research uses a type of juridical-normative-empirical comparative legal research, namely legal research that examines the factual implementation or implementation of positive legal provisions (legislation) in each particular legal event happening in society. This legal research uses statutory, conceptual and case approaches. The analytical method employed is qualitative descriptive in nature, where the legal materials that have been obtained are analyzed based on qualitative methods.

The results of this research show that the existence of Fixed Procedures in the Police organization is very strategic and influences the actions and behavior of police personnels as protectors and services providers to the community and Regional Police as a general control to regulate all forces and actions of troops in the field during demonstrations in conditions where the masses Protesters have carried out unlawful acts.

Keywords: Fixed Procedures; Demonstration; Crowd Control

INTRODUCTION

Indonesia is a country based on the rule of law as stated in the 1945 Constitution of the Republic of Indonesia. This means that all aspects of life are governed by law. The law plays an important role as a social institution in society to create justice, order and security, as well as to regulate every human action, whether it be rights, obligations or prohibitions. Indonesia is a democratic country. According to Abraham Lincoln, President of the United States, democracy is government of the people, by the people and for the people.¹ Democratic countries are always closely linked to human rights (hereinafter referred to as HR). The democratic system is a political system that upholds human rights. In democratic countries such as Indonesia, freedom of expression is also the spirit of democracy. The country's laws and regulations clearly and explicitly state in Article 28 of the 1945 Constitution of the Republic of Indonesia that "Every person shall have the right to associate and assemble, express their thoughts verbally and in writing, and so forth, as stipulated by law.

¹ Padmo Wahyono, *Negara Republik Indonesia* (Jakarta: CV.Rajawali Press, 1968).

The Indonesian National Police was established to enforce the law in matters of public security and order. This is stipulated in Article 13 of Law No. 2 of 2002 on the Indonesian National Police, which states that the police have three main duties: to maintain public security and order; to enforce the law; and to provide protection, guidance and services to the community. The Indonesian National Police carries out legal measures with an emphasis on preventive measures before a crime occurs and repressive measures when a crime is occurring or has occurred. One form of protection, guidance and service to the community is Crowd Control).

In an effort to deal with anarchic demonstrators, physical clashes between demonstrators and the police often occur. The police, as law enforcers, have on several occasions taken actions that are not in accordance with Law Number 2 of 2002 Article 2 concerning the Indonesian National Police, stating that the function of the police is one of the government functions in the field of maintaining security and public order, law enforcement, protection, guidance and service to the community.

In taking decisive (repressive) action against anarchic demonstrations, the police are guided by the provisions issued by the Chief of the Indonesian National Police based on Standard Operating Procedure No. 8 of 2010 concerning Procedures for Crossing and How to Act in Handling Riots.

Based on the description above, the author narrows down the formulation of the problem as follows: What is the hierarchy of the Indonesian National Police's Standard Operating Procedures for Crowd Control in Handling Mass Demonstrations? What is the position of the Regional Police's (Polda) Standard Operating Procedures for Crowd Control in relation to Handling Mass Demonstrations? The objectives of this paper include determining the hierarchy of standard procedures for crowd control by members of the Indonesian National Police in handling mass demonstrations and determining the position of standard procedures for crowd control by the Regional Police (Polda) in relation to handling mass demonstrations.

METHOD

Legal research is a process of discovering legal rules, legal principles, and legal doctrines in order to address legal issues that arise.² Legal research differs from other social science research. Social science research deals with what exists, investigating factual truths

² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta, 2010), p.34

rather than what ought to be.³ Research is an effort to search for something that is not merely observing carefully an object that can be easily held in one's hand.⁴ However, research is also a scientific activity related to analysis and construction that is carried out methodologically, systematically and consistently. Legal research is a scientific activity based on specific methods, systems and thinking, which aims to study one or more specific legal phenomena by analysing them and then attempting to solve the problems that arise in relation to these phenomena.⁵ This study uses empirical legal-normative comparative legal research. Normative legal research is a legal research method conducted by examining reference materials or secondary data only.⁶ Empirical legal research is a research method used to obtain primary data and discover the truth using inductive reasoning and the criterion of correspondence, whereby the facts used to perform the process of induction from testing the truth by correspondence are the most recent facts.⁷ Comparative legal research Normative-empirical jurisprudence is legal research that examines the factual implementation of positive legal provisions (legislation) in specific legal events that occur in society.⁸

This research employs a statutory, conceptual, and case approaches. This is done by examining all laws and reviewing cases related to legal issues, examining all concepts in various literature obtained, and conducting interviews with several elements of society. Then, the contents of specific laws of other countries with the laws being studied are compared in order to fill gaps in positive law.⁹ The collection of legal materials, both primary and secondary, was based on the topic of the issue by conducting library research, which is research that collects legal materials from various laws and regulations, textbooks, legal journals, papers, research results from legal experts and newspaper clippings, as well as browsing the internet for everything related to the above issues. The analysis method used is qualitative descriptive analysis, in which the legal materials obtained are analysed using qualitative methods, a research method that produces descriptive analytical information, to then describe the facts found in the research, which are then elaborated and linked in such a way and presented in a more systematic writing to answer the problems that have been formulated. Interviews conducted in this study were to support normative analysis based on community responses.

³ *ibid*

⁴ Bambang Sunggono, *Metodelogi Penelitian Hukum* (Jakarta, 2012), p. 27

⁵ Soerjono Soekanto & Sri Mamudji, 2001, *Penelitian Hukum Normatif* (Suatu Tinjauan Singkat), Jakarta, Rajawali Pers, hlm.13-14.

⁶ Soerjono Soekanto, *Op. Cit*, p. 34

⁷ *Ibid*

⁸ Abdulkadir Muhammad, 2004, *Hukum dan Penelitian Hukum*, Bandung, PT. Citra Aditya Bakti, p.134.

⁹ Jonaedi Efendi, *et.al.*, *Metode Penelitian Hukum: Normatif dan Empiris cet.3* (Jakarta, 2016), p. 124

RESULTS AND DISCUSSION

A. Hierarchy of Standard Operating Procedures for Controlling Indonesian National Police Personnel in Handling Mass Demonstrations

The existence of Standard Operating Procedures within the Police organization is highly strategic and influential in terms of the actions and behavior of police officers as protectors and providers of services to the community, because Standard Operating Procedures regulate how Indonesian Police officers should act in dealing with legal issues, particularly in this case, handling mass riots. The Police Force is an official institution mandated to carry out police functions, namely maintaining public order, protecting people and their property from danger or public disturbances, and taking action against unlawful acts. A police officer must have the ability to implement or apply the methods, techniques, procedures, and rules that exist within the police organization. Police professionalism can be reflected in the application of techniques and procedures that must be carried out by the police in accordance with the rules in carrying out their duties. The current state of the Indonesian National Police does not yet demonstrate the expected level of professionalism, because: 1) There are still members of the Indonesian National Police who are unable to apply police science in accordance with their rank and status; 2) The instruments supporting police duties are still inadequate; 3) Other factors that influence police professionalism are still not supportive.

Therefore, in handling mass riots that lead to acts of anarchy, the police must adhere to applicable procedures and respect human rights. Mass riots in any form cannot be justified because they are illegal acts. Mass riots that lead to acts of anarchy are dangerous. Anarchic actions can cause disturbances to the stability of security and public order, which can disrupt the functioning of government and the daily activities of the community, as well as disrupt the operations and functions of certain institutions that are targeted acts of anarchy and loss of life and property that significantly affect public order and security or cause widespread unrest among the community. Based on the results of the study and analysis, it was found that each member of Samapta-Indonesian National Police is aware of the Standard Operating Procedures (SOPs) established for their daily duties (read: Leadership or Command). The SOPs are considered by members to be sufficient to deal with mass riots that tend to lead to anarchic actions. However, in conditions where mass riots are difficult to control, members must wait for further orders from their leaders or commanders.

A demonstration is an expression of the will of the masses or students in public by giving speeches so that their inspiration is heard by the intended party. If there are officers who act outside the SOP, they will be dealt with in accordance with the disciplinary procedures of the Indonesian National Police. Police Personnels must not deviate from the rules set out in the standard procedures. Criminal provisions also apply to members of the public who act anarchically during demonstrations. Demonstrators often perceive those in front of them as opponents (police officers on duty), which sometimes triggers anarchic behavior and uncontrolled emotions, even though there are coordinators at the demonstration.

Provocateurs sometimes come from outside the group and sometimes from within, influenced by emotional factors due to an inability to control themselves. Provocateurs from outside the group usually use vehicles, such as cars or motorcycles.

The police must be able to determine whether the demonstration is a coalition (front) or just a specific group. This is because coalitions (fronts) are usually prone to anarchic acts because the members do not know each other. Before carrying out their duties, the police conduct an APP (Departure Preparation Event) to check their health, equipment, weapons, uniforms, neatness, and other matters. This activity is carried out at the post to avoid unwanted incidents. In handling mass riots, officers implement a secure perimeter pattern to avoid unwanted incidents by taking preventive measures and not allowing themselves to be provoked emotionally, as well as acting on the orders of their superiors and under a single command.

Demonstrators and police personnels are only allowed to be within ± 100 m of the location, and only certain people (representatives) are allowed to enter. The police act only as mediators or facilitators or assist in the implementation of these activities by reporting to the relevant agencies. Factors contributing to the riots include: First, the crowd is dissatisfied with the current situation. Second, the community does not understand the procedure that requires every action to be reported to the authorities in advance in order to obtain security in accordance with the law. If the anarchist crowd suddenly attacks the police personnels The police have the right to disperse the crowd and search for the instigators (provocateurs), of course in accordance with procedures and acting in accordance with standard operating procedures. If the crowd remains anarchic, officers will negotiate, gather data in the field, find out the purpose of the demonstration, and after successfully conveying this to their superiors.

The next steps, if negotiation fails, are for Crowd Control Dalmas to use the ring trick (ring I all), and if the ring is ineffective, then batons, warning shots, ricochet shots, and finding out who is causing the damage, who can be charged under the Criminal Code. The police no

longer beat the crowd because they are committed to serving, protecting, and safeguarding the community, so there is no more beating. If it happens, it will be subject to criminal sanctions.

Standard operating procedures are only effective in theory and procedure, but in the field, there are many unexpected events and the handling of these events varies and is sometimes not in accordance with standard operating procedures. If there are officers who violate human rights, they will be punished in accordance with the provisions of the Indonesian National Police's disciplinary code, and if there are anarchist protesters, they will be prosecuted under the Criminal Code. It is further emphasized that when a demonstration occurs, the leadership must go to the field to support their members.

The Indonesian National Police has the function of documentation and internal evaluation of the Indonesian National Police organization and for the community. In the case of large-scale demonstrations, the number of personnel will also be increased. The discretionary authority of the police cannot be separated from the enforcement of law and public order, especially in cases of mass riots. However, in carrying out their duties, as far as possible, methods that do not cause harm should be chosen, and the use of force and firearms should only be chosen when other methods are not feasible. And if such use cannot be avoided, police officers must consider preventing damage and injury, respecting and maintaining public safety.

In controlling mass riots, law enforcement personnels, in this case police personnels, must recognize that violence and firearms may only be used based on two principles, namely: First, in dispersing groups that violate the law but do not cause harm, law enforcement personnels may not use violence, or at least the use of violence must be kept to a minimum. Second, to disperse groups that cause harm, firearms may only be used when other less dangerous methods are no longer possible. Such use must be kept to a minimum.¹⁰ In the appendix to Indonesian National Police Chief Decree No. 1567/X/1998, it is stated that the government guarantees that police officers who misuse violence and weapons will be prosecuted, and if injury or death results from the use of violence and weapons by police officers, they must immediately report to their superiors. Any police action that violates the law as stipulated in legislation can be held accountable both legally and in terms of police morals and ethics, and is not exempt from punishment.

¹⁰ Surat Keputusan Kepala Kepolisian Republik Indonesia Nomor Polisi 1567/X/1998, hlm. 35

Police leaders at least at the level of police chief or district police chief can be subject to sanctions, because leaders are fully responsible for the actions of their subordinates who act outside of standard procedures. This is because before securing and handling mass riots, leaders must first provide guidance and warnings to their subordinates who will be deployed in the field to handle mass riots. The sanctions imposed can be in the form of disciplinary actions and punishments. Police personnels who have violated the law and been proven to have committed violence, whether due to orders from superiors or of their own volition, by violating applicable procedures, shall be subject to sanctions and the threat of criminal punishment. Article 7 of Government Regulation No. 2 of 2003 concerning Disciplinary Regulations for Members of the Indonesian National Police states that "Members of the Indonesian National Police who are found to have violated the disciplinary regulations of the Indonesian National Police shall be subject to sanctions in the form of disciplinary actions and/or disciplinary law."

Such disciplinary actions and penalties may include verbal warnings, physical punishment, postponement of education, postponement of periodic salary increases, postponement of promotions, and so on, in accordance with Articles 8 and 9 of Government Regulation No. 2 of 2003. Furthermore, if a police officer handling mass riots commits violence and is proven to have committed a criminal offense that meets the elements stipulated in the Criminal Code, that police officer shall be subject to criminal penalties and shall be subject to the provisions of laws and regulations within the general court system.

B. The Position of the Regional Police (Polda) Standard Operating Procedures for Crowd Control in relation to Handling Mass Demonstrations

The concept of statehood found in Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a state based on the rule of law. It is within this framework of the rule of law that the Indonesian National Police exists as an instrument of the state that acts as a law enforcer, guardian, protector, guide, and servant of the people in realizing legal certainty and justice as well as domestic security in carrying out its functions. However, the history of the Indonesian National Police has undergone several changes in terms of its functions, duties, and roles, which can be described as follows: 1) The police were part of the armed forces, particularly during the war of independence. The Indonesian National Police were considered part of the armed forces in the physical revolution to uphold and defend the Unitary State of the Republic of Indonesia. This then led to the emergence of a militaristic culture within the police force; 2) The history of the Indonesian National Police over more than 57 years reflects the political configuration of

the Government of the Republic of Indonesia, as does the existence of the Indonesian National Police integrated into the Indonesian Armed Forces to avoid attempts to divide the Unitary State of the Republic of Indonesia by political forces for their own interests, even though this could not be maintained forever; 3) The existence of the Indonesian National Police within the ABRI has had a negative impact on the effectiveness of the Indonesian National Police in carrying out its main duties, functions, and roles, thereby preventing it from developing itself to the fullest extent to carry out its mission; 4) The Armed Forces (TNI-AD, TNI-AU, TNI-AL), which should focus on the implementation of their duties on the capabilities of the weapons technology system, will not be effective in carrying out their duties if they have to divide their concentration and capabilities with duties in the field of policing. This is based on the fact that there are fundamental differences between the world of policing and the world of the military; 5) The existence of legitimate laws and regulations governing the existence of the Indonesian National Police within the Indonesian Armed Forces has not had a positive impact on improving the performance of the Indonesian National Police so far; 6) Police forces universally adhere to a similar pattern, namely the National Police System, which is part of the government and administrative system of the country concerned. Therefore, it is necessary to reidentify the position of the Indonesian National Police from a constitutional law perspective; 7) The explanation of the main points of the preamble to the 1945 Constitution contains the word "protect," which actually has two meanings: protecting the people and protecting the sovereignty of the state; and 8) Article 10 of the 1945 Constitution only states that the President holds supreme power over the Army, Navy, and Air Force and does not include the police. This is because the police are not part of the armed forces.

The structure of the Indonesian National Police at the provincial police level is adjusted to the characteristics of the region and the level of vulnerability of the area. The structure at the provincial police, regional police, district police, and sub-district police levels does not need to be too large but should be sufficiently functional. The functions referred to are the existing functions of investigation, intelligence, traffic, community guidance, and public order, which need to be maintained, while other functions such as social assistance and personnel development need to be established to assist the Indonesian National Police in carrying out their duties and meeting the expectations of the community. Similarly, the rank structure needs to be reorganized so that it is not as complicated as it is currently.

Technically, the Indonesian National Police handles demonstrations based on Indonesian National Police Regulation No. 16 of 2006 concerning Guidelines for Crowd Control, as well as Indonesian National Police Regulation No. 8 of 2010 concerning procedures for crossing and acting in riot control. The authority to secure these demonstrations is carried out by the Crowd Control and PHH forces of the Indonesian National Police. To maintain order during the expression of opinions, appropriate equipment that meets standards must be used.

The Regional Police Mass Control Standard Operating Procedure, led by the Regional Police Chief as the general controller to regulate all forces and actions of troops in the field during demonstrations in conditions where the demonstrators have committed unlawful acts in the form of threats, violent theft, destruction, arson, severe abuse, terror, intimidation, hostage-taking, and so on, hereinafter referred to as a red situation. The implementation of Regional Police duties has several elements that cover their respective tasks and functions, including leadership, supervision, implementation of main tasks, support, and implementation of regional tasks. Based on these elements, the sub-elements in handling demonstrations are handled by the core task implementation element, namely the Sabhara unit of the Regional Police. Sabhara is a police unit that operates in the field of prevention or deterrence in creating a situation of public order and security in the community.

CONCLUSION

Based on the results of this legal research, the following conclusions can be drawn:

The hierarchy of standard operating procedures within the police organization is highly strategic and influential in terms of the actions and behavior of police officers as protectors and providers of services to the community, because standard operating procedures regulate how Indonesian National Police officers should act when dealing with legal issues, particularly in this case, handling mass riots.

That the Regional Police, as the general control for regulating all forces and actions in the field during demonstrations, must intervene in situations where the demonstrators have committed unlawful acts in the form of threats, violent theft, destruction, arson, severe abuse, terror, intimidation, hostage-taking, and so on.

The government and law enforcement agencies must ensure that no criminal or disciplinary sanctions are imposed on law enforcement officials who refuse to carry out orders to use force or firearms, or who report such use to other officials. This is because these officers

comply with the code of ethics, namely Indonesian National Police Chief Decree No. 32/11/2003 on the Code of Ethics for the Indonesian National Police, specifically Article 9 paragraph 3.

The Provincial Police, as the general control, is expected to provide follow-up directions to the Crowd and Riot Controls units to regulate all forces and actions of the troops in the field in order to improve the quantity and quality of equipment and increase the readiness of members in the field in accordance with standards.

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