

Legal Protection for Traffic Police in Handling The Covid-19 Pandemic



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ABSTRACT: This article aims to analyze the legal aspects of the traffic police's police in handling the covid-19 pandemic related to the legal basis of the traffic police's actions and analyze the legal protection of the traffic police who act as the Covid-19 chain breaker. Through normative legal research related to the legal aspects of traffic police actions as a Covid-19 chain breaker. In this study, the author uses a type of research, namely normative legal research. Normative research is research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials from each normative law. The findings from this study include: The juridical basis for the traffic police to break the Covid-19 chain is Article 13 of Law Number 2 of 2002 concerning the Police, Law Number 22 of 2009 on Road Traffic and Transportation, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB), Decree of the Indonesian National Police Number MAK/2/III/2020 concerning Compliance with Government Policies in Handling the Corona Virus, and Police Telegram Letters. The Traffic Police during Covid-19 acted according to the law in accordance with Article 19 of Law No. 2 of 2002 concerning the Police and Article 10 of Indonesian Republic Police No. 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Discharging the Duties of the Indonesian National Police.

KEYWORDS: Legal Protection, traffic police, Covid19 pandemic

1. INTRODUCTION

At the beginning of 2020, the entire countries in the world were disturbed by the Corona Virus Disease-19 (hereinafter referred to as Covid-19). The virus has suffered million victims in all over the world. The corona virus first appeared in China in 2019 and then spread uncontrollably to more than 150 countries. The covid-19 itself is a new type of virus that has only been recognized by the world. The spread of Covid-19 in the world tends to increase all the time and has caused casualties and material losses which have had very fatal consequences on the social, economic and welfare aspects of the community. Joko Widodo, the president of Indonesia, announced directly at the Presidential Palace that there were two Indonesian citizens who had contracted Covid-19 on March 2, 2020. Previously, on January 21, 2020, Thailand announced the first time that its citizens had contracted Covid-19, then followed by Singapore on January 23, 2020 announced the first case of Covid-19. Considering the very rapid spread of Covid-19 around the world, on March 11, 2020, the World Health Organization (WHO) declared Covid-19 a pandemic, because at that time Covid-19 had infected more than one hundred thousand people over the world, spread across 118 (one hundred and eighteen) Country. Indonesia itself, as one of the biggest citizens in the, through Presidential Decree No. 12 of 2020, declared Covid-19 as a national disaster world on April 13, 2020. One way to reduce the number of spread of Covid-19 in Indonesia, the government issued a policy in the form of Large-Scale Social Restrictions (hereinafter referred to as "PSBB") as regulated in Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerated Handling of Corona Virus Disease 2019 (Covid-19). As a result of the policies related to PSBB and other government policies such as the policy of dismissing schools and the policy for work from home (WFH), the number of poor people increased. For the prevention and handling of Covid-19 in Indonesia, the government established a Task Force for the Acceleration of Handling COVID-19, in which in this case the task force for the acceleration of handling Covid-19 and the National Police has a cooperative relationship to deal with the Covid-19 pandemic in the country. Indeed, the role of the National Police will not be separated from its main functions, objectives, roles and duties as mandated by Law Number 2 of 2002. concerning the Indonesian National Police. Functions, goals, roles and duties This is the basis for the Police to act and play a role in this pandemic period. Head of the National Police Security Maintenance Agency (Kaba-harkam), Komjen Pol Agus Andrianti said that the Covid-19 pandemic had an impact on society, not only in the health sector, but also in the eco- economic, religious, social and cultural, and political. All of that, if you can't If managed properly, it will have the potential to disrupt the security and order situation. Through the notice of the Head of the State Police of the Republic of Indonesia number Mak/2/III/2020 regarding compliance with government policies

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in handling the spread of the Corona virus (Covid-19). In this notice, Among other things, it was stated that in considering the national situation, related to the rapid spread of Covid-19, the government has issuing policies in the context of handling properly, quickly, and appropriately so that its spread does not spread and develop into a nuisance to security and public order. This becomes the basis for the Police if they find actions that are contrary to the edict. For this reason, members of the National Police have the right to take necessary police actions in accordance with the provisions of the applicable laws and regulations. In this context, apart from medical personnel, the National Police are also referred to as the front line in prevention efforts the spread of Covid-19. The success of PSBB does depend on awareness and community discipline, but to ensure that both work, it is necessary the role of the police in it. The role of the National Police which is so crucial and significant to prevent the spread of Covid-19 is certainly an additional task that was never anticipated before. The Police, on the one hand, have routine duties as an apparatus law enforcers and guardians of public order, while on the other parties who are relied on to enforce the rules regarding PSBB (Restrictions on Large-Scale Social). At the same time, all Polri personnel in the field must also increase their vigilance for themselves because the possibility of contracting this virus is also great. Since the Covid-19 Pandemic began to enter Indonesia, the Polri ranks have been prepared to support the government in dealing with this pandemic, this has been done as a form of responsibility to protect and serve the community and as a form of Polri's concern for the people affected by the pandemic, the Indonesian Police ranks have begun to hold activities from spraying disinfectants, educating community members to be disciplined in following health protocols and Covid-19 prevention protocols, disbanding mass crowds that are considered to be potential links to the spread of Covid-19, holding donation activities to affected residents, and establishing public kitchens in collaboration with TNI ranks to prepare food for people in need. (Suryanegara 2021:5). This article tries to examine in detail about the legal protection of the traffic police in carrying out actions and efforts to handle the covid 19 pandemic.

2. METHODOLOGY

In this study, the authors rely on the literature and legislation relating to the problem to be studied to obtain answers to the problems above. The approach methods used to answer the problems in this research are: The Statute Approach This approach is carried out by examining all laws and regulations and regulations related to the legal issues being discussed. Conceptual Approach, this approach departing from the views and doctrines that develops in the science of law. Case Approach The case approach is carried out by examining cases related to the issues at hand. Several cases were reviewed for reference for a legal issue.²⁰ Examples of cases of forced retrieval of Covid-19 bodies by the public by violating health protocols to blocking traffic and even crimes during the pandemic.

3. DISCUSSIONS

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According to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating a power to him to act in the context of his interests. In addition, CST Kancil also believes that legal protection is a variety of legal remedies that must be provided by law enforcement officers to provide a sense of security, both mentally and physically from disturbances and various threats from any party. The Traffic Police has various legal responsibilities, every action of the Indonesian National Police Officer, within the framework of legal authority can be justified, while actions that are outside or exceed their legal authority, or do not have the legal authority to act arbitrarily and improperly, must be considered as an individual act personally who must be legally responsible for the following:

1. Liability under disciplinary law;
2. Liability under criminal law;
3. Liability under civil law;
4. Legally responsible for State Administration/Police Law;
5. Legal responsibility for professional ethics through a code of ethics commission session.

The legal responsibility of the State Police of the Republic of Indonesia mentioned above needs to be clearly formulated to provide legal certainty and justice so that the definition of legal responsibility must also include the notion of legal protection for the Officials of the State Police of the Republic of Indonesia. Legal protection for Indonesian National Police Officers is very necessary because the police here are legal subjects. The term legal subject comes from the Dutch language, namely *reschtsubject* or subject of law in English. In general, *reschtsubject* is defined as a supporter of rights and obligations, namely humans and legal entities. According to Alpedoorn, the subject of law is everything that has legal authority or *persoonlijkheid*. The legal authority is the ability to be a supporter of the legal subject given by the objective law. For legal protection for the Police, it is regulated in the Regulation of the Chief of Police Number 14 of 2011 and Law of the Police Number 2 of 2002. Because looking at the existing reality, conflicts often occur due to abuse of authority and the public's perception of the apparatus about the police code of ethics which is starting to fade in the course of its implementation. In the Police Law Number 2 of 2002, it comprehensively includes legal protection for police officers to carry out their duties based on the provisions of the Act. Every act carried out by the police

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is regulated by the provisions of its implementation in this Law. So, from protection theory, it is a theory that examines and analyzes the form or form or purpose of protection, protected legal subjects and objects of protection provided by law to the subject. During the current Covid-19 pandemic, the Traffic Police as officers of the Indonesian National Police in carrying out their duties and authorities always act based on legal norms and respect religious norms, decency, morality, and uphold human rights. This is regulated in Article 19 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Furthermore, it is further stated in Article 10 of Perkap Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Carrying Out the Duties of the Indonesian National Police, that implementing In law enforcement duties, every officer/member of the National Police is required to comply with the following code of conduct:

1. Always carry out the duties mandated by law to them;
2. Respect and protect human dignity in carrying out their duties;
3. Not to use violence unless it is necessary to prevent a crime to assist in the arrest of violators of the law or suspects in accordance with the regulations on the use of force;
4. Confidential matters that are within the authority must be kept confidential, unless it is considered in the performance of duties or for the benefit of the judiciary;
5. Must not incite, tolerate acts of torture, other cruel, inhuman or degrading treatment or punishment,
6. Likewise, taking orders from superiors or extraordinary circumstances such as when in a state of war as justification for carrying out torture;
7. Ensure the full protection of the health of persons in custody, more specifically, should take immediate steps to provide medical services when necessary;
8. No corruption in any form, nor any other abuse of power that is contrary to the law enforcement profession;
9. Must respect the law, the code of conduct, and the existing code of ethics.

From the behavioral provisions mentioned above, it is still very relevant as a basis that basically the Indonesian National Police when carrying out their duties are not creatures who have never made mistakes and are not above the law. Basically the Traffic Police have the same rights and obligations as the public in general to get protection in carrying out their duties, the regulation of rights that need to be protected for the community is contained in Article 28 of the 1945 Constitution.

Legal Policy as a Means of Optimizing Covid-19 Emergency Management

In the development of criminal law today in Indonesia, especially in the Special Criminal Law or criminal legislation outside the Criminal Code (KUHP), there is a tendency to apply a two-track system in the system of sanctions. The Criminal Code itself also applies a two-way system in the system of sanctions, this is stated in Article 10 of the Criminal Code which contains criminal sanctions consisting of basic and additional criminal penalties and Article 44 of the Criminal Code which contains sanctions for actions in the form of treatment in a mental hospital for people who are unable to take responsibility. For a crime committed because of a mental disorder. In terms of implementing a two-track system in its sanctions system, Indonesia adheres to a two-track system of punishment (double track system), which means that in addition to the perpetrators of criminal acts, they can also be subject to various actions. In the concept of the Criminal Code, the imposition of action sanctions is not only for people who are unable to take responsibility due to mental disorders, but people who are able to take responsibility can also be subject to action sanctions. The application of the “two-way system” in the laws and regulations in Indonesia, because the application of criminal sanctions alone has so far been considered ineffective in tackling criminal acts that occurred in Indonesia. (Wiharyangti: 2011:80) The policies in question include restrictions on the entry of people from countries affected by Covid-19, flight suspensions, visa restrictions, border closures, and quarantines. The implementation of these various policies can of course disrupt human mobility traffic at the regional and international levels. Meanwhile, at the domestic level, governments in various countries have also started implementing a lockdown policy that also focuses on limiting the space for existing people to move. An important question that then arises is what kind of mobility restriction policies have been issued and what impacts have been and may arise as a result of these restrictions. (Sylvia Yazid and Liliana Dea Jovita : 2020:76)

The quarantine situation which is the impact of the spread of COVID-19 has caused social ties in the world community to become tenuous. The lockdown policy using the principle of distancing in fact not only keeps people away physically, but also socially. People have unknowingly been trapped into a very significant physical and social distance. In the future, it is believed that this widening social and physical distance will become something normal. The human condition when the COVID-19 outbreak is over will further emphasize the function of technology in mediating human interaction. Direct human interaction will then be replaced by indirect interaction. This is combined with the presence of new civilizational challenges, ranging from the threat of government surveillance via technology, increasing government control over public privacy, to the phenomenon of the loss of global solidarity in the face of emergency threats.

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The Constitution of the Republic of Indonesia Year 1945

The state has guaranteed protection for the entire Indonesian nation and the entire homeland of Indonesia, promoted public welfare, educated the nation's life, and participated in carrying out world order. This is stated in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. The aim is none other than to achieve independence, peace, eternal peace, and social justice. The follow-up to the guarantee is forwarded to the body of the 1945 Constitution of the Republic of Indonesia. There are several articles in the constitution that provide constitutional guarantees for law enforcement in the health sector. First, Article 28A states that everyone has the right to live and has the right to defend his life and life. Second, Article 28H paragraph (1) which states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to obtain health services.

Third, Article number 34 paragraph (3) which states that the state is responsible for the provision of proper health care facilities and public service facilities. *Fourth*, Article 28I paragraph (4) which states that the state is responsible for the provision of proper health care facilities and public service facilities. *Pancasila, the five principle of philosophical theory of Indonesia*, from the perspective of *Pancasila*, we can construct the mandate of Pancasila in ensuring the safety of the people. In the 2nd and 5th precepts, namely "just and civilized humanity" and "social justice for all Indonesian people", the aim is to provide certainty in the deepest thoughts of the Indonesian nation to provide clarity of direction in order to achieve the country's goals for the sake of the benefit and safety of the people.

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First, Divine Precepts. Covid-19 is a creature of God Almighty; its spread is God's provision. Therefore, we must increase our faith and piety, and pray to Him so that Covid-19 will end or be resolved, either alone or together, and then encourage increased good deeds such as giving assistance or giving charity, and so on. Second, the Precepts of Humanity. The realization is by preparing referral hospital facilities and district/city health service centers with complete medical equipment, health workers, medicines, security and other infrastructure facilities, as well as providing services to People Under Monitoring (ODP), Patients Under Supervision (PDP), positive for Covid-19, until the funeral. Socialization of life behavior according to health protocols by sterilizing public facilities, offices, areas, settlements, and others. Furthermore, receiving and serving the needs of daily life and health for Indonesian Migrant Workers who return to their homeland through the gates of North Sumatra with the Covid-19 health protocol and temporary quarantine shelters, until their return service to their area of origin. In addition, basic food assistance is also provided to affected communities and helps MSMEs to survive with economic stimulus through product marketing assistance, capital or business activities, assistance and so on. Third, Please Unity. In dealing with the Covid-19 problem, the government formed a Task Force consisting of various components, and invited all stakeholders to jointly play an active role in helping prevent the spread of Covid-19. Fourth, Precept of Democracy. The realization is through meeting the needs, hopes, aspirations and suggestions of people who are experiencing difficulties in life due to the impact of the spread of Covid-19. Fifth, Precepts of Justice. All citizens infected with Covid-19 are provided with the same and free health services, without distinction, as well as places or communities that require sterilization, education, food assistance, temporary quarantine and others, in a fair manner. (Hamzah: 2020)

Police Discretion in Efforts to Maintain Public Security and Order

During the Covid-19 pandemic, the role of the National Police was also emphasized on the function of law enforcement, which was confirmed through the Decree of the Chief of Police No. Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Covid-19 Virus. The announcement is an initiative of the National Police in supporting the regulations related to PSBB. Regarding the implementation of police discretion during the Covid-19 Pandemic Discretion in the Implementation of Traffic Engineering Regarding the implementation of tasks in the Traffic sector, the application of discretion is mostly carried out by members in the field of traffic law enforcement, where Traffic police officers carry out law enforcement duties on Traffic regulations. One thing that makes it very easy for them in carrying out their duties is that the officers are provided with a form of ticket or evidence of a certain Traffic violation in which the officers simply fill in what the violation occurred, what was confiscated, what date the violator must face a court hearing, then submit a copy. the fine to the violator. Discretion in Closing Traditional Markets The establishment of traditional markets was based on Presidential Regulation No. 112 of 2007 concerning the Arrangement and Development of Traditional Markets, on April 4, 2020 within 14 days the market was forced to close after

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one of the traders was confirmed to have been exposed to Covid-19. The Regional Company (PD) Pasar Surya as the manager issued a circular regarding the temporary closure of the Kapasan Market. The circular letter dated April 3, 2020 number SU-789/01/IV/2020 was addressed to the Kapasan Market traders. In the letter, PD Pasar Surya said it would close the operations of Pasar Kapasan in the next 14 days. Members of the Polsek, *the police sector*, and the association of Pamong Praja police are tasked with carrying out joint patrols and security related to the temporary closure of the Kapasan Market in the context of Quarantine / Isolation to Anticipate the spread of Covid-19. In fact, if referring to Article 13 paragraph (3) jo. Article 14 paragraph (2) East Java Governor Regulation Number 18 of 2020 and Article 13 paragraph (3) jo. Article 14 paragraph (2) of Perwali Number 16 of 2020 states that the market is an excluded place in the implementation of the PSBB, but due to an urgent matter for Kamtibmas, members of the Sector Police in cooperation with the Market Manager act based on their judgment to temporarily close the market. Discretion in Banning Homecoming and Restricting Motorized Vehicle Passengers The implementation of discretion in the prohibition of going home and restrictions on motorized vehicle passengers is carried out by the traffic unit, it is stated in Perkap Number 1 of 2019 that the function of the Traffic unit is to carry out Traffic Dikmas activities, Traffic Engineering, regulation, guarding, escort, patrolling, registration of motorized vehicle identification and drivers, carry out prosecutions, investigations and investigations of traffic accidents and others. Discretion in Road Access Restrictions During the PSBB implementation to anticipate the Covid-19 pandemic, curfew rules were applied in several regions throughout Indonesia, namely a ban on residents going out at 21.00 to 04.00 which refers to the direction of the Regional Police Chief during a meeting at the respective Regional Police Headquarters on April 26, 2020 involving the City Government, The Regency Government, which implements the PSBB.

4. CONCLUSION

Based on the results of the analysis, it can be concluded that the traffic police in carrying out their duties to prevent the transmission of covid 19 has a legal basis. The legal basis is Article 13 of Law Number 2 of 2002 concerning the Police, Law Number 22 of 2009 on Road Traffic and Transportation, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB), Declaration of the State Police of the Republic of Indonesia Number Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Corona Virus, and Police Telegram Letters. Regarding the implementation of tasks in the Traffic sector, the application of discretion is mostly carried out by members in the field of traffic law enforcement, where Traffic police officers carry out law enforcement duties on Traffic regulations. One thing that makes it very easy for them in carrying out their duties is that the officers are provided with a form of ticket or evidence of a certain Traffic violation in which the officers simply fill in what the violation occurred, what was confiscated, what date the violator must face a court hearing, then submit a copy to the violator.

REFERENCES

- 1) Dwi Wiharyangti, 2011, Implementasi Sanksi Pidana dan Sanksi Tindakan dalam Kebijakan Hukum Pidana di Indonesia, *Journal of Pandecta*, Vol. 6, No. 1, Hal. 80.
- 2) Suryanegara, A.H 2021. *Penegakan Hukum Lalu Lintas Oleh Satuan Lalu Lintas Polresta Banyumas Pada Masa Pandemi Covid-19. Skripsi Program Studi Hukum Tata Negara Jurusan Hukum Pidana Dan Politik Islam Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto.*
- 3) Sylvia Yazid dan Liliana Dea Jovita, Dampak Pandemi Terhadap Mobilitas Manusia di Asia Tenggara, *Jurnal Ilmiah Hubungan Internasional*, Edisi Khusus, 2020, hlm. 76
- 4) Hamzah, M.G. 2020. *Konstitusi dan Kebijakan Publik dalam Penyelamatan Kehidupan Bersama.* Disampaikan pada Webinar Nasional APHTN-HAN Sumatera Utara. Selasa, 2 Juni 2020
- 5) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- 6) Undang-Undang Nomor Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia. Lembaran Negara Tahun 2002 Nomor 2. Tambahan Lembaran Negara Nomor 4168.
- 7) Undang-Undang Republik Indonesia Nomor 22 Tahun 2009 tentang Lalu Lintas Angkutan Jalan. Lembaran Negara Tahun 2009 Nomor 96. Tambahan Lembaran Negara Nomor 5025.
- 8) Peraturan Pemerintah Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar (PSBB).
- 9) Peraturan Kepala Kepolisian Negara Nomor 23 Tahun tentang Susunan Organisasi dan Tata Kerja Pada Tingkat Kepolisian Resort dan Kepolisian Sektor.