

Characteristics of Police Discretion in Handling Demonstrations Resulting in Mass Rage Based on Law No. 2 of 2002



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ABSTRACT: The study entitled Characteristics of Police Discretion in Handling Demonstrations Resulting in Mass Amok Based on Law No. 2 of 2002 raises the problem of how the characteristics of police discretion in handling demonstrations that result in mass amok based on Law No. 2 of 2002. The research method used in this study is normative research, namely by basing it on the applicable laws and regulations (positive law) using a statutory and conceptual approach. Based on the research method as mentioned above, the following discussion can be produced: Securing demonstrations is part of the role of the police function. Demonstrations are one form of expressing opinions in public where expressing opinions in public is the right of every citizen as regulated in Article 28 E of the 1945 Constitution. Thus, expressing opinions in public is known as a demonstration. Handling demonstrations by the police includes organizing services, organizing security and handling cases, and forms of police discretion are carried out by carrying out other police actions that can be accounted for. The role of the police in handling demonstrations is carried out in three stages: preparation, during the demonstration, and after the demonstration.

KEYWORDS: police discretion; demonstrations; mob violence; authority

I. INTRODUCTION

Discretion is a new concept in the Indonesian legal system. Discretion was first introduced in Law Number 30 of 2014 concerning Government Administration. According to Article 1 Number 9 of this law, discretion is the decision-making and actions taken by government officials to address certain problems faced in the administration of government. These problems arise due to the absence of specific regulations, incomplete or unclear laws, or the absence of government action. The discretion in question relates to the realm of law enforcement carried out by law enforcement officers, especially the Indonesian National Police, as regulated in Law Number 2 of 2002 concerning the Indonesian National Police. Based on Article 16 paragraph (1) of Law Number 2 of 2002, the Indonesian National Police has the authority to take additional actions in accordance with applicable laws and regulations in order to fulfill its responsibilities in criminal proceedings, as stated in Article 13 and Article 14. This provision shows the very broad authority of the police because the meaning and significance of the term "other actions" becomes broader. In the Indonesian legal system that adheres to the principle of the rule of law, arbitrary actions (abuse of power) are very limited. Such actions not only violate the law but also violate the principle of Human Rights (HAM).

The police detention and arrest procedures are examples of the use of Discretion because they involve the use of coercive measures to limit the freedom of individuals, whether they are citizens or residents. In his explanation, Rusli Muhammad discusses the act of arresting individuals as a means to limit their freedom and legal rights. He acknowledges that although the law protects the freedom, independence, and property rights of individuals, there are instances where these freedoms must be limited or even taken away. This occurs when a person's actions cause harm to others, thus disrupting the balance of their actions. Restrictions on a person's freedom and autonomy can only be considered legitimate if they can be justified in accordance with applicable laws and regulations. If these restrictions are implemented without complying with laws and regulations, then this indicates that there has been a violation of the human rights of others.¹

Discretion is a concept that arises when legal standards are limited or ambiguous, and the police are forced to take certain legal steps to address the challenges they face. Discretion is a manifestation of the power or freedom to take action. In this context, Marwan Effendy provides his explanation. In practice, discretion can be referred to as broad jurisdiction or as an alternative to the freedom to take action. In the realm of Criminal Law, discretion is an important element that must be implemented wisely and in

¹ Rusli Muhammad, 2007, *Hukum Acara Pidana Kontemporer*, Cet.1, Bandung: Citra Aditya Bakti, p. 25.

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accordance with legal limitations. This is especially important when discretion involves the use of coercive means, as this has a direct impact on human rights.²

The issue at hand is the application of police discretion, which refers to the freedom or authority to make judgments and decisions based on their own judgment when dealing with urgent and specific problems. To understand this issue thoroughly, it is first necessary to understand the meaning, purpose, and scope of discretion in general, as well as its application in the context of the Police as a law enforcement entity. In demonstrations or mass riots, the Police as law enforcement officers have the legal authority to deal with incidents and conditions that disrupt public security and order. Based on Law Number 2 of 2002, the main task of the Police is to enforce the law and provide a sense of security to the public.³

The application of discretion in a major riot situation depends on the number of parties who can face legal consequences, such as imprisonment and arrest. This requires the Police to accurately determine the roles of the parties involved for further legal proceedings. The problem faced is determining the responsible party in the Police apparatus when the demonstration escalates into widespread riots, including acts of violence, destruction of public infrastructure, and damage to other people's property.

The main problem that needs attention is the application of police discretion, especially in handling mass riots that occurred in various regions of Indonesia, especially in Surabaya, such as the anarchic incident at the Surabaya City DPRD office. The burning occurred at around 13.00 WIB after a riot between the demonstrators and security forces. Before carrying out the burning action, the masses also threw stones at the DPR building located on Jl. Indrapura No. 1 Surabaya. The protesters protested because they did not accept the Regional Regulation (Perda) regarding the Job Creation Law and demands for an increase in the UMR. In addition, what is of concern is the arbitrary arrest and detention of demonstrators at other locations before arriving at the demonstration location as a form of rejection of the Job Creation Law. This law has caused a significant wave of mass mobilization and has generated both support and rejection. Not infrequently, police officers chase and detain demonstrators without clear reasons under the pretext of "security", even though the concept of security is not recognized in the Criminal Procedure Code. In contrast, the Criminal Procedure Code only recognizes the act of arrest. Justification for security measures is a tactic used by the police to avoid their responsibility to comply with the administrative requirements for making an arrest. These police actions constitute a serious violation of individual freedom.

The police actions and mass violence mentioned above are examples of human rights violations, which are often carried out by police officers in carrying out their duties. These incidents are a clear indication that Police Reform has not met the expectations of the wider community. Examples of police violations, characterized by abuse of authority and disproportionate use of force, have continuously and repeatedly caused harm and death among civilians.

The obstacles to the actions and efforts of enforcement mentioned above also constitute restrictions on freedom of opinion, assembly, and speech. In this case, the State has committed human rights violations as mandated by the International Covenant on Civil and Political Rights, which has been officially accepted, especially in Article 28 of the 1945 Constitution. These actions were carried out with the intention of weakening the people's movement and suppressing resistance, with the aim of protecting the nation and state from oligarchies that unlawfully seize the rights of the people. In this scenario, the role of the police shifts from a state apparatus tasked with guarding and serving the community to an instrument of power exercised by the government.

The above issues require various interventions, some of which may not be regulated by laws and regulations. Therefore, actions that exceed the limits of police authority become very important. Discretion refers to actions taken outside the limits permitted when carrying out duties. Discretion is given as a means to carry out responsibilities in accordance with the roles and functions set. The use of discretion, which is primarily guided by intelligence and moral integrity, is a policy that deserves to be recognized. The importance of discretion is growing, especially as existing laws and regulations face challenges in dealing with all the problems that arise. Therefore, research with the aim of ensuring the use of police discretion in managing demonstrations that cause widespread riots becomes very important.

Based on the background in the previous description, the main problem is, then the problem can be formulated how the characteristics of police discretion in handling demonstrations that result in mass riots based on Law No. 2 of 2002.

II. RESEARCH METHODS

The type of research used in this study is normative, namely by basing it on the applicable laws and regulations (positive law) using the legal and conceptual regulatory approaches. Legal materials are collected through inventory procedures and identification of laws and regulations, as well as classification and systematization of legal materials according to research problems. Therefore, the technique of collecting legal materials used in this study is through literature study. Literature study is carried out by reading, reviewing, taking notes, making reviews of library materials that are related to the formulation of the problem being studied.

² Marwan Effendy, 2016, *Diskresi, Penemuan Hukum, Korporasi dan Tax Amnesty Dalam Penegakan Hukum*, Cetakan Kedua, Jakarta: Referensi, p. 11.

³ Pasal 14 ayat (1) Huruf e UU No. 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia.

III. DISCUSSION

Police Authority in Handling Demonstrations Resulting in Mass Riots Based on Law No. 2 of 2002

Law Number 2 of 2002 concerning the Indonesian National Police does not explicitly regulate the police's authority in demonstrations, but rather their overall authority. Based on Article 15 paragraph (2) of Law Number 2 of 2002, the Indonesian National Police has the authority to enforce laws and regulations. Therefore, the police can exercise their authority over laws and regulations related to demonstrations. Regulations on demonstrations are specifically regulated in Law Number 9 of 1998 concerning Freedom of Expression in Public. Based on Article 15 paragraph (1) letter a of Law Number 2 of 2002, the police have the authority to grant permits and supervise community gathering activities and other community activities. This authority is related to Article 10 paragraph (1) of Law Number 9 of 1998 which states that the expression of opinions in public must be officially reported to the police. Thus, it can be concluded that the police have the authority to grant or reject permits for demonstration activities, as well as the authority to supervise the course of the demonstration.

According to Article 14 paragraph (1) letter a of Law Number 2 of 2002, the police are tasked with regulating, protecting, guarding and patrolling community and government activities according to need. According to Article 13 paragraph (2) of Law Number 9 of 1998, the Police are tasked with protecting and guaranteeing the safety of everyone who expresses an opinion in public. This means that the police have the authority to regulate and supervise demonstrations, as well as provide a sense of security to demonstration participants.

According to Article 14 paragraph (1) letter e of Law Number 2 of 2002 concerning the Indonesian National Police, the Police are tasked with maintaining order and guaranteeing public security. If this article is connected to Article 13 paragraph (3) of Law Number 9 of 1998 concerning Freedom of Expression in Public which states that the Indonesian National Police are tasked with maintaining public security and order in expressing opinions in public, then it can be concluded that the police have the authority to maintain public security and order during demonstrations.⁴

Based on the description above, it can be concluded that: a. the police have the authority to grant or reject demonstration permits in accordance with Law Number 2 of 2002 concerning the Indonesian National Police; b. the police have the authority to supervise the course of demonstrations; c. The police have the authority to supervise, protect, and accompany people who are demonstrating; and d. The police have the authority to maintain order and security during demonstrations.⁵

Police Code of Ethics in Handling Demonstrations that Result in Mass Violence

The Indonesian National Police is a component of the state government tasked with enforcing public order and security, enforcing the law, providing a sense of security, protection, and service to the community. To carry out these tasks effectively, they must be in line with the national development agenda which includes the vision, mission, main development strategies, policies, targets, programs, and activities. Therefore, the tasks given include the authority and responsibility that must be fulfilled. Nanan Sukarna stated that the generally recognized duties of the police include:⁶ (a) guarding and protecting the community (duty to protect); (b) serving the community by providing protection, protection, and assistance (public servant); (c) ensuring the maintenance of public order and security (security and order maintenance); (d) enforcing the law as an agency or officer (law enforce/investigation); (e) acting as a peacekeeping officer (peacemakers). Each law enforcement officer has a different position and responsibility. Position refers to a certain rank or status in the social hierarchy, which can be categorized as high, medium, or low. Role is essentially a container that has certain rights and responsibilities. These rights and obligations are essentially roles.

In a broader context, some demonstrations were initially peaceful, but then escalated due to factors that caused chaos or inadequate handling. These demonstrations ended in clashes with security forces and tended to be anarchic, including riots involving arson, hostage-taking, and destruction of public infrastructure. As a result, the security and public order situation became very uncertain. Given the possibility of such a situation occurring, the Police as an institution tasked with upholding public safety and enforcing the law must be able to effectively anticipate such situations. This can be achieved by implementing a service model that prioritizes preventive measures and security strategies to anticipate and quell potential anarchic demonstrations, as well as ensuring that such demonstrations can be controlled and their spread prevented.⁷

The police in the jurisdiction respond to various challenges in securing demonstrations by referring to the Standard Operating Procedure and Permanent Procedure of the Indonesian National Police Number 1 of 2010 concerning Handling Anarchy:⁸

a. Preemptive efforts are initial activities carried out by the Police to appeal to and approach the demonstration group so that the demonstration can proceed in an orderly manner. The goal is for the demonstration to run smoothly and in an organized manner

⁴ Yunita Dwi Aryani, "Pelaksanaan Tugas Kepolisian Dalam Penanganan Unjuk Rasa Di Wilayah Hukum Polres Kudus". Hukum dan Kewarganegaraan Fakultas Ilmu Sosial Universitas Negeri Semarang, *Jurnal Hukum*, Vol. 1 No. 3, 2011, p. 30.

⁵ Guntur Priyantoko, "Penerapan diskresi kepolisian dalam penanganan unjuk rasa", *De LegaLata*, Volume I, Nomor 1, Januari - Juni 2016.

⁶ *Ibid.*

⁷ Usi Zahara, "Peranan Kepolisian Dalam Pengamanan Demonstrasi Di Wilayah Hukum Resor Kota Padang", Bagian Hukum Pidana Fakultas hukum Universitas Bung Hatta Padang, *Jurnal Hukum*, Vol. 1 No. 5 Juni 2016.

⁸ *Ibid.*

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without causing negative impacts on the community. Namely by notifying the relevant agencies that are the focus of the demonstration in advance.

- b. Preventive efforts are actions taken by the Police to carry out their duties in accordance with Standard Procedures (SOP). The goal is so that actions taken by the Police, both individually and as a unit, are not considered too aggressive by the community. To reduce the risks and threats arising from demonstrations, the Police must always be vigilant and anticipate various possibilities that may occur. One effective effort to prevent mass riots is to clear the streets. Meanwhile, repressive actions are only carried out as a last resort if the demonstration is out of control and is about to turn into a riot.
- c. If the Police take repressive action, it must be in accordance with the SOP (established procedure). The Police take this action in response to an unfavorable and uncontrolled situation, in order to proactively prevent the spread of unrest. This action is in accordance with Police Procedure Number 1 of 2010, which regulates the handling of anarchy.

The success of the implementation of police functions, while maintaining professional ethics, is greatly influenced by the performance of the police, as demonstrated through their attitudes and behavior when carrying out their responsibilities and authorities. The main objectives of the police are to uphold security and public order, enforce laws and regulations, and provide a sense of security, protection, and assistance to the community. With the increasingly advanced methods of crime and the development of society, it is very important for the police to have a high level of professionalism in order to effectively fulfill their responsibilities as law enforcement officers. Lack of professionalism among the police can lead to an unbalanced law enforcement process, thus posing a continuous threat to security and public order.⁹

Violence may be appropriate in dealing with anarchic demonstrators, as long as it is within reasonable limits. However, violence must be carried out selectively and with proper control. Law enforcement operations must comply with relevant laws and uphold the principles of human rights. Demonstrators who engage in violent and unlawful behavior must be supervised in accordance with relevant laws. However, there are several instances where the police, when faced with challenging situations in the field, are forced to make decisions that may exceed their jurisdiction and contradict the directives of their superiors.

Police discretion refers to a police officer's authority to decide whether or not to act within the law when performing his or her duties. Discretion authorizes a police officer to use judgment in choosing from a variety of roles (such as maintaining order, enforcing the law, or protecting the public), strategies (such as enforcing traffic laws through patrol or guarding a location), or objectives (such as issuing tickets to violators or counseling them) when performing his or her duties. A police officer has the ability to use discretion in a variety of situations encountered on a daily basis. However, the existing literature on discretion largely emphasizes selective law enforcement, particularly the criteria that determine whether or not a lawbreaker will be punished. Discretion is generally associated with two principles, namely selective action and targeted patrol.¹⁰

Discretion refers to the authority given to the police to exercise judgment and choose the right action when handling violations of the law or criminal cases that fall within their authority. It is essential to ensure that this judgment is carried out accurately by considering all relevant factors and in accordance with the ethical standards mentioned earlier. Therefore, given this discretion, it is essential that the actions taken by the police comply with legal standards.

Based on the above explanation, it can be said that legal considerations can be used to advance public welfare. In order to achieve the goals of the state, the government must prioritize and optimize its efforts in ensuring comprehensive social security. Therefore, the government is required to actively intervene in the socio-economic affairs of the community, which is known as public service. This prevents state administrators from avoiding making decisions or taking action on the grounds that there are no laws and regulations, which is also known as *rechtsvacuum*. Thus, in order to be able to move freely, state administrators, also known as the government, are given the freedom to act, which is usually referred to as discretion or *Fries Ermessen*.¹¹

Steps Taken by the Police in Handling Demonstrations Resulting in Mass Riots Based on Law No. 2 of 2002

The presence of police during demonstrations is very much needed. The police who are tasked with maintaining the security of all demonstrations have their own protocols in implementing security measures. The Samapta Crowd Control Unit (Dalmas) is a police unit tasked with maintaining the security of demonstrations. Dalmas is a law enforcement operation carried out by the National Police unit to control the masses who come in droves.¹²

a. Preparation Steps Before Demonstration

After receiving notification of a demonstration from the masses, as mandated in Law Number 9 of 1998 concerning Freedom of Expression in Public, the local police in the area where the demonstration is taking place must make the necessary preparations. The activities in question are: 1. Drafting a warrant; 2. Ensuring a sufficient number of Dalmas to effectively handle the number

⁹ Agryan Pikarsa, "Tinjauan Kriminologis Terhadap Penanggulangan Aksi Unjuk Rasa Oleh Anggota Polri", *Jurnal hukum*, Vol. 12 No. 2 September 2016

¹⁰ Guntur Priyantoko, "Penerapan Diskresi Kepolisian Dalam Penanganan Unjuk Rasa", *De Lega Lata*, Volume I Nomor 1 Januari - Juni 2016.

¹¹ *Ibid.*

¹² Deus Sihombing, "Peran Kepolisian Dalam Penanggulangan Kerusuhan Yang Terjadi Pada Saat Demonstrasi", *Jurnal Hukum*, Vol. 1 No. 3 16 Maret 2009, p. 1.

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and attributes of the masses; 3. Conducting inspections of Dalmas personnel, equipment, and tools, as well as monitoring consumption and health; 4. Drafting a travel plan for Dalmas troops to the target and determining an escape route for VVIP/VIP officials and other high-ranking officials; 5. Identifying field posts/outposts located around the demonstration object that provide protection; 6. Building a communication system for all participating Polri units.¹³

The police will analyze the characteristics of the demonstrators using Intelkam devices. This study will examine the profile, psychology, characteristics of the masses, and issues raised by the demonstrators. The purpose of the demonstrator attribute analysis is to assess the likelihood of rioting during the protest and determine what steps need to be taken to adequately equip and train the Dalmas troops.

Intelkam conveys this information to the controller, who is usually the leader or chief of the local police overseeing the demonstration. Prior to the Dalmas, the Unit Chief will hold a Troop Leadership Event (APP) for all Dalmas Unit members participating in the Dalmas. During this event, the Unit Chief will provide the following information: 1. A detailed report on the number, quality, requirements, and equipment that the Dalmas troop unit will encounter during the demonstration, along with the possible outcomes; 2. A description of the conditions and locations of the objects and roads where the demonstration will take place; 3. A comprehensive outline detailing the sequence, procedures, and activities to be carried out by the Dalmas unit; 4. The restrictions and responsibilities enforced by the Dalmas unit.¹⁴

b. Dalmas Troops Restrictions, Duties, and Mandates

Before holding a protest, it is important to prepare adequately for the security measures implemented by the Dalmas troops. It is very important that security protocols are not implemented carelessly or without proper consideration. There are restrictions imposed: 1. These restrictions include refraining from showing arrogance and anger towards the behavior of the masses; 2. Engaging in unauthorized aggressive actions; 3. Transporting equipment from Dalmas equipment to external locations; 4. Possessing sharp weapons and loaded ammunition; 5. Breaking away from the unit or formation and pursuing the masses alone; 6. Moving away from the demonstrators while turning their backs on them; 7. Engaging in the use of vulgar language, engaging in sexual harassment or immoral behavior, or cursing demonstrators; 8. Engaging in other actions that violate laws and regulations.

Meanwhile, the responsibilities of the crowd control troops, sometimes known as Dalmas, in ensuring the security of the demonstration are: 1. Upholding the Human Rights of all individuals participating in the demonstration; 2. Carrying out and ensuring the security of the demonstration in accordance with the regulations; 3. The Dalmas troops always advance together as a cohesive unit and organize themselves in a certain formation as determined; 4. Ensure the safety and security of individuals and their belongings; 5. Maintain and protect the position until the demonstration ends; 6. Obey and follow the instructions of the Field Unit Chief, who holds the appropriate responsibility.

When recruiting Crowd Control troops, the selection process is not done randomly or based on personal preference. There are several important requirements that Dalmas troops must have, which include: 1. Strong mindset and ethical principles; 2. Strong determination and unwavering loyalty; 3. Strong commitment and strict self-control; 4. Minimum level of physical fitness; 5. Proficiency in the legal articles relating to Dalmas; 6. Strong sense of camaraderie; 7. Impartial attitude; 8. Proficiency in self-defense techniques; 9. Proficiency in operating Dalmas equipment; 10. Ability to adapt or modify formations quickly; 11. Capacity to evaluate the overall nature of the crowd; 12. Skills in effective communication; 13. Ability to use tactical vehicles to disperse crowds and other special Dalmas equipment; 14. Ability to systematically load and unload vehicles and assemble them quickly.

b. Prohibitions, Obligations and Requirements of Dalmas Troops

Preparation for securing demonstrations carried out by Dalmas troops, then the security must not be carried out arbitrarily. There are prohibitions that apply. The prohibitions are: 1. Being arrogant and provoked by the behavior of the masses; 2. Carrying violent actions that are not in accordance with procedures; 3. Bringing equipment outside of Dalmas equipment; 4. Carrying sharp weapons and live ammunition; 5. Leaving the unit or formation and pursuing the masses individually; 6. Retreating with your back to the mass of demonstrators; 7. Uttering dirty words, sexual harassment or immoral acts, cursing demonstrators; 8. Carrying out other acts that violate laws and regulations.

Meanwhile, the obligations of the crowd control troops or Dalmas in securing demonstrations are: 1. Respecting the Human Rights of every person who demonstrates; 2. Serving and securing demonstrations in accordance with the provisions; 3. Every movement of Dalmas troops is always in a unit and forms a formation in accordance with the provisions; 4. Protecting lives and property; 5. Maintain and defend the situation until the demonstration is over; 6. Obey and obey the orders of the Head of the Field Unit who is responsible according to his level.

In recruiting Crowd Control troops, it is not arbitrary. There are important things that every Dalmas troop must have, including: 1. Good mentality and morals; 2. High determination and loyalty; 3. High dedication and discipline; 4. The lowest physical fitness value; 5. Mastery of the articles in the laws relating to Dalmas; 6. High esprit de corps; 7. Neutral attitude; 8. Self-defense skills; 9. Ability to use Dalmas equipment; 10. Ability to form or change formations quickly; 11. Ability to assess the characteristics of the

¹³ Peraturan Kapolri Nomor 16 Tahun 2006 tentang pedoman Pengendalian Massa.

¹⁴ Deus Sihombing, "Peran Kepolisian Dalam Penanggulangan Kerusuhan Yang Terjadi Pada Saat Demonstrasi," *Jurnal Hukum*, Vol. 1 No. 3 16 Maret 2009, p. 2.

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masses in general; 12. Ability to communicate well; 13. Ability to use tactical vehicles to disperse crowds and other special Dalmas tools well; 14. Ability to get on and off vehicles in an orderly manner and gather quickly.¹⁵

c. The Role of the Police During Demonstrations

Dalmas implements demonstration security in stages during the demonstration. These steps are adjusted to the specific situation or conditions of the demonstration activities.¹⁶ The stages are as follows:

1. The first stage is marked by an orderly situation (Green)

The orderly phase refers to the phase in which demonstration activities are carried out in a safe manner, without any activity that could result in disorderly behavior. In normal situations, the initial Dalmas troops are strategically placed. The initial Dalmas unit is a non-specialist police force deployed in situations where the masses are calm and well-behaved (green situations), and does not have any special police equipment.

In controlled situations, the Dalmas troops maintain the safety of the protesters by escorting them and ensuring their safety, while also making continuous appeals to the demonstrators. The purpose of the appeal is to speak to the demonstrators from the perspective of the Police: a. We appeal to you, brothers and sisters: 1) In order to uphold order and security, it is very important for you not to break the law. 2) Express your aspirations and thoughts in a polite and clear manner. It is better not to be provoked by the behavior of irresponsible people; 3) Avoid causing discomfort or disturbance to other members of society; 4.) Maintain our integrity and reputation as members of society. b. Thank you and may your demonstration be successful.¹⁷

During the protest, law enforcement officers documented the event using standard and special video surveillance cameras. The Dalmas troops, which consist of ordinary people, do not have the ability to effectively monitor the behavior of demonstrators. Monitoring is carried out through the use of video cameras operated by the Police using the Intelkam function. The surveillance function of this camera is very valuable in law enforcement to detect prohibited actions carried out by certain people.¹⁸

Currently, the police are involved in negotiations with the protest coordinators through trained negotiators. Negotiators are police officers who are involved in bargaining with demonstrators to reach a mutually acceptable agreement. The negotiators work together with the Dalmas troops to initiate discussions or talks with the coordinators to convey their wishes.

After the negotiations, the negotiators inform the local police chief of the demonstration's demands, which will then be conveyed to the intended party or agency. In addition, negotiators have the option to accompany demonstrator representatives to convey their wishes to the intended party. However, if the protesters request the presence of the head of the agency or the targeted party in the midst of the protest to provide an explanation, the negotiator will notify the local police chief and request that the person be allowed to speak to the protesters.

The person responsible for providing the explanation, either the head of the agency or the intended recipient, remains in front of the negotiator or the local police chief. Every update on the situation is consistently communicated by the Platoon Commander (Dan Tonne) or Company Commander (Dan Ki) to the local police chief, who has authority over tactical control. Tactical control is the authority held by several police officials, such as the Kapolsek, Kapolsekta, Kapolsek Metro, Kapolres, Kapolresta, Kapolres Metro, Kapoltabs, Kalpolwil, Kapolwiltabs, and Kapolda, to supervise and monitor the actions of all troops present at the demonstration location.

The situation changes from an orderly state (green) to a disorderly state (yellow), then the layers are changed with Dalmas which is continued. This change is a transition process that involves changing the original Dalmas unit to a more advanced Dalmas.¹⁹

2. Disorderly Situation Stage (Yellow)²⁰

At this level, the negotiator continues to negotiate with the protest coordinator as far as possible, despite the fact that the situation is no longer orderly (yellow). An unruly situation refers to a scenario where protesters engage in actions that disrupt order and security around the demonstration site. These actions can include theatrical performances or similar activities that cause inconvenience to other members of the public. For example, engaging in acts of burning an object on a public road or deliberately sleeping on the road in a way that causes disturbance to other road users.

In this scenario, highly skilled Dalmas troops provide assistance in lifting and moving to a neutral and/or safer location using persuasive and instructive methods. Advanced Dalmas refers to special Dalmas units equipped with special police equipment. They are specifically sent to deal with situations where the general public is no longer behaving in an orderly manner, sometimes indicated by the color yellow. When switching from the initial Dalmas to the advanced Dalmas, the police may use animal units placed in front of the initial Dalmas to provide protection during the layer change process.²¹

¹⁵ *Ibid.*, p. 3

¹⁶ *Ibid.*

¹⁷ *Ibid.*, p. 9.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, p. 10.

²⁰ *Ibid.*, p. 11.

²¹ *Ibid.*

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The transition from the initial Dalma to the advanced Dalma involves changing layers. The level of escalation increases and/or the general public begins throwing projectiles at law enforcement officers. In response, Dalma maintains a defensive position. Next, the local police chief urges Danton or Danki Dalma to take legal action, by deploying: a) Tactical vehicles used to disperse the crowd continue to advance to disperse the crowd, while Dalma continues to advance by putting pressure on the crowd; b) Firefighters have the ability to extinguish the fire by extinguishing burning tires, banners, flags, and other props; c) They use the method of throwing and firing tear gas.

The situation is chaotic (yellow). Dalma troops continue to ensure the safety or removal of VIPs or other important officials by using tactical rescue vehicles. Each Danton or Danki diligently informs the local Police Chief of the latest developments in the situation. If the situation worsens, the local Police Chief will inform the Police Chief who acts as the general supervisor to make a transition with the Brimob Riot Handling Detachment or Company (PHH).²²

3. Stages of Breaking the Law (Red)

Unlawful circumstances are circumstances in which protesters commit unlawful acts during a demonstration. For example, theft, vandalism of public or community property, intimidation, or other unlawful acts. In unlawful circumstances, the Regional Police Chief takes over the authority as general supervisor, after receiving notification from the local Regional Police Chief about the unlawful circumstances.²³

General control is the authority of the Regional Police Chief to supervise and regulate all troop activities in the field during a demonstration. This control is carried out in situations where the mass of protesters commit unlawful acts such as threats, violent theft, vandalism, arson, serious assault, terror, intimidation, hostage-taking, and similar acts, which are referred to as red situations. In this scenario, securing the demonstration can only be carried out by the local Regional Police Chief.²⁴

In the unlawful phase, Brimob deploys the Riot Handling Detachment or Company (PHH) after replacing Dalmas Maju. The transfer of authority is the process of transferring control from the Dalmas unit to the Brimob Riot Handling Company or Detachment. Riot Handling is a series of activities or procedures aimed at anticipating or overcoming large-scale riots or unrest, with the aim of securing the community from the disturbances caused. If there is no Brimob PHH unit or company in a regional unit, the Regional Police Chief as the general supervisor orders the Regional Police Chief or the Resort Police Chief to deploy a Samapta action unit to take legal action with the assistance of the Dalmas unit from the nearest Resort Police or Resort Police.

At this point, the negotiator's efforts are over because what needs to be done is to take law enforcement action to deal with the riots that have occurred. Brimob PHH is authorized to carry out legal processes in accordance with the direction of the general supervisor. Law enforcement officers are authorized to make arrests and use rubber bullets in shooting incidents. Or, in critical situations, real bullets can be used. Meanwhile, officers from various departments continue to carry out their respective duties according to their roles and collaborate to achieve optimal results. The Intelkam function continues to monitor and document all incidents that occur during the riots to speed up the investigation process carried out by the Police.

d. Role of Police After Protests

After completing the demonstration activities, the Dalmas unit will carry out a consolidation process by verifying personnel and equipment. In the context of this consolidation, a consolidation roll call will be held by: a) The district or metropolitan police chief, when conditions are safe; b) The district or metropolitan police chief, when conditions are high alert or dangerous; b) The regional police chief acts as general supervisor during critical situations.²⁵

After each Dalmas activity ends, the Unit Head is required to carry out a review. This review consists of a series of activities aimed at analyzing and evaluating the results of the tasks that have been carried out. The purpose of this review is to identify and correct any actions or behavior that deviate from the established protocol. This is also useful for the implementation of mass control or Dalmas in the future. After completing the Dalmas task, the Dalmas unit immediately returns to their respective unit headquarters in an orderly manner. In addition, if a riot occurs during a demonstration, all law enforcement actions, including legal proceedings against people caught red-handed committing violations of the law, are delegated from Bareskrim to the police, in collaboration with other agencies such as Intelkam, to ensure optimal results.²⁶

In this case, a thorough investigation or inquiry is conducted to arrest and detain the person responsible for the crime. Based on Article 4 of the Criminal Procedure Code (KUHAP), the State Police officers are authorized to conduct investigations. This means that every state police officer in the Republic of Indonesia can act as an investigator. In addition, the authority to conduct investigations is also given to Civil Servant Investigators who meet the requirements of certain ranks as stated in Article 6 paragraphs (1) and (2) of the Criminal Procedure Code. Paragraph (1) refers to the State Police officers of the Republic of Indonesia, while paragraph (2) refers to civil servants who are specifically appointed according to certain laws and regulations and are authorized to conduct investigations. Furthermore, agency officials who are specifically appointed according to certain laws and regulations are

²² *Ibid.*, p. 12.

²³ *Ibid.*, p. 13.

²⁴ *Ibid.*

²⁵ *Ibid.*, p. 14.

²⁶ *Ibid.*

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also authorized to conduct investigations. The disputed Government Regulation is Government Regulation Number 27 of 1983 concerning the Implementation of Criminal Procedure. According to Article 17 of the Criminal Procedure Code, an arrest warrant can only be issued against a person who is strongly suspected of committing a crime, supported by sufficient preliminary evidence. There is no clear explanation of the concept of "sufficient preliminary evidence". Explanation of Article 17 of the Criminal Procedure Code in conjunction with Article 1 number 14 of the Criminal Procedure Code only states that preliminary evidence relates to the actions and circumstances of a person that give rise to a strong suspicion that the person is involved in a crime. The obligation to determine whether or not preliminary evidence is sufficient lies entirely with the official authorized to make the arrest, and this decision is based on their subjective assessment.

Implementation of Discretion by the Police in Handling Demonstrations Resulting in Mass Riots Based on Law No. 2 of 2002

The police's responsibilities as protectors of public order and security include implementing measures to guard, escort, and patrol public and government events as necessary. They also involve coordinating all activities to ensure security, order, and efficient traffic flow on the highways. In addition, the police work to promote community involvement, public legal awareness, and compliance with laws and regulations.

The police's responsibilities as law enforcement officers include involvement in the development of national laws, maintaining order, and ensuring public safety. They also coordinate, supervise, and provide technical guidance to special police units, civil service investigators, and volunteer security organizations. In addition, they conduct investigations and inquiries into all criminal activities in accordance with criminal procedure law and other relevant laws and regulations. Furthermore, they organize police identification, police medicine, forensic laboratories, and police psychology for the benefit of the police. In addition, the duties of the POLRI as protectors and servants of the community include maintaining physical and spiritual safety, property, the community, and the environment from legal disturbances and/or disasters, as well as providing assistance and support while upholding human rights. In addition, the Indonesian National Police also dedicates itself to the community for temporary interests until there is an authorized party and/or agency that takes over, and provides services to the community according to their needs within the scope of police duties.

According to Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police, what is meant by "acting according to one's own considerations" is an action that can be taken by members of the Indonesian National Police. Such actions must consider the advantages and disadvantages, and must truly prioritize the interests of the community.

Characteristics of Police Discretion in Handling Demonstrations That Result in Mass Riots

In relation to the crime of inter-group fighting, the role of the police in exercising discretionary authority is as follows: a. Actions in accordance with applicable procedures and legal provisions. If police actions are carried out in accordance with applicable procedures and legal provisions, then police officers will not be subject to criminal, ethical, or disciplinary sanctions. This is because the actions taken are in accordance with the provisions and have a legal basis that can justify and eliminate all forms of unlawful actions; b. Actions that are not in accordance with procedures or exceed the limits of applicable authority.

The absence of clear limitations, elements, and criteria in the formulation of police discretionary authority makes its use vulnerable to abuse of authority and arbitrary actions. Police discretionary authority is exercised to fulfill government responsibilities and is primarily influenced by the behavior of each police officer as a representative of the government. Therefore, every action taken and assessment made must comply with the principles of law and human rights, in line with the basic principles of good governance. Therefore, the implementation of discretionary authority should not solely rely on a power-centered approach, but must also consider human rights and incidents of abuse of authority or negligence in carrying out duties, especially in exercising discretionary authority, which results in losses to third parties or police officers due to their negligence must be held accountable and subject to punishment in accordance with the system or legal norms violated.

Discretion, which comes from the term "freies ermesen," refers to the autonomy given to authorized public authorities to act or make judgments based on their own judgment. Therefore, in addition to handling criminal cases, other actions or discretions can also be applied in many other activities or tasks, namely in fulfilling the functions of security, defense, and public service. The police are generally known as enforcers of public order and safety, as well as law enforcers in criminal proceedings. The police are law enforcement officers who are responsible for maintaining public order and eradicating criminal activities. According to Article 2 of Law Number 2 of 2002 concerning the Indonesian National Police, the police are tasked with maintaining public security and order, enforcing the law, and providing protection and services to the community. This is one of the functions of state government. The police function as a law enforcement agency as well as maintaining public security and order. The police act as the front guard in the integrated criminal justice system.

The police play an important role in uncovering the complexity of criminal cases. Law enforcement officers are required to have the ability to uncover criminal networks that occur in society and arrest the perpetrators. To uncover crimes and arrest the perpetrators, law enforcement officers must carry out a series of actions to conduct thorough investigations and collect evidence.

Based on Article 5 Paragraph (2) of Perkap 7/2012, citizens who express their opinions in public are required to comply with the following obligations: a. respect the human rights of others in orderly social, national, and state life; b. obey laws and regulations

Characteristics of Police Discretion in Handling Demonstrations Resulting in Mass Rage Based on Law No. 2 Of 2002

that are solely intended to guarantee recognition and respect for the rights and freedoms of others, and fulfill reasonable demands in accordance with moral considerations, religious values, security, and public order in a dignified manner; c. obey the rights and freedoms of others, uphold universally recognized moral principles, obey applicable laws and regulations, maintain and enforce security and public order, and maintain national unity; and d. express opinions in public in a manner that guarantees the safe, orderly, and peaceful delivery of opinions.²⁷

The procedure for handling large-scale riots or demonstrations is to submit a written notification to the local police before holding the activity. During the implementation of the activity, the organizer is required to cooperate with related agencies and institutions to ensure the smooth running and security of the demonstration activities. Demonstrations are not permitted in certain prohibited places, including places of worship, hospitals, airports or seaports, train stations, and land transportation terminals. Demonstrations are also prohibited within a radius of 500 meters from national vital objects, within a radius of 150 meters from military installations, and within a radius of 100 meters from the outer fence of the presidential palace (the residence of the President and Vice President). In addition, demonstrations are not permitted in places that cross or intersect with the Presidential Palace.

IV. CLOSING

Conclusion

The police's duties include ensuring the security and order of demonstrations. Demonstrations are a means of expressing opinions in public, which is a basic human right as stipulated in Article 28 E of the 1945 Constitution. Therefore, expressing opinions in public is called a demonstration. The police carry out various activities, such as providing services, security, and handling cases, to handle demonstrations. These activities also involve police authority and can be documented. Police involvement in handling demonstrations is carried out in three stages, namely:

1. At the preparation stage, what needs to be done is to prepare a warrant, ensure that the Dalmas unit has sufficient strength to deal with large crowds, plan the Dalmas unit's route to the target and evacuation route, provide a detailed description of the masses to be faced, describe the situation of the target and the highway where the demonstration is taking place, and convey the prohibitions and obligations that must be obeyed by the Dalmas unit. Currently, the police are only taking proactive steps to prevent unwanted incidents and working together with the leaders of the demonstration to ensure that the demonstration runs in an orderly and orderly manner in accordance with the rules and regulations stipulated in Law Number 9 of 1998 and Law Number 39 of 1999. Order can be interpreted as a condition characterized by a harmonious, orderly atmosphere, in accordance with the aspirations of the community and the objectives of laws and regulations.
2. During the demonstration, especially when the masses are moving or marching, Sabhara/Satlantas members provide escort and security. When the masses are still or on strike, the Company Commander (Danki) and/or Danton order the initial Dalmas Unit, without equipment, to join the Negotiator Unit in a one-way formation using a boundary rope (Dalmas rope). The route taken by the demonstrators is recorded. The negotiators always appeal to the demonstrators to convey their aspirations in an orderly manner and not to take actions that violate the law.
3. After the demonstration, the police carried out post-demonstration activities to restore the situation at the location of the demonstration. The police managed to disperse the crowd and regulate community activities, so that the situation could be controlled.

Suggestion

Additional police actions that can be explained are examples of police discretionary powers that have not been clearly and firmly limited, allowing for misinterpretation in their implementation. Therefore, Law No. 2 of 2002 needs to be amended, especially regarding the structure and implementation of police discretion.

Conduct a thorough examination of the policies and processes that have been implemented to manage protests. Direct your attention to the implementation of policies, assess their effectiveness, and identify policies that need updating or improvement.

Conduct case studies on several demonstrations that have occurred. Examine the police approach to demonstrations, especially those related to cases of violence or human rights violations, and analyze their impact on society and security. These case studies offer a deeper understanding of the specific difficulties faced by law enforcement when handling demonstrations in the area.

Conduct an investigation into various methods or approaches that might be used in managing demonstrations. This could be a better protest management style involving mediators or facilitators, as well as other proactive strategies to prevent escalation of violence. This research could include a comparative analysis with exemplary methodologies applied in other areas or involving renowned specialists in the field of social conflict resolution.

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