

## IMPLEMENTATION OF POLICE DISCRETION IN CRIMINAL LAW ENFORCEMENT IN ANARCHIC DEMONSTRATIONS

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**Abstract**— *Police discretion is the authority of members of the police to take a policy in certain situations that require their own judgment as long as it does not violate statutory provisions. It aims to guard, maintain order and ensure public security. However, policies issued often raise pros and cons, especially when enforcing criminal law in securing demonstrations. The community considers that the actions taken are a form of hindering the achievement of their aspirations. This condition eventually led to riots during demonstrations which could threaten the safety of the demonstrators, police officers, as well as those at the location of the action. So that in this situation police discretion can be issued to prevent and deal with various threats that occur. This study uses an empirical juridical method, namely direct research conducted by studying the applicable legal rules with real events that occur in society. The results of this study explain related considerations, procedures, to obstacles and efforts made in the application of discretion by members of the police in overcoming anarchic demonstrations.*

**Keywords**— *Discreion, Police, Criminal Law, Demonstration*

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## I. INTRODUCTION

Demonstrations in the context of a democratic country have a fairly close relationship, where in a democratic country, demonstrations have an important position as part of the freedom of speech and freedom of expression. This is in line with the opinion of Miriam Budiarjo who said that democracy comes from the word people rule or government or rule by the people. But on the other hand, demonstrations can also be an indicator of the death of democracy when the government does not provide space for public participation for the people to convey their aspirations in aspects of governance, as a result, various ways are used by the people so that their voices can be heard. These various ways of conveying opinions in public, sometimes do not always go well. There is the possibility of an anarchic demonstration, where the demonstration events that take place cause casualties, both from property to human lives. In connection with these events, every individual certainly needs a place of refuge from all unwanted events. In situations like this, the role of the police is very important as a law enforcement agency, which has the authority to maintain security and public order, as well as provide protection, protection and services. to society. In carrying out their duties and functions, members of the police are given a mandate by law to exercise discretion as stipulated in Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police, namely "in matters of public interest officials of the Indonesian National Police in carrying out his duties and authorities can act according to his own judgment" furthermore in paragraph (2) it is emphasized that the requirements for the application of discretion carried out by the police "can only be carried out in urgent circumstances while still paying attention to laws and regulations, as well as the national police professional code of ethics Republic of Indonesia" [1]. However, unfortunately this article does not explain explicitly regarding the mention of "Discretion" but explains it in another sense, namely "according to one's own judgment" which later is feared to become an article that is vulnerable to deviations and abuse of authority caused by personal interest factors.

Therefore it is regulated in the Regulation of the Head of the State Police of the Republic of Indonesia Number 1 of 2009 concerning the Use of Force in Police Action in article 1 paragraph (2) which states that "police action is coercive action and/or other actions carried out responsibly according to the law applies to prevent, inhibit, or stop the actions of the perpetrators of crimes that threaten safety, or endanger body and soul, property or moral honor, in order to realize order and uphold the law and maintain public tranquility [2]. has not

been declared urgent. In carrying out demonstrations there are provisions that must be considered and obeyed by demonstrators before carrying out demonstrations including maintaining security and order during the action, and maintaining unity and oneness among demonstrators. However, the situation on the ground can suddenly change when demonstrations that were previously carried out in a conducive manner turn into an uncontrollable riot due to the entry of irresponsible elements who managed to break up the ranks of the masses by spreading fake news which angered the masses, and provoked the masses. the demonstrators to attack the apparatus, as a result dozens of members of the police were injured in the incident. Under these conditions, the police finally issued a discretionary policy by launching several shots of tear gas towards the masses with the aim of calming the chaos. Based on the above background, the authors conducted research with the title "IMPLEMENTATION OF POLICE DISCRESSION IN ENFORCEMENT OF CRIMINAL LAW AGAINST ANARCHIC DEMONSTRATIONS ACCORDING TO LAW NO. 2 YEAR 2002 (CASE STUDY IN POLRESTABES SURABAYA)".

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## II. METHOD

This study uses an empirical juridical method, namely a legal research related to the implementation or enactment of normative legal provisions in action on certain legal events that occur in society, carried out with the aim of knowing the facts and data needed, which is then after the data collected conducted an assessment of the identification of problems that ended in solving the problem.

This study uses a qualitative analysis method, namely the data that has been obtained through the method of collecting interviews with informants and real studies in the field are put together and processed in one continuous unit, then studied and interpreted until finally an outline conclusion can be drawn on this research problem by stated in the form of sentences arranged systematically.

## III. RESULT AND DISCUSSION

### B. Considerations of Police Members in Exercising Discretion in Anarchist Demonstrations.

In carrying out law enforcement, the role of the police apparatus cannot be separated from the principle of legality, namely a principle that is inherent in every member of the police to carry out a policy in accordance with applicable procedures and rules, both within the scope of national law and international law [4]. The real role of members of the police, which at this time often raises pros and cons in people's lives, one of which is when the police officers carry out their duties in carrying out security during demonstrations to protect the community from various forms of disturbance that threaten the safety of the soul, body and property of citizens. This condition was caused by the demonstrators who felt that their aspirations could not be channeled properly, and did not get the positive response from the government as they expected. how to spread fake news or hoaxes about the government being deemed incapable of handling security issues. This was done to carry out the interests of certain political groups by creating riots, so that the demonstrators felt that the police officers, who at that time were on duty as an element of security, order and, protector of the community, were seen as enemies who would hinder the achievement of their aspirations. In this situation members of the Police can appeal and negotiate with the masses to remain orderly so that conditions can return to conducive conditions. However, if the appeals from

officers are not heeded by the masses and cannot change the situation on the ground, the National Police can issue discretionary policies, as stipulated in the Regulation of the Chief of Police of the Republic of Indonesia Number 1 of 2009 concerning the Use of Force in Police Actions, which reads "Stages to use force in police action consists of: a. stage 1: forces that have a deterrent/preventive impact; b. stage 2 : verbal command; c. stage 3 : soft barehand control; d. stage 4: hard barehand control; e. stage 5: control of blunt weapons, chemical weapons including tear gas, pepper spray or other tools according to Polri standards; f. stage 6: control by using firearms or other means to stop the actions or behavior of criminals or suspects that can cause serious injury or death to members of the Police or members of the public [5].

Discretion is the authority exercised by members of the police in carrying out their duties and authorities for the public interest, by acting according to their own judgment in urgent situations with due observance of laws and regulations and the professional code of ethics for the Indonesian National Police. Discretionary policies issued by the police apparatus must be carried out with full responsibility and in urgent circumstances, a situation can be said to be urgent if one of the elements has been fulfilled, to defend oneself or the family against threats or in serious injuries that will soon occur, to prevent the commission of a crime. which is very serious in this case can range from the crime of persecution, to murder, and to prevent the perpetrators from escaping.

Discretionary policy from the point of view of criminal law is power seduction, which means that in carrying out and implementing a policy one must be able to consider the benefits and harms for society. Because if the policy issued by the police creates a loss for the community, then the action can be categorized as an unlawful act. Muladi argues that criminal law in relation to national economic development is used to increase the state's sense of responsibility in managing people's lives. The urgency of taking discretion in anarchist demonstrations in the context of enforcing criminal law is to protect demonstrators from various forms of threats from irresponsible parties in disrupting actions, as well as to anticipate falling victims in these events [6]. In addition, this discretionary action was carried out by the police as a form of prevention against all demonstrators from committing a criminal act that could threaten the safety of themselves and those around them. Discretion in question can be exercised in all forms of real disturbances such as mass fights; burning; destruction; threats; persecution; rape; the loss of a person's life; hostage-taking; kidnapping

beatings; sabotage; looting; deprivation; theft; against the authorities by using tools or weapons.

### **A. Procedures for Implementing Police Discretion in Enforcing Criminal Law Against Anarchist Demonstrations.**

The procedure for implementing police discretion is guided by Article 18 (1) of Law Number 2 of 2002 concerning the Indonesian National Police and Regulation of the Chief of Police Number 1 of 2009 concerning the Use of Force in Police Action with its origins in the principles of general police obligations (*Plichtmatigheids Beginsel*) namely a principle that gives authority to police officials to act or not act according to their own judgment to protect and maintain public order, as well as guarantee public security [7]. These principles include the principle of legality (legal certainty), the principle of necessity (fairness) and the principle of proportionality (benefits of law). Based on Law Number 2 of 2002 concerning the Indonesian Police, the procedure for exercising police discretion in anarchist demonstrations can be implemented directly in the field by each member of the police, without having to obtain approval from the leadership [8]. The following is the procedure for applying police discretion in anarchist demonstrations:

1. Starting with submitting a letter of notification that a demonstration will be carried out, which is sent by the person in charge of the demonstration participants and then received by the Head of the Intelligence Section (*Kabag Intel*).
2. Then as stated in article 13 of Law Number 9 of 1998 concerning Freedom to Express Opinions in Public that the Head of the Intelligence Section (*Kabag Intel*) gives a letter of receipt of notification, which is then followed by a meeting with the leadership (*Kapolres* or *Wakapolres*), The Head of the Operational Section (*Kabag Ops*) and the Head of the *Samapta* Unit (*Kabag Samapta*) to coordinate the demonstration notification letter to convey opinions.
3. At the coordination meeting, it was mutually agreed that if in the midst of demonstrations the conducive situation becomes an anarchic situation, then in the public interest the police officers on duty in the field have the authority to issue police discretion by considering the benefits and risks that will arise as a result of such discretionary actions .
4. Next, the *Kapolres* or *Wakapolres* instructs the Head of Operations Section (*Kabag Ops*) to prepare security for the places, locations and routes that are used as targets for demonstrations.

5. Coordinate with the people in charge of the demonstration participants, so that in carrying out their actions the demonstrators are still required to comply with the regulations as stipulated in Article 6 of Law Number 9 of 1998 concerning Freedom to Express Opinions in Public, namely in conveying opinions in public the demonstration participants are required and is responsible for respecting the rights and freedoms of others; respect the generally accepted moral rules; comply with applicable laws and statutory provisions; maintaining and respecting security and public order; and maintain the integrity of the unity and integrity of the nation. If during the implementation of the demonstrators violate the regulations as mentioned above, causing chaos that threatens public safety, then in accordance with Article 15 of Law Number 9 of 1998 concerning Freedom to Express Opinions in Public, the police have the right to issue police discessions to disperse demonstrations for the sake of public interest.
6. The Head of the Operations Section (Kabag Ops) and the Head of the Intelligence Section (Kabag Intel) coordinate in the field regarding security at demonstrations. In this case the Head of the Intelligence Section (Kabag Intel) carried out direct security and monitoring of the members of the demonstrators.
7. If in carrying out security duties there is a disturbance that threatens public safety, members of the police can immediately coordinate with their superiors regarding the situation that has occurred. In order to unite views and objectives so that police discretion can be issued in the public interest, without having to obtain approval from the leadership. Number 1 of 2009 concerning the Use of Force in Police Action, which reads "The stages of using force in police action consist of: a. stage 1: forces that have a deterrent/preventive impact; b. stage 2 : verbal command; c. stage 3 : soft barehand control; d. stage 4: hard barehand control; This action can be carried out directly by each member of the police, without having to obtain approval from superiors.

#### **A. Obstacles that Occur in the Implementation of Police Discretion in Anarchist Demonstrations.**

The application of police decrees issued at anarchist demonstrations has received a lot of criticism in the community. The community considers that the police are considered to have obstructed the way of conveying their aspirations, but besides that the police are also given a mandate by law to protect the public from all forms of threats and harassment, bearing in mind that in carrying out demonstrations all participants are required to comply with regulations by protecting each other. unity and integrity during demonstrations, if

demonstrators violate regulations which result in chaos, the police have the right to disperse demonstrations in the public interest [9]. The following are obstacles that often occur in the application of police discretion in anarchist demonstrations:

a. Internal factors

This obstacle comes from the members of the police themselves in the form of understanding and knowledge of the meaning of "discretion" by each of the internal police. Each member of the police certainly has a different level of knowledge and intellect, so this has an effect on the level of understanding and implementation regarding the application of police discretion in the field. Furthermore, the weakness of law enforcement officers in carrying out law enforcement has an impact on decreasing the optimization of the professionalism and expertise of members of the police.

Efforts that can be made to overcome these obstacles are to hold regular evaluation meetings with the aim of evaluating the performance of members of the police, and provide an understanding of the meaning of discretion and the steps in its application in the field, leaders or superiors can teach all members of the police who carry out duties and functions must continue to uphold and promote mutual respect and respect for the rights and obligations of oneself and others, and must stick to decisions taken in accordance with reasoning and correct calculations.

a. External Factors

This obstacle is caused by the lack of understanding and legal knowledge of the community regarding discretionary policies issued by the police, negative speculation from the public towards the police which results in a decrease in the level of public trust in the performance of the police apparatus, so that they assume that any policy issued by the police is solely the eye only fulfills the interests of government officials without regard to the interests of the community, the rejection of the exercise of discretion by certain parties which influences the pattern of public understanding of police discretion.

Efforts that can be made by the police apparatus to overcome these obstacles are by conducting legal counseling to the community, then providing understanding and understanding to them regarding the application of police discretionary policies in anarchist demonstrations, then the police apparatus can prove their performance to the community by handling and resolving various troubling cases in people's lives, as well as closing all access related to extortion (illegal fees), thereby indirectly rebuilding the image of the police which previously received a negative view in society.



#### IV. CONCLUSION

Discretion is the authority exercised by members of the police in carrying out their duties and authorities for the public interest, by acting according to their own judgment in urgent situations with due observance of laws and regulations and the professional code of ethics of the Indonesian National Police. The consideration of police members in issuing discretion in anarchist demonstrations in the context of enforcing criminal law is to protect demonstrators from various forms of threats from irresponsible parties.

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