
Analysis of the Problems of Police Shooting on Sight Cases from a Criminal Law Perspective

Janintra Pasha Maheswara¹, Muchammad Iksan²

¹ Muhammadiyah University of Surakarta (C100190123@student.ums.ac.id)

² Muhammadiyah University of Surakarta (mi214@ums.ac.id)

ABSTRACT

The purpose of the research in this research is to find out how the Police are authorized to use firearms and know the procedures for imposing sanctions on members of the Police who violate the SOP of shooting on the spot. Research uses normative legal research, namely research on legal rules, principles, concepts or doctrines. Involves careful systematic exposition, analysis, and critical evaluation of legal rules, principles or doctrines. the authority to use firearms comes from the subjective self of the police officers, who have the freedom to do or not do anything at their own discretion. As a result, discretion cannot be separated from the power or authority attached to officials to act freely with due regard and responsibility for those actions. From the provisions regarding criminal law related to murder in Article 338 of the Criminal Code if the police violate the SOP, in which murder is punishable by a prison sentence of 15 years in prison (more than 4 years), then of course a general court process must be carried out before the trial of the National Police code of ethics commission.

Keywords: Police, Firearms, Police Authority

INTRODUCTION

In Indonesia, crime is increasing along with the times. Where many crimes are committed is unknown in society. Criminals often target the public when committing their crimes. Whatever the motivation, the perpetrators of these crimes or criminal acts must be held accountable. Law enforcement is necessary to catch criminals to enforce the law. The police are one of the law enforcement agencies in Indonesia (Caecilia, 2015).

The widespread demands for the supremacy of law, human rights, globalization, democratization, transparency and accountability, along with the rapid development of social progress, have created new perspectives in viewing goals, duties, functions, authority and responsibilities. The police as law enforcers cause increased public expectations and demands for the National Police in carrying out their duties (Nova et al., 2017).

Morally, the law must be obeyed because the police is one of the state organizations that is at the forefront and upholds moral integrity. With the ratification of Law no. 2/2002 concerning the Indonesian Police which places more emphasis on public service functions and in accordance with international conventions that regulate the function of the police in the world, the police function is part of the government function which is tasked with regulating and enforcing security. domestically. Criminal law enforcement refers to the implementation of police duties (Antow et al., 2022).

The police have a responsibility to enforce the law. Therefore, the task of the National Police as law enforcers is to uphold the community's rights to protection, order and security (Oktavriana, 2023). Because the responsibility and authority of the police is so great and is directly related to the need to protect both human life and public property, there are laws, both the Criminal Code and international agreements, that regulate this responsibility.

As law enforcers, it is natural for the police to have firearms to carry out their duties in the field. There are only three main requirements that police must have to own firearms, namely a certificate of passing a psychological test from their direct superior, as well as a health certificate from a National Police

doctor. If you look closely, this is clearly very reasonable because police officers have undergone training, all required personal data documents have been completed during the registration process to become members, and the three conditions listed above are sufficient to screen members' responsibilities for the firearms they own (Hasibuan, 2023).

The National Police is required by law to enforce the law, protect, protect and serve the community. when tasks are interconnected and do not follow a priority hierarchy. In order to maintain security and public order, law enforcers can carry out the mission of protecting and protecting the community. Alternatively, it can be understood that police actions in the form of law enforcement are primarily to defend and protect the wider community from crime in order to achieve security and enjoyment of the community (Sendewana, 2013).

The public anticipates that the police will be able to solve all of society's social problems when their duties are carried out. At first glance, this optimism seems excessive because it anticipates that the National Police will be able to overcome social problems. An in-depth investigation reveals that this optimism is not unwarranted, because almost every social problem has the potential to become a security problem and if left unchecked will disrupt community activities.

National Police Chief Regulation Number 1/2009 concerning Stages of Use of Force in Police Actions regulates police actions. So that the public can assess and monitor every action taken by the police, referring to these regulations.

The police must appear tough in their efforts to eradicate crime. He must be authoritative, kind, cheerful and friendly with the community to advance, lead and protect the community. Criminal law enforcement is related to police work. Police decisions regarding issues of public order and security, which are closely related to human rights, are always assessed from their efforts to promote a sense of justice between individuals (Jannah and Sumaryanto, 2021).

The police have the right to use their own discretion whenever they act, which they sometimes violate. The discretionary authority of the Republic of Indonesia Republic of Indonesia's police is contained in Law No.UU No. 2/2002 which reads as follows: "In the public interest, officials of the Indonesian National Police can act according to their own judgment in carrying out their duties and authority." Some call this discretionary rule authority. wisdom. Thomas J. Aaron defines police discretion as "the authority given to the police to make decisions in certain situations that require their own consideration and involve moral issues, and are within the boundaries between law and morality." (Fauziyah, 2015).

The implementation of shooting on sight against suspects by police in the field is usually situational, based on the principle of proportionality in dealing with violence, and calls for the use of firearms in certain situations.

Police are given certain rights or powers, including the capacity to make arrests, to help them carry out their duties to maintain public order and security. Police must have legal knowledge to make an arrest. In the cultural reform of the National Police, the public has not seen any significant changes in the attitudes or behavior of the officers. Reports of police shootings often cause public unrest.

Public attention has been drawn to several cases of police shootings of crime suspects, which provide a unique perspective for law enforcement officials themselves. Many media outlets have covered routine police shooting drills (Andes, 2016).

Based on background, The research objective in this study is to find out the authority of the National Police in using firearms and to know the procedures for implementing sanctions for members of the National Police who violate the SOP for shooting on sight.

RESEARCH METHODS

The research uses normative legal research, namely research on legal rules, principles, concepts and doctrine. Involves careful systematic exposition, analysis and critical evaluation of legal rules, principles or doctrine (Purwati, 2020). This type of legal material uses library materials, which involves a reading list

of all relevant books to find a theoretical basis in the form of laws and related literature (Muhaimin, 2020).

RESULTS AND DISCUSSION

Police Authority in Using Firearms

Police assertiveness has a purpose. Violence is necessary to eradicate crime. Without more draconian measures, it will be impossible to prevent and eradicate even the most violent violations. The violence described in the Police Regulations is the substance of Article 49 of the Criminal Code concerning Overmach, which shows that it is an act of coercion and is only used in coercive circumstances. Police officers use firearms when carrying out their duties, especially when using force.

The police's last resort in stopping criminals is the use of deadly force. Force is used to control access to firearms when: (Jannah, 2021).

1. Criminals and suspects have the potential to directly harm or kill police officers and members of the public;
2. Police officers have no other rational and fair choice to stop the actions of criminals or suspects;
3. The lives of police officers and the general public are immediately in danger when suspects or criminals try to escape, and this is exactly what police officers do.

There are prerequisites for the use of firearms in policing under human rights principles, in particular:

1. Firearms will only be used under duress.
2. To prevent excessive use of force, members of the National Police must follow certain criteria when using firearms to defend themselves or others from the threat of death or serious injury.

RI Perkap Article 5 (1) No. 1/2009 concerning the Use of Force in Police Actions regulates the use of force in police actions, as follows:

- a. Stage 1: forces that have a deterrent impact;
- b. Stage 2: verbal command;
- c. Stage 3: soft empty hand control;
- d. Stage 4: hard empty hand control;
- e. Stage 5: control of blunt weapons, chemical weapons including tear gars, chili spray or other tools according to National Police standards;
- f. Stage 6: control using firearms or other tools that stop the actions or behavior of criminals or suspects that could cause serious injury or death to members of the National Police or members of the public.

In addition, the authority to use firearms comes from the subjective self of the police officer, who has the freedom to do or not do anything at his own discretion. As a result, discretion cannot be separated from the power and authority which are integral to officials acting freely by paying attention to and assuming responsibility for these actions. There are rules that must be based on subjective factors, even though discretion can be described as freedom in decision making; The police cannot act arbitrarily in certain situations.

Implementation of Sanctions for Police Members Who Violate the Shoot-on-Spot SOP

The National Police is expected to continue to prioritize discretionary and preventive actions for the safety of the community. UU no. 2/2002 concerning the National Police of the Republic of Indonesia which states that Indonesian Police officials can act in accordance with the authority of their own judgment in carrying out their duties and authority (Article 18), providing a legal basis for the implementation of Polri's duties in exercising discretion. Apart from that, Law no. 8/1981 concerning the Criminal Procedure Code, Article 5 (1) letter a number 4, states that members of the National Police have the authority to carry out other actions in accordance with applicable laws and regulations due to their duties. The definition of "other acts" in Article 5 Paragraph 1 Letter A Number 4 of the Criminal Procedure Code states that actions carried out by investigators for the purposes of investigations are considered "other acts" if they do not conflict with the law and are based on duly justifiable reasons. under compelling circumstances.

Definition of Law no. 2/2002 concerning "Discretion" and the KUHAP definition of "authority to carry

out other actions” both refer to the authority to carry out discretionary actions. In practice, Polri officers often face issues regarding the rights of defenders (peace and tranquility of privacy) and state laws which often conflict with each other because of the wide scope of the Polri's duties which are not only limited to law enforcement but also duties in the context of maintaining security and fighting for the interests of the community. . Such situations require the implementation of a policy based on the personal preferences of the Police officer concerned, which is known as "discretion". Because it is in the public interest, included in its field, and does not conflict with the AUPB, discretion is a policy of state administrators from central to regional which essentially gives authority to public officials to implement a policy. which violates the law (Kurniawan, 2020).

It is worth mentioning that Article 29 (1) of Law no. 2/2002 states that police officers are essentially subject to the powers of the general judiciary just like the civilian population in general.

If a member of the National Police is found to have violated professional ethics in carrying out his duties, in this case discretion, then the member is obliged to be held accountable for his actions before the National Police of the Republic of Indonesia which is also bound by the laws and professional code of ethics of the National Police.

Implementing responsibility through discretion usually occurs if the discretion is exercised inappropriately, for example the discretion is exercised within the limits of one's authority, does not pay attention to the limitations set out in law, harms other people, if there is no reason to eliminate that responsibility, etc. -other.

Criminal Code, PP 38 No. 2/2003 regarding the Disciplinary Regulations for Police Members, as well as the National Police Chief's Regulation Number 14/2011 regarding the Police Professional Code of Ethics were all violated by members of the National Police who committed criminal acts. Article 27 of the National Police Professional Code of Ethics states that if there is a cumulative violation between disciplinary violations or a trial of the National Police Code of Ethics, it is based on the consideration of the superior of the examinee/suspected violator as well as the opinion and legal advice from the legal function implementer because there are three (three) regulations that have been violated. If a criminal act is committed, it will be tried through a trial according to the National Police's code of ethics, which will be carried out after a general court decision because the results of the general court decision will be one of the pieces of evidence used in the trial.

Police code of ethics commission hearings against members of the National Police who commit criminal acts can be carried out if there has been a decision from the general court which has permanent legal force, because if the code of ethics commission hearing is held first before the trial in the general court, then the decision from the code of ethics commission hearing The National Police will be legally handicapped, whereas if the administrative sanctions that will be imposed on KKEP violators are in the form of recommendations for Dishonorable Discharge (PTDH), then this will be decided through the KKEP Session after first proving the criminal violation through the general court process up to a court decision that has permanent legal force.

Administrative sanctions in the form of PTDH recommendations are imposed through the KKEP Session against: (Pratiwi, 2022).

1. Violators who intentionally commit a criminal offense with the threat of a prison sentence of 4 (four) years or more and have been sentenced by a court with permanent legal force.
2. Leaving his duties illegally for more than 30 (thirty) consecutive working days.
3. Committing suicide with the intention of avoiding investigation and/or legal prosecution or dying as a result of the criminal act he committed.
4. Subjected to disciplinary punishment more than 3 (three) times and deemed no longer worthy of maintaining his status as a member of the National Police.

In relation to the criminal acts that have been mentioned, for example the provisions regarding criminal law related to murder in Article 338 of the Criminal Code where murder is punishable by a criminal penalty of 15 years in prison (more than 4 years), then of course a general judicial process must

be carried out first before the code commission hearing. Police ethics.

CONCLUSION

The basis for the National Police's authority to use firearms is contained in the Republic of Indonesia Perkap Article 5 (1) No. 1/2009 concerning the Use of Force in Police Actions. As a result, the legal basis for the police to exercise discretion is Article 18 paragraph (1) of Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia, discretion cannot be separated from the power or authority inherent in officials to act freely by observing and assuming responsibility for their actions. the. Criminal Code, PP 38 No. 2/2003 concerning Disciplinary Regulations for Police Members, as well as National Police Chief Regulation Number 14/2011 regarding the Professional Code of Ethics are regulations that regulate the actions of police officers who commit violations. From the provisions regarding criminal law related to murder in Article 338 of the Criminal Code, if the police violate the SOP, where murder is punishable by a criminal penalty of 15 years in prison (more than 4 years), then of course a general court process must be carried out first before the National Police Code of Ethics Commission hearing.

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