

LEGAL ANALYSIS OF LEGAL PROTECTION OF MEMBERS OF THE BRIMOB POLICE IN HANDLING DEMONSTRATIONS BASED ON THE REGULATION OF THE CHIEF OF POLICE NUMBER 16 OF 2006 FROM A HUMAN RIGHTS PERSPECTIVE

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Abstract

legal protection for members of the Mobile Brigade in controlling demonstrations based on the regulation of the Chief of the Indonesian National Police No. 16 of 2006, aims to guarantee the rights of members of the Mobile Brigade who carry out mass security duties. Legal protection is divided into three things, namely: 1) Before carrying out duties, 2) During the implementation of duties, 3) After the implementation of duties. This protection is mapped into two categories, namely the first, for members of the Mobile Brigade of the Indonesian National Police who are suspected of being guilty, and secondly for members of the Mobile Brigade of the Indonesian National Police who are not guilty in carrying out the Police profession. Obstacles in efforts to provide legal protection for members of the Mobile Brigade who carry out mass security duties: 1) Limited Social Security, 2) Complicated Administrative Procedures, 3) Insufficient Control and Evaluation from the Government. Efforts that need to be made by the state or government in overcoming these challenges are: There needs to be an increase in the welfare of families left behind by members of the Mobile Brigade who died in carrying out duties. Must create and establish a service mechanism for families that is easily accessible or passed through. As the highest authority, the government must oversee the implementation of welfare services for the families of the Mobile Brigade members left behind.

Keywords: Legal protection, demonstrations, and Mobile Brigade.

Introduction

One of the main challenges facing the Mobile Brigade in carrying out crowd control duties is the organizational culture within the police force itself. In many cases, the approach used by officers tends to be repressive and focuses on the use of greater force rather than one based on dialogue or mediation. This may be related to the long history of police use of force rooted in authoritarian traditions of the past, although since the reform era, this approach has undergone

changes. However, this change in organizational culture is still gradual and does not always translate into practice on the ground. On the other hand, the legal protection afforded to Brimob members should not be a justification for violating the rights of protesters. Every action taken by officers, particularly regarding the use of force, must always be balanced and must not exceed what is necessary to maintain order and control unrest.

Based on the above background, the following problem formulations can be drawn: first, legal protection for Mobile Brigade members in controlling demonstrations based on National Police Chief Regulation Number 16 of 2006; second, obstacles faced by Brimob in implementing crowd control.

This study aims to find out and analyze in depth the legal protection for members of the Mobile Brigade in controlling demonstrations based on the Regulation of the Chief of Police Number 16 of 2006 and to analyze in depth the obstacles faced by Brimob in implementing mass control.

Methods

The research method used in this study is a normative research method that uses various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of library materials related to legal protection for members of the Mobile Brigade in controlling demonstrations. Johnny Ibrahim believes that normative legal research is a form of scientific research aimed at finding the truth based on the logic of legal science reviewed from a normative perspective, or one that takes the form of an effort to discover law that is adapted to a particular case. This research is also supported by empirical research.

Results and Discussion

Legal Protection for Brimob Members in Controlling Demonstrations Based on National Police Chief Regulation Number 16 of 2006

A demonstration is a protest movement carried out by a group of people in public, usually to express opposition to a policy proposed or implemented by a party. It can also be carried out as an attempt to exert political pressure by a vested interest group. In a democratic country, demonstrations are a common way to express an opinion or oppose a policy. In principle, demonstrations should be viewed as a group of people enjoying and exercising their rights as citizens, as demonstrations are a constitutionally guaranteed right and a human right.

Demonstrations are not movements intended to impose the will of a particular individual or group, but rather are part of a democratic element for expressing opinions. Therefore, in their actions, protesters should understand their rights and obligations and proceed from good intentions for the advancement of the nation and state. Demonstrations must uphold ethics and must not involve violence, especially when held in large numbers. None of these movements should be tinged with violence that could instill fear and discomfort in any party. A wise leader will view demonstrations as a tangible manifestation of public concern for the development and fate of the nation, a desire to improve the situation, and a gesture of solidarity with the suffering of the common people. Public demonstrations are a sign that there are still unmet public aspirations.

The Mobile Brigade Corps (Brimob) is an elite unit within the Indonesian National Police (Polri) that plays a crucial role in maintaining public order, particularly in emergencies such as handling mass riots. In the context of a state governed by the rule of law like Indonesia, all Brimob Corps actions must be based on applicable law, while upholding human rights. The authority granted to Brimob is not only repressive, but also preventive and humanistic, in accordance with the mandate of the constitution and various regulations. Within the national legal framework, the basis of the Mobile Brigade Corps' authority can be traced to Law Number 2 of 2002 concerning the Indonesian National Police. Article 13 of this law stipulates that the primary duties of the Indonesian National Police, including the Mobile Brigade Corps, are to maintain public order and security, enforce the law, and provide protection, assistance, and services to the

community. In carrying out these duties, the Mobile Brigade Corps is tasked with addressing high-intensity threats, including mass riots.

However, in practice, the use of force by the Mobile Brigade Corps often creates legal dilemmas, particularly regarding human rights (HAM). The standard operating procedures used by the Mobile Brigade Corps must align with Law Number 39 of 1999 concerning Human Rights. For example, in the context of dispersing a violent crowd, the Mobile Brigade Corps must ensure that the action taken is a last resort after all persuasive efforts have failed, and that the action is proportionate to the threat faced.

Compliance with human rights principles is also reflected in Police Regulation Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Execution of Police Duties. This regulation emphasizes that every repressive action must be subject to a thorough threat analysis and documented use of force for legal accountability. A major challenge faced by Brimob in handling mass riots is maintaining a balance between the need to maintain public order and respect for the public's freedom of expression. In some cases, such as those in several regions, Brimob's actions in controlling crowds have drawn criticism from various human rights organizations, particularly regarding allegations of excessive use of force. Therefore, it is crucial for every Brimob personnel to understand the hierarchy of legal norms governing their actions, from the 1945 Constitution, the National Police Law, the Criminal Code, to the Chief of Police Regulations (Perkap) and internal procedures. This understanding is not only crucial for avoiding violations of the law but also for strengthening the legitimacy of police actions in the eyes of the public.

One of the key instruments in Brimob's training regarding handling mass riots is ongoing training in crowd control techniques, non-violent approaches, and an understanding of human rights principles. For example, Brimob's PHH training is conducted quarterly to maintain personnel's preparedness for riots, prioritizing conflict de-escalation. In handling mass riots,

Brimob employs a phased approach. This procedure begins with the physical presence of troops to demonstrate readiness, followed by verbal action to disperse the crowd, the use of non-lethal means such as shields and tear gas, and ultimately the use of greater force if necessary. These stages must be followed meticulously to ensure any escalation of action is legally and ethically justified.

In exercising the authority to handle demonstrations by the Police, pursuant to Law No. 9 of 1998 concerning Freedom of Expression, the Police, within their jurisdiction, have the right to be informed and have the authority to handle the demonstration. During demonstrations, there are several stages in the implementation of demonstration security by the Dalmas (Community Police Unit). This stage is adjusted to the conditions or situations of the demonstration activities. The stages are: a. Stage of orderly situation (Green), The orderly stage is the stage where the demonstration activities are still running safely, there are no activities that lead to disorderly activities. In an orderly situation, the initial Dalmas troops are deployed. The initial Dalmas is a Dalmas unit that is not equipped with special police equipment that is mobilized in facing conditions where the masses are still orderly and orderly (green situation). In an orderly situation, the Dalmas troops provide escort and security to the demonstrators while continuing to provide appeals to the demonstrators. b. Stage of Disorderly Situation (Yellow), At this stage, the negotiator continues to negotiate with the protesters' coordinator as much as possible, even though the situation is no longer orderly (yellow). A disorderly situation is a situation where the protesters have begun to carry out actions that disrupt order and security around the demonstration location, theatrical actions and similar actions that bother other members of the community. c. Unlawful Stage (Red): An unlawful situation occurs when protesters engage in unlawful acts during a demonstration. For example, theft, damage to public property or property belonging to the surrounding community, intimidation, or other criminal acts. In unlawful

situations, control rests with the Chief of Police, acting as the general controller, after receiving notification from the local police chief of the unlawful situation.

Adequate legal protection for Brimob (Mobile Brigade Corps) personnel is crucial to maintaining professionalism and effectiveness in carrying out their duties to secure demonstrations. With legal protection, Brimob personnel can act decisively and fairly when dealing with crowds, without fear of unfair legal action. Furthermore, legal protection can also boost Brimob personnel's morale and motivation in carrying out their duties. Legal protection for Brimob personnel in securing demonstrations, as stipulated in National Police Chief Regulation Number 16 of 2006, aims to guarantee the rights of Brimob personnel while carrying out their duties and to provide legal certainty in their actions. This protection encompasses the basic rights of Brimob members as citizens as well as special rights related to the police profession. There are two criteria for legal protection for Brimob Polri members: the first is closely related to their personal rights as human beings, and the second is legal protection when carrying out their profession, namely the duties and authorities of the police. Legal protection for personal rights, namely protection provided related to their nature as human beings who have natural rights and their rights as citizens in a state based on law. Meanwhile, protection for safety in carrying out their profession, namely protection provided against what is the risk and their duties and authorities.

Legal protection for members of the Mobile Brigade Corps of the Republic of Indonesia National Police (Polri) who carry out their profession but not in accordance with the provisions of the law is when they undergo the legal process, namely by paying attention to their rights as human beings who have the right to the presumption of innocence, the right to be equal before the law, the right not to be subject to retroactive law, the right to receive legal assistance starting from the investigation level to the trial level, and other rights in accordance with their rights as human beings living in a state of law. And in the sentencing process, they must pay attention to

applicable norms such as freedom and interests, avoiding elements of cornering, avoiding the emergence of coercion for moral reasons as holders of the police profession, being fair and objective.

Obstacles Faced by Brimob in Implementing Crowd Control

Demonstrations are generally motivated by the collapse of channels for expressing aspirations or the impasse of dialogue. In a country's political system, the people's aspirations are represented by members of the legislature. However, in a corrupt government where legislators are unable to fulfill their role, the people take concrete action by holding demonstrations. These demonstrations are not simply intended to shout in front of members of parliament or the general public, but also to shape public opinion or garner support. Many issues raised by students develop into community issues and shape public opinion. Understanding demonstrations as a form of political actualization is essential in the practice of politics in a democratic country. Demonstrations, as a form of political expression, should be accepted and accommodated in the political and governmental process.

The widespread coverage of student demonstrations, carried out in the name of the people, through various media outlets, both electronic and print, will undoubtedly contribute to the formation of perceptions (viewpoints) among individuals and students. Perceptions arise from continuous, intensive media coverage, which then leads to different perceptions, as the public is inherently active. Demonstrations, which are essentially protests, are a way of expressing protest against a specific issue. While demonstrations typically take the same form, demonstrations have remained unchanged from the past to the present. However, it's important to emphasize that our country's governance system has changed, marked by the introduction of democratic principles. Demonstrations are part of democracy, the right to express opinions. Demonstrations often end in riots. Violence can arise from several factors, including internal and external factors within

the demonstrators themselves. Internal factors originate within the demonstrators themselves, while external factors originate outside the demonstrators' sphere.

Police actions are divided into the following: 1. Preemptive action. The initial action taken by the police is to appeal to and request the protesting group to hold an organized demonstration. This aims to ensure that demonstrations can proceed in an orderly manner and prevent incidents that are detrimental to the community, then notify the relevant agencies in advance who will be the targets of the demonstration and/or performance. 2. Preventive Action. This is an effort by the police to carry out their duties according to established procedures. This is intended for police actions, both individual and departmental, not to be considered too much by the community. In taking action, the police must carefully consider the opportunities that may arise during the demonstration to minimize threatening things that arise from the impact of the demonstration and/or broadcast, to prevent mass riots, one way is to clear the streets. 3. Repressive Action. The role of the police in this repressive form occurs when the demonstration carried out by the protesters has led to anarchic actions, thus disrupting security and order. This role is carried out by negotiators, Brimob, Densus 88, Bimmas, Bareskrim, Kasatvil and other regional police officers. When the masses become uncontrollable, it means they are starting to behave anarchically. Therefore, the security forces are forced to take action to forcibly resolve the masses, namely by dispersing the masses or expelling the masses from the demonstration site. Forms of action taken by the internal police to suppress demonstrations in the jurisdiction of the Bali Regional Police.

There are several obstacles in the legal protection efforts for Brimob members who carry out mass security duties: 1. Limited Social Security, When viewed from the regulatory provisions there are still limitations in social security provided to the families of victims or Brimob members who are negligent in carrying out their duties. The welfare provided by the state is certainly not as complete as that provided to Brimob members as active ASN, of course there are differences

between members and families left behind. The state does not fully guarantee welfare to the families left behind because of the consideration that the implementation of duties is no longer there, and there is no more contribution after death, so the state only provides enough to the family as a form of respect for members who carry out mass security duties if they die. 2. Complicated Administrative Procedures, The procedures that are passed still have complexities that cause difficulties in fulfilling the rights of heirs who often experience difficulties in obtaining administrative services at institutions that provide guarantees for family welfare. Complicated procedures certainly make it difficult for beneficiaries or guarantees to obtain what should be their rights. 3. Government Control and Evaluation are Not Yet Optimal. The government has an obligation to protect and supervise every service provided by institutions established by the government and independent institutions mandated to guarantee the rights of police officers. Supervision of the implementation of services for victims' families in receiving welfare guarantees has not been fully carried out by the government or the police institution, resulting in the complications described above. Therefore, the efforts that the state or government needs to make to overcome these challenges are: 1. There is a need to improve the welfare of families left behind by Brimob members who died in the line of duty, especially in securing demonstrations, which are considered commonplace. 2. Must create and establish a service mechanism for families that is easily accessible or passed through. Institutions that hold the rights of Brimob members must recognize the importance of providing good service to the families left behind so that it is easy to obtain their rights. 3. As the holder of the highest authority, the government must supervise the implementation of welfare guarantee services for the families of Brimob members left behind, so that there are no obstacles faced by the families left behind in obtaining the rights they should be able to enjoy after receiving a determination from the authorized institution.

Conclusion

Legal protection for members of the Mobile Brigade in controlling demonstrations based on the regulation of the Chief of the Indonesian National Police No. 16 of 2006, aims to guarantee

the rights of members of the Mobile Brigade who carry out mass security duties. Legal protection is divided into three things, namely: 1) Before carrying out duties, 2) During the implementation of duties, 3) After the implementation of duties. Obstacles in efforts to provide legal protection for members of the Mobile Brigade who carry out mass security duties: 1) Limited Social Security, 2) Complicated Administrative Procedures, 3) Inadequate Control and Evaluation from the Government. Efforts that need to be made by the state or government to overcome these challenges are: There needs to be an increase in the welfare of families left behind by members of the Mobile Brigade who died in carrying out duties. Must create and establish a service mechanism for families that is easily accessible or passed through. As the holder of the highest authority, the government must supervise the implementation of welfare guarantee services for the families of members of the Mobile Brigade who were left behind.

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