



ABUSE OF FORCE BY MEMBERS OF THE DALMAS IN HANDLING DEMONSTRATIONS

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Abstract

Demonstrations are a form of implementation of human rights guaranteed by the 1945 Constitution of the Republic of Indonesia and Law Number 9 of 1998 concerning Freedom of Expression in Public. In its implementation, the Indonesian National Police (POLRI), especially the Dalmas (Community Police), has an obligation to maintain security and order during demonstrations. However, in practice, there are still cases of abuse of force by Dalmas members that are carried out excessively and disproportionately against demonstration participants. This study aims to analyze the forms of abuse of force by Dalmas members in handling demonstrations, the causes of abuse of authority, and law enforcement efforts against police officers who commit violations. The results of the study indicate that repressive actions by Dalmas officers that exceed the limits of authority are contrary to the principles of legality, proportionality, necessity, and respect for human rights as specified in applicable laws and regulations. This abuse of force can be categorized as a violation of the law, a violation of discipline, and a violation of the Indonesian National Police's professional code of ethics. Therefore, stricter oversight, increased professionalism of officers, human rights education, and reform of the police's legal culture are needed to achieve humane and democratic law enforcement.

Keywords: Abuse Of Force, Dalmas, Demonstrations, Polri, Human Rights.

INTRODUCTION

Freedom of expression in public is a human right guaranteed by the constitution and laws and regulations, one of which is through Law Number 9 of 1998 concerning Freedom of Expression in Public. This right is an important means for the public to express aspirations, criticism, and control the course of government. However, sometimes in its implementation, demonstration activities end in anarchic actions and riots often also give rise to dynamics in the field that require the presence of police officers, especially crowd control units (Dalmas), to maintain order and security. In this case, the police have the authority to carry out several actions as regulated in Law Number 2 of 2002 concerning the Republic of Indonesia National Police, which regulates the Polri as a state instrument that maintains security, public order, enforces the law, and protects and serves the community.

Demonstrations that can be in the form of demonstrations, parades, public meetings, or free speech are not only guaranteed in the 1945 Constitution along with all the basic principles of organizing life under the rule of law (therefore they are considered Constitutional Rights) but are also recognized and guaranteed in National and International Human Rights Law instruments as Constitutional Rights as well as Human Rights (HAM), so in principle the State and all its apparatus are obliged to respect, protect, fulfill and advance them.¹ Demonstrations in Indonesia have become a daily public consumption. This can be seen on television screens and in newspapers where demonstrations are held to reject the performance of the government which does not side with the interests of the people and the rulers who have an immoral attitude, namely corruption, collusion and nepotism.²

¹MINISTRY OF EDUCATION AND CULTURE. (2017). Pancasila and Citizenship Education. Jakarta: Indonesian Ministry of Education and Culture, p. 93.

²Agusta, I. 2002. Empowerment Program Evaluation Method. Humaniora Utama Press; Bandung, p. 37

In developing countries that adhere to democratic politics, the perspective of the authorities in viewing the demonstrations articulated by the community is prioritized on understanding the objectivity of conditions that are considered dissatisfaction at the lower level. This is reflected in a critical analysis of the substantial initial factors that caused the emergence of these mass actions.³

It is important to fully understand that demonstrations or public expression of opinion are essentially manifestations of freedom of assembly, opinion, and expression. Demonstrations should be viewed not only as a normal expression of society but also as an indicator of the application of "democratic principles" in a pluralistic society.⁴ However, freedom of expression in public is not an absolute right, but remains subject to existing regulations to guarantee the rights and freedoms of others and maintain public order. In this regard, the state certainly has a dual role: guaranteeing and protecting the implementation of this right and ensuring that its implementation does not disrupt the public interest. The essence of life and the scope of political demonstrations are usually closely linked to the need for stability designed by the system of power. The perspective of the apparatus' culture in responding to public demands expressed through unconventional, peaceful participation media, such as demonstrations, will in turn play a decisive role in the balance of state-civil society relations.⁵

Problems arise when, in practice, police officers, particularly the Dalmas (Community Police), abuse their power. Excessive action in handling demonstrations has the potential to lead to human rights violations and contradicts the very purpose of democracy. The police, tasked with maintaining national security, are required to secure and stop the anarchic actions of protesters. However, in carrying out their duties, the police often act inconsistently with applicable regulations, such as using violence to quell protesters.⁶ Law No. 9 of 1998, which regulates demonstrations, tends to be general in nature and does not clearly regulate the limits of the use of force by police officers in dealing with demonstrators. Meanwhile, Law No. 2 of 2002 directly grants authority to police officers, leaving room for considerable interpretation in carrying out their duties. This situation has the potential to create an imbalance between protecting the public's right to demonstrate and police actions in maintaining public order.

In handling demonstrations on the ground, each police officer is permitted to act according to his or her own judgment, but must do so based on security, order, and the public interest. For the police, the implementation of their authority to handle demonstrations must be judicious. The police must be consistent with Law No. 9 of 1998 concerning freedom of expression in public.⁷ However, the phenomenon of abuse of force by the authorities in controlling demonstrations can be seen from various events that have occurred in Indonesia, one example that has just occurred in recent years is in 2020 when demonstrations against the Job Creation Law (Omnibus Law) occurred in various regions carried out by thousands of people from various levels of society which resulted in clashes between demonstrators and officers and it was alleged that the officers used excessive force in the process of dispersing the mass action by the police including the Dalmas unit. Of course, this incident has drawn a lot of criticism from various groups of society, both civil society and human rights monitoring institutions because it is considered not in line with applicable regulations where there is a lot of use of physical violence against demonstrators and arrests without clear procedures. Whereas in the context of a state of law, every action of the authorities should be accountable and not exceed the limits of established authority.

The role of the Indonesian National Police as a security force should be given homework on how to design a new format to deal with, contain, regulate and secure uncontrolled demonstration masses in accordance with the reality of frequent clashes between demonstration masses and the police.⁸ In the Regulation of the Chief of Police Number 1 of 2009, it has been regulated in detail regarding the use of force in police actions which serve as guidelines

³Handoko, H. 2016. *Personnel and Human Resource Management*. BPF Publisher. Yogyakarta, p. 128

⁴Lokataru, F. (2019). *Data on Complaints from Victims of the September 24, 2019 Demonstration*. Jakarta: Lokataru, p. 82.

⁵Hakim, L. 2013. *Problems of Democracy and Good Governance in the Reform Era*. First edition. Brawijaya University Press. Malang, p. 868

⁶Maryam, NS 2016. *Realizing Good Governance Through Public Service*. *Journal of Political Science and Communication* 6(1): 1-18

⁷Law Number 9 of 1998 concerning Freedom of Expression in Public

⁸Suaib, MR 2016. *Introduction to Public Policy from State Administration: Public Policy, Public Services, Good Governance to Policy Implementation*. First edition. Calpulis. Yogyakarta, p. 56.

for police officers while on duty, however, this is an internal regulation, the position of the regulation is still under the Law so that its binding power is limited. This raises the need for a deeper study regarding the suitability between the various regulations governing the handling of Demonstrations and the use of force by police officers, especially the Dalmás unit in handling demonstrations, especially to examine the form of legal accountability for the abuse of force. Based on the description of the background above, the formulation of the problem is:

"How are law enforcement efforts against the abuse of force by Dalmás members in handling demonstrations?"

DISCUSSION

As a nation governed by the rule of law, every government action must be based on law. Law is a system of norms that includes criminal law. Law enforcement through the criminal justice system aims to address all crime.⁹ Law enforcement in the criminal justice system is closely related to the principle of legality or *wetmatigheid van bestuur*. This principle is a determining factor, even though it is not based on the responsibility delegated by the applicable laws and policies. Therefore, all law enforcement officers in carrying out their duties as law enforcers will not have responsibilities that could influence the condition or legal status of their community.¹⁰

According to J Valkhoff, quoted by Van Bemmelen in Bambang Waluyo¹¹ states that legal science considers the state as the most important, even the only, source of law at the time the *Van Strafrecht Weboek* was prepared, then further by Van Bemmelen, citing Langemeyer's opinion, states: "Positive law today cannot be thought of other than as starting from the 'state'. In fact, 'state' is the name we give to the highest organization to exercise power over a certain area and in the name of certain human superiority."¹² The Indonesian National Police (Polri) is an extension of the state responsible for ensuring public order and security. Therefore, if the public is safe, the state will be safe too. On the other hand, the police are also in a dilemma between guaranteeing freedom of expression and maintaining public order. In situations where demonstrations have the potential to escalate into anarchy, officers are required to act swiftly and decisively, while remaining within the law.

The body of the 1945 Constitution of the Republic of Indonesia in Article 30 paragraph (4) has given express authority to the Indonesian National Police as a state apparatus whose main function is to maintain security and public order, enforce the law and provide protection, patronage and service to the community. Furthermore, the legitimacy of the position of the Indonesian National Police is emphasized in Law Number 2 of 2002 concerning the Indonesian National Police, abbreviated as Law No. 2 of 2002. This function is regulated in Article 2 in conjunction with Article 4, namely one of the functions of state government in the field of maintaining public security and order, law enforcement, protection, shelter, and service to the community. And the goal of the Indonesian National Police is to realize domestic security by upholding human rights. Thus, all police actions, including crowd control in demonstrations, must pay attention to the principles of human rights, professionalism, and proportionality.

According to Jimly Asshiddiqie, an expert in constitutional law, in his book, he wrote that the Indonesian National Police in a modern democratic country is not only a tool of state power, but also an instrument of law enforcement that must comply with the principles of the supremacy of law and respect for human rights.¹³ Manifestation of submission to the rule of law and respect for human rights, which means that the power possessed by the Indonesian National Police must not be repressive and arbitrary. Handling demonstrations carried out by the Indonesian National Police unit with authority in mass control (DALMAS), can use its power with a humanist approach in order to maintain public order. The police must not be an instrument of state violence against civilians who express opinions in public (the concept of civil police).¹⁴ The following is the legal basis for the duties and functions of the Indonesian National Police's Dalmás unit in carrying out its duties in handling mass situations, including demonstrations, riots and also protest actions, which are in controlling the masses in a measured manner so that the situation remains safe and conducive:

1. Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia
2. Law Number 2 of 2002 concerning the Republic of Indonesia National Police

⁹ Ella Angelia, Thesis: "The Implementation of Criminal Investigation Discretion at the Criminal Investigation Unit of the Indonesian National Police Headquarters (Discretion in Handling Demonstrations), (Jakarta: Veteran National Development University Jakarta, 2018): 25.

¹⁰ Ari Nurhaqi, Thesis: "Police Discretion in Law Enforcement against Criminal Acts" (Badung: Parahyangan Catholic University, 2017), p. 1

¹¹ Bambang Waluyo, *Criminal Acts Against State Security*, 2024. Sinar Grafika. Jakarta. p. 1.

¹² Ibid.

¹³ Jimly Asshiddiqie, *Constitutional Law and the Pillars of Democracy* (Jakarta: Sinar Grafika, 2012), pp. 95–102.

¹⁴ Satjipto Rahardjo, *Building a Civilian Police: Legal, Social, and Community Perspectives*, Jakarta: Kompas Book Publishers, 2007, p. 291

3. Law Number 9 of 1998 concerning Freedom of Expression in Public
4. Regulation of the Chief of Police Number 16 of 2006 concerning Guidelines for Crowd Control
5. Regulation of the Chief of Police Number 1 of 2009 concerning the Use of Force in Police Actions

Regarding the National Police Dalmas Unit, in carrying out its duties and functions, it is more firmly regulated in the Chief of Police Regulation No. 16 of 2006 concerning guidelines for crowd control, that Article 1 letters 1, 2 and 3 as follows:

1. Mass Control, hereinafter referred to as Dalmas, is an activity carried out by the Indonesian National Police unit in order to deal with masses of demonstrators.
2. Early Dalmas is a Dalmas unit that is not equipped with special police equipment, mobilized to face conditions where the masses are still orderly and regular/green situation.
3. Dalmas Lanjut is a Dalmas unit equipped with special police equipment, deployed to deal with conditions where the crowd is no longer orderly/yellow situation.

The use of excessive, disproportionate, procedural, or unlawful use of police force in handling demonstrations is known as abuse of force by Dalmas members. Crowd control in a situation including demonstrations that we can see and read in several media that show the incident, maybe even feel such a situation, is still often seen, excessive use of physical violence, Beating of demonstrators who do not resist, Unprocedural shooting of tear gas, arbitrary arrests, Intimidation of demonstrators, Dispersal of peaceful demonstrations without legal basis and Disproportionate use of weapons or crowd control tools.

The use of force by officers is also regulated more strictly in Article 3 of Regulation of the Chief of Police No. 1 of 2009 concerning the Use of Force in Police Actions, which must fulfill the following principles:

- a. legality, which means that all police actions must comply with applicable laws;
- b. necessity, which means that the use of force can be carried out if it is necessary and cannot be avoided based on the situation at hand;
- c. proportionality, which means that the use of force must be carried out in a balanced manner between the threat faced and the level of force or response of the Polri members, so as not to cause excessive losses/victims/suffering;
- d. general obligations, which means that members of the Indonesian National Police are given the authority to act or not act according to their own judgment, to guard, maintain order and guarantee public safety;
- e. preventive, which means that police actions prioritize prevention;
- f. reasonable, which means that police action is taken by logically considering the situation and conditions of the threat or resistance of the perpetrator of the crime to officers or the danger to the community.

Due Process of law is a fundamental principle of the rule of law, in which the state provides legal guarantees to every individual in obtaining a fair, transparent and procedural legal process, which means that the state guarantees and provides protection of Human Rights to every individual, as stated by Yahya Harahap,¹⁵ that "law enforcement officers are obliged to act based on procedural law and may not use their power arbitrarily." In line with the opinion of Satjipto Rahardjo¹⁶, emphasizes that abuse of authority by law enforcement officers can be categorized as a violation of the law and a violation of professional ethics if the action exceeds the authority granted by law. Therefore, law enforcement officers in exercising their authority must adhere to professional ethics, morality, and human values. Abuse of authority that exceeds the law reflects a deviation from law enforcement and contradicts the principles of the rule of law and substantive justice.¹⁷

Abuse of force by members of the National Police's community police unit (Dalmas) is categorized as a violation of human rights, as well as a violation of discipline and the National Police code of ethics. Demonstrations should not be met with violence, let alone hindering or prohibiting the expression of opinions, as this would certainly be unconstitutional. The use of violence by Dalmas in dealing with excessive demonstrations certainly violates Article 28E of the 1945 Constitution of the Republic of Indonesia and Law No. 39 of 1999 concerning Human Rights. The UN's basic principles regarding the use of force and firearms by law enforcement officers. Meanwhile, violations of discipline and the Indonesian National Police code of ethics are regulated in Government Regulation No. 2 of 2003 concerning Disciplinary Regulations for Indonesian National Police Members and also the Indonesian National Police professional code of ethics. Of course, also regarding abuse of authority, if it results in serious injury or death, then it can be charged with the Criminal Code regarding abuse, violence, or serious human rights violations according to the concrete circumstances of the case.

¹⁵M. Yahya Harahap, *Indonesian Criminal Procedure Law* (Jakarta: Sinar Grafika, 2002), pp. 36–45.

¹⁶Satjipto Rahardjo, *Law Enforcement: A Sociological Review* (Yogyakarta: Genta Publishing, 2009), pp. 14–15

¹⁷Ibid.

This occurs because officers as members of the Indonesian National Police unit who have the duty and function of community police (Dalmas), still lack understanding of human rights, emotions and provocation from demonstrators that make officers unable to control their actions, habits/culture. According to Muladi, police reform must be directed at the formation of a professional, modern, and human rights-respecting apparatus to prevent abuse of power in law enforcement.¹⁸

CONCLUSION

If members of the Dalmas unit use force to handle demonstrations, it is an act that violates democracy and the principles of the rule of law. The Indonesian National Police (Polri), as a state institution, is responsible for protecting the public's right to speak in public rather than engaging in repressive actions that violate the law and human rights. Dalmas is fundamentally designed to maintain security and order during demonstrations, conducted in a proportionate and professional manner. Therefore, legality, proportionality, and respect for human rights must be the basis for any use of force.

SUGGESTION

To avoid abuse of authority in acting by members of the National Police Dalmas unit, the government and police institutions are obliged to:

- a) strict internal controls
- b) improving human rights education,
- c) enforcement of the code of ethics,
- d) transparency in handling demonstrations,
- e) and reforming police culture to make it more humanistic and democratic.
- f) Strict sanctions

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¹⁸Muladi, Democratization, Human Rights, and Legal Reform in Indonesia (Jakarta: The Habibie Center, 2002), pp. 120–135.

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