

## The Rule of Law Shoots Dead where Police Do against Criminals

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### *Abstract*

*Shooting to death on the spot is carried out by the police in enforcement and security efforts to protect the public and the police from the threat of resistance by criminals. However, in carrying out these actions, it is not uncommon to have legal implications for the police, in other words the police in carrying out these actions cannot be separated from criminal elements. Procedural errors and negligence in using firearms in carrying out police duties are often things that must be held criminally accountable. The responsibility of the police in carrying out the act of shooting to death on the spot against the perpetrators of the crime has a procedure in carrying it out. The procedure for the use of firearms and the authority to shoot and die on the spot carried out by the police are described in the Regulation of the National Police Chief Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of the Duties of the Indonesian National Police and in Perkap Number 1 of 2009 concerning the Use of Force in Police Actions. The specification of this research was descriptive analytical, which was a research that aimed to provide data that was as accurate as possible about humans, certain conditions or symptoms in relation to laws, regulations, and legal theories that are the object of research. This research method used normative juridical research methods, by researching library materials which are secondary data and also known as library law research.*

**Keywords:** *Procedure, Shoot Dead, Criminal, Police*

## INTRODUCTION

The police is one of the state institutions as the leading layer of community custody must be able to maintain moral integrity, with a moral foundation for law enforcement in Indonesia. The enactment of Law No. 2 of 2002 concerning the Indonesian Republic State Police which prioritizes the function of community service. As a tool of the state of law that primarily fosters public security and order, the police are obliged to organize all efforts, both preventive and repressive (Prakoso, 1987).

The theory of modern state regulation, for a country that adheres to a presidential system of government, the country is led by the president in his position as head of state and head of government, so that if it is associated with the meaning of the Police as a tool of the state, it means the Police in exercising its authority under the president as head of state. The function of the Police on the other hand carries one of the "functions of government" containing the meaning of government held by the president as holding government power. This is affirmed in article 2 of Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia which states that the function of the Police is a function of state government in

the field of public security and order, law enforcement, protection, protection, and service to the community (Mansur & Gultom, 2012).

Police also function in law enforcement in criminal cases that act as investigators and investigators. The terms investigation and investigation are separated by the Criminal Code, although according to Indonesian both languages are derived from the basic word *sidik*, which means checking research. The word *sidik* is given the greeting *el* becomes a survey which means a lot of investigation. So, probing and probing actually has the same meaning. *El inserts* only harden (many) piercing (Hamzah, 2008). Investigators consist of the State Police of the Republic of Indonesia and certain civil servants who are given special authority by law, while investigators consist only of state police (Mulyadi, 1996).

The role of the police in maintaining public security and order is also written in TAP MPR Number VII / MPR / 2000 year 2000 in porigin 6, namely: (1) the State Police of the Republic of Indonesia is a state tool that plays a role in maintaining public security and order, enforcing the law, providing service, and service to the community (2) In carrying out its role, the State Police of the Republic of Indonesia must have professional expertise and skills.

The State Police of the Republic of Indonesia (Polri) has the authority to act according to its own assessment. The authority is written in Article 18 paragraph (1) of Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia, namely: in the public interest of the officers of the State Police of the Republic of Indonesia in carrying out their duties and authorities can act in their own judgment.

POLRI in carrying out its duties and authority can not be separated from the problems that occur on the ground. The scope of the Police whose duties are often and even must be directly related to the criminal world is not uncommon for police to risk their lives. Crimes using weapons that can threaten the life of the Police and the public require the Police to take decisive action against the situation, one of which is the crime by using firearms. The actions of the Police using firearms with the intention of disabling the perpetrator of the health, not infrequently resulted in his life being lost.

One of the U.S. criminologists, Shutherland, said that police everywhere are always familiar and chatting with violence. The violence that always colours police life can come from the general protected public or from embattled criminals. Not surprisingly, there are people who think the work of the Police is dirty and unpleasant (Supriadi, 2019)

Various questions arise among the public why the Police use violence, unresponsive, and less protect and protect the community. This condition is motivated by how the implementation of law enforcement in the field, especially the actions of the Police at the crime scene. Every action, the Police has the authority to act according to its own judgment. The actions taken by the Police are protected by law. The authority is written in Article 18 paragraph (1) of Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia, namely: in the public interest of the officers of the State Police of the Republic of Indonesia in carrying out their duties and authorities can act in their own judgment.

Thomas Jeferson who also served as the third President of the United States in Suhrawardi's book mentions what is known as the *Declaration of Independence*, which among other things mentions that: All that He created in a state of independence and have the same degree and is granted a right that cannot be separated from everyone among others: (1) The right to live (2) the right to freedom (3) the right to pursue independence (Supriadi, 2019)

Police as a law enforcement agency in carrying out its duties must remain submissive and comply with the duties and authorities as stipulated in the law. Article 13 of Law No. 2 of 2002 states that the main duties of the State Police of the Republic of Indonesia are: (1) mto maintain the prosperity and order of the community (2) mreegkan law (3) Provide protection, protection, and service to the community (Supriadi, 2019).

The performance of the Police is required to be firm in reducing the crime rate even though the risk experienced is very high. The authority given to the Police with the intention of protecting the public from the threat of crime is very risky with the consequences of such decisive action against the negligence of the Police that can provide opportunities for criminal elements to the Police that can be accounted for their actions.

## **RESEARCH METHOD**

The type of research used in this study was normative legal research. Normative legal research is research conducted by examining library materials (secondary data) or literature law research (Ediwarman, 2009). Normative legal research is a scientific research procedure to find the truth based on the logic of legal science from the normative side. The logic of science that is often in normative legal research is the science of law whose object is law itself (Ibrahim, 2006).

This research aimed to reveal the reality to the extent to which a particular legislation is compatible vertically and horizontally with another rule, resulting in the synchronization of the law.

This research was a descriptive analysis (Waluyo, 2008). Research that is descriptive analysis is a study that describes, examines, explains and analyzes a legal regulation (Soerjono & Mamudji, 1995). This research is a scientific activity based on certain methods, systematics and thoughts that aim to study a particular law by analyzing it (Soerjono & Mamudji, 1995).

Data analysis is the process of arranging the sequence of data, making it into a pattern, category, and a basic description (Meleong, 2005). Data analysis in this study uses qualitatively, i.e. based on the relevance of data to the problem, not based on the amount of data (quantitative) (Meleong, 2005) This qualitative analysis with norms, principles, principles, concepts, doctrines (Meleong, 2005)

Data analysis will be conducted by conducting a review of the laws and regulations in Indonesia that regulate criminal accountability to the police in carrying out gunfire in place against criminals. The data in the form of the study will be analyzed deductively in order to arrive at a final conclusion that will answer all the subjects in this study.

## **DISCUSS AND ANALYSIS**

### **Criminal Code (Criminal Code)**

Law enforcement by members of the police certainly has a legal advantage in acting or looking at situations that are immediately possible in making decisions. The decision has consideration of various aspects both social, psychological or protection for the community and the police. One form of law enforcement efforts against criminal offenders who fight and endanger officers and the surrounding community, of course, needs to make the right decision in this case shoot in place as an effort to soften the actions of dangerous perpetrators.

Shooting on the spot carried out by the police certainly has a foundation that is in accordance with the rule of law in the act of shooting. The circumstances or verbal orders are one of the actions of the police in conducting law enforcement efforts in the field. The Criminal Code (Criminal Code) Article 48 of the Criminal Code which reads whoever commits an attack because of forced force (*overmacht*) is not convicted.

The existence of force is what causes members of the Police of the Republic of Indonesia to use force with firearms. In Article 49 paragraph (1) of the Criminal Code regulates the defense of forced (*noodweer*), whose formulation mentions whoever is forced to commit acts for defense, because there is an attack or threat of attack when it is against the law, against yourself and others, against the honor of decency, or property alone or others, is not punished.

Innature article 50 of the Criminal Code which states whoever commits an act to carry out the rule of law, must not be in law, carrying out the law means not only limited to doing acts regulated by law but can more broadly include the actions carried out on the authority granted by a law.

Police who shoot dead in the process of arrest should be seen whether balanced what is not in terms of the use of firearms. And in article 51 of the Criminal Code paragraph (1) which states whoever commits an act to carry out the command of the office given by the right power of the authority, should not be punished. The Criminal Procedure Law (KUHAP) Article 7 paragraph (1) number 10 determines other actions according to the responsible law and in carrying out its duties must uphold the applicable law.

Other actions referred to in number 10 article 7 of the Criminal Procedure Law (KUHAP) is to include shooting dead on the spot on suspected persons or suspects associated in a criminal act including terrorism crimes. The shooting attempt is another act in carrying out its duties carried out in the case of a last resort to prevent the suspect from fleeing or resisting the Police of the Republic of Indonesia.

### **Law No. 2 of 2002 about the State Of Indonesia**

The duties and functions of the police as law enforcement that protects and protects the community are certainly based on the rule of law, namely Law No. 2 of 2002 concerning police. For the realization of a fair, civilized and civilized society based on Pancasila and the 1945 constitution. Police as a maintainer of domestic security and order through the efforts of police function organizers which include the maintenance of security and public order, law enforcement, protection, protection and service to the community by upholding human rights.

Juridically, the notion of authority is the ability provided by the laws and regulations to cause legal consequences (Lotulung, 1994). Brouwer, (1998) argues that attribution is the authority granted to an organ (institution) of government or state institutions by an independent legislative body. This authority is genuine, which is not taken from the previously existing authority. The legislature creates self-authority rather than the expansion of its previous authority and gives to competent organs.

Delegation is the authority transferred from the attribution authority of one organ (institution) of government to another so that the delegator (organ that has given authority) can test that authority on its behalf, while in the Mandate, there is no transfer of authority but the mandator (mandator) gives authority to another organ (mandatary) to make decisions or take an action on his behalf.

Authority must be based on the provisions of existing law (constitution), so that the authority is a legitimate authority. Demikia also with actions according to self-assessment by police members on the ground when dealing with conditions that must be quick to take decisions in order to ensure the protection of the community by the police.

In acting in his own judgment, it means that the police officer has known and realized the benefits and risks of the actions he will take, so that the legal basis of the implementation of the shooting order in the same place as police discretion is: 1. Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia Article 16 paragraph 1 letter l and Article 16 paragraph 2, which states: (1) In order to carry out duties as referred to in Articles 13 and 14 in the field of criminal proceedings, the State Police of the Republic of Indonesia is authorized to:<sup>1</sup>take other actions according to the responsible law. (2) Other actions referred to in paragraph (1) letter l are acts of investigation and investigation carried out if they meet the following conditions: Not contrary to a rule of law. In accordance with the legal obligations that require such actions to be carried out. It should be appropriate, reasonable, and included in the environment of his office. Proper consideration based on coercive circumstances and respect for human rights.

Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia Article 18 paragraph 1 which reads "In the public interest of the officers of the State Police of the Republic of Indonesia in carrying out their duties and authorities can act in their own judgment". Where it means "Acting in its own judgment is an action that can be taken by members of the Police of the Republic of Indonesia who in acting must consider the benefits and risks of their actions are right in the public interest. (explanation of Law No. 2 of 2002 Article 18 paragraph 1) 9 3. The Criminal Procedure (Law No. 8 of 1981) Article 5 paragraph 1 letter a number 4 which states: "The investigator as referred to in Article 4: because his obligation has the authority: to take other actions according to the responsible law"

Where the investigator referred to in article 4 of the KuhaP is every official of the State Police of the Republic of Indonesia. And other actions referred to in the above article are actions that are included in the discretion of the police. 4. The Criminal Procedure Law (Law No. 8 of 1981) Article 7 paragraph 1 letter j.

### **National Police Regulation No. 8 of 2009 concerning The Implimentation of Human Rights Principles and Standards in the Implementation of The Duties of the State Police of the Republic of Indonesia**

The police as a tool of the State is on duty and serves to maintain public security and order, law enforcement, protection, protection, service, and service to the community. In carrying out its functions, the police have an obligation to respect, protect and uphold human rights in carrying out their duties and functions.

The purpose of this Regulation is (1) to ensure the understanding of basic human rights principles by all police officers so that in carrying out their duties always pay attention to human rights principles; (2) to ensure changes in the pattern of thinking, behaving, and acting in accordance with basic human rights principles;

Based on Article 47 of The National Police Regulation 8/2009 mentioned that: (1) The use of firearms should only be used when it is really intended to protect human life. (2) Firearms for officers may only be used for: (1) in the event of exceptional circumstances; (2) defend yourself from threats of death and/or serious injury; (3) defend others against threats of death and/or serious injury; prevent serious or life-threatening crimes; (4) detain, prevent or stop a person who is or will commit a very life-threatening act; and (4) deal with life-threatening situations, where softer measures are not enough.

The use of firearms by the police is carried out if (1) the actions of the perpetrator of the crime or suspect can immediately cause severe injury or death for members of the Police or the public; (2) Members of the Police have no other reasonable and reasonable alternative to stop the actions / actions of the perpetrators or suspects; (2) Members of the Police are preventing the escape of criminals or suspects who are an immediate threat to the lives of police members or the public.

In principle, the use of firearms is a last resort to stop the actions of criminals or suspects So, the use of firearms by the police is only used when there is a threat to human life. Before using firearms, the police must give a clear warning in a manner (Article 48 letter b Perkapolri 8/2009): (1) mention himself as an officer or member of the Police on duty; (2) warn the target to stop, raise his hand, or lay down his weapon; and (3) give sufficient time for the warning to be obeyed

Before opening fire, police must also give warning shots into the air or to the ground with high caution with the aim of lowering the perpetrator's morals and warning before the shots are directed at the perpetrator. Warnings don't need to be made. How is the police responsible for the use of firearms? If any party is harmed or objected to the use of firearms, the police officer concerned shall make a detailed explanation of the reasons for the use of

firearms, the actions taken and the consequences of the actions that have been carried out (Article 49 paragraph [2] letter a Perkapolri 8/2009).

In addition, after using a firearm, the police must make a detailed report on the evaluation of firearm use. The report contains among others (Article 14 paragraph [2] Perkapolri 1/2009): (a) the date and scene; (b) a brief description of the events of the crime perpetrator or suspect, thus requiring police action; (c) reasons/considerations for the use of force; (d) details of the force used; (e) evaluation of the results of the use of force; (f) the consequences and problems caused by the use of such force.

This report will be used for legal liability materials for the application of the use of force, as well as legal defense material in the event of a criminal / civil lawsuit related to the use of force committed by the relevant members of the Police (Article 14 paragraph [5] letter e and f perkapolri 1/2009).

In principle, each individual member of the Police shall be responsible for the implementation of the use of force (firearms) in police actions carried out (Article 13 paragraph [1] Perkapolri 1/2009). Because of individual liability for the use of firearms by police, the use of firearms that have harmed others for not following procedures can be held accountable civilly or criminally.

The use of firearms by the Police must in principle be initiated first based on emotional intelligence therefore based on Article 3 perkap No. 4 of 2007 which states that the psychological aspects revealed in psychological examinations for prospective holders of tni/polri organic firearms include the originator aspect; and the inhibitory aspect. Psychological aspects of the originator include:

1. I'm impulsive or unable to resist the urge to act
2. I've been offended
3. Anew or encouragement to hurt others
4. Dorongan self-harm
5. Pamer
6. I have high prejudices against others
7. Lalai or tendency to behave allows his special items borrowed by others and put things in any place, and
8. I have serious problems in the household.

Aspects of inhibiting psychology are good self-adjustment, self-control, a strong super ego respecting the prevailing values/ rules, high humanism encouragement, alternative problem solving or being able to choose the right alternative in solving problems and resistance to stress. In nature Article 6 Perkap No. 4 of 2007, psychological examination using methods including psychotes; interviews; observations; and documentation.

### **Regulation of the Head of The State Police of the Republic of Indonesia No. 1 of 2009 concerning the Use of Force in Police Actions**

The exercise of the use of force in police actions must be carried out in a manner that is not contrary to the rule of law, in accordance with legal obligations and still respects / upholds human rights. The purpose of this regulation is regulated in article 2 paragraph 1 The purpose of this Regulation is to provide guidelines for police members in the implementation of police actions that require the use of force, so as to avoid excessive or unaccountable use of force.

The procedure of shooting at the scene of the arrest is to mention himself as an officer or police officer on duty, give a warning with a clear and firm speech to the target to stop, raise his hand or put down his weapon and give enough time for the warning to be obeyed.

Before opening fire, the police must also give warning shots into the air or to the ground with high caution with the aim of lowering the morale of the perpetrator and giving warnings

before the shots are directed at the perpetrator (Article 15 Perkap 1 of 2009). The exception is that in very urgent circumstances where time delays are expected to result in death or serious injury to officers or others around them, warnings do not need to be made (article 48 letter c Perkap 8 of 2009).

In the realm of the execution of the task, as far as possible the method that does not hurt is chosen then chosen the use of force and firearms if other means do not allow to succeed properly. In that regard, if the use of force and firearms is unavoidable officers consider; (1) Carry out detention and actions proportionate to seriousness in quelling the crime and the purpose of its service, (2) Eliminating damage and injury, respecting and maintaining the safety of the community. Trying to make sure, in the event of injury, the victim's family or closest friends are immediately notified (Kunarto, 1996)

This was stated by Indriyanto Seno Adji. In his book, that: "This act of police violence is the scope of doctrine and legal science whose form is interpreted as another act of the Police as a preventive *bevoegdheid* (preventive authority) justified *hoge Raad* (Supreme Court of the Netherlands). That acts of police violence must be based on two principles, namely the principle of proportionality where between the goal and the means taken to achieve that goal must be proportional, for example the police do not need to use a pattern of violence and gunfire to disperse demonstrations, simply with a bat, for example and, the principle of soft action to overcome the situation (Adji, 2009) . When soft action cannot be overcome, instead action is used more decisively, but worth it. The violation of these two principles is the basis of prosecution for perpetrators, including the police."

Some of the above regulations explain how important the rules in the use of firearms against the police in carrying out their duties. The use of firearms has been regulated in accordance with the operational standards of implementation in some of the above rules, including sanctions for police members for the use of firearms that are beyond reasonable limits that can pose a danger to society or result in death for someone who is attached to human rights.

## **CLOSURE**

### **Conclusion**

Legal arrangements on the criminal act of firearms abuse committed by police officers in carrying out their duties are regulated in the rules of the Criminal Code as a basic reference to ensnare criminals against criminal offenders. Law no. 22 of 2002 concerning policing is a rule of law regarding the performance of basic duties and the function of the police in law enforcement as law enforcement in accordance with procedures. The last is the police regulation on the use of violence in the fight against crimes in the community, which is an internal rule for the election in facing challenges in the community. Legal proceedings given to police officers who are negligent in the use of firearms so as to cause harm will be processed through general disciplinary and criminal actions. Disciplinary action is applied to each member of the police based on Government Regulation No. 3 of 2003 on the Institutional Technical Implementation of General Justice for Members of the State Police of the Republic of Indonesia, it can be through verbal and physical reprimands even through the commission hearing of the code of ethics of the election. In the general judicial process is carried out at judicial hearings in district courts as criminal proceedings in finding justice.

### **Suggestion**

The legislators should immediately issue a new Criminal Code that can define the use of firearms by officers and strict police rules will be disciplined by the police in using firearms as a use of force. Law enforcement proceedings against police officers who are proven to be against the law on the use of firearms that result in the death of others should be strengthened

by providing severe sanctions or punishments so that police officers can be wise and wise in carrying out their duties as law enforcement that upholds human rights.



## REFERENCES

- Adji, I. S. (2009). *Humanism and the Renewal of Law Enforcement*.
- Brouwer, J. G. (1998). *A Survey of Dutch administrative law*.
- Ediwarman. (2009). *Monograph Legal Research Methods* (Second).
- Hamzah, A. (2008). *Indonesian Criminal Procedure Law*. Sapta Artha Jaya.
- Ibrahim, J. (2006). Theory and Methodology of Normative Legal Research. *Unfortunate: Bayumedia Publishing*, 57.
- Kunarto, K. S.B. (1996). Overview of Human Rights Implementation in Law Enforcement. *Cipta Manunggal, Jakarta*.
- Lotulung, P. E. (1994). *The General Principle-Azas Paper Set of Good Governance*.
- Mansur, D.M. A., & Gultom, E. (2012). *The Right of Immunity of the Police Officer in countering terrorism crimes*. Pencil-324.
- Meleong, J. (2005). *Qualitative Research Methodology*.
- Mulyadi, L. (1996). *Criminal procedure law: a special review of indictments, exceptions, and judicial verdicts*. Aditya Bakti's image.
- Prakoso, D. (1987). *Police as Investigators in Law Enforcement*. PT. Bina Aksara.
- Soerjono, S., & Mamudji, S. (1995). *Normative Legal Research A Brief Review*. PT Raja Grafindo Persada, Jakarta.
- Supriadi, S. H. (2019). *Ethics and Responsibilities of the Legal Profession in Indonesia*. Graphics Rays.
- Waluyo, B. (2008). *Research in Law in Practice*.