

# Law Enforcement Against Violent Crimes By Police Members: A Case Study of the Use Of Excessive Force *Against* Protesters

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**Abstract :** This research examines law enforcement against acts of violence committed by members of the Indonesian National Police in the context of the use of excessive force when securing demonstrations. The phenomenon is considered a form of violation of criminal law and human rights that has the potential to threaten the principle of the rule of law and undermine the legitimacy of the police institution. The approach used is normative legal research with juridical analysis of the Criminal Code (KUHP), Law No. 2 of 2002 on the Police, Law no. 39 of 1999 on Human Rights, as well as the Chief of Police Regulation relating to the use of force. The results of the study show that although normatively there is an adequate legal basis to limit and regulate the use of force by the apparatus, in practice it often deviates from the principles of legality, proportionality and accountability. Offenders are not always processed through the general criminal mechanism, but only through internal ethical channels, creating an impression of impunity. Therefore, it is necessary to strengthen the criminal accountability system, institutional reform, and independent external oversight so that the principles of the rule of law and the protection of human rights can be thoroughly upheld.

**Keywords:** Excessive Force, Police, Protests, Law Enforcement, Human Rights, Criminal Liability

## I. INTRODUCTION

Indonesia's current democratic transition demands that the state and state apparatus be more professional and independent. The Indonesian National Police (POLRI), as one of the state apparatuses, has a strategic position, purpose, and function in realizing the ideals of the August 17, 1945 Proclamation of Independence, namely achieving a just and prosperous society. The POLRI also plays a role in enforcing the law, providing protection, guidance, and services to the public in order to maintain domestic security while upholding human rights.<sup>1</sup>

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<sup>1</sup>Jeremi Genard Johanes Ngangi, et al. Law Enforcement Against Police Officers Who Commit Violent Extortion Against Agricultural Product Traders. Faculty of Law Journal, UNSRAT Vol. 12 No. 5 (2024): Lex crimen. Pg. 1



The police's duties and authority as law enforcers essentially must apply positive law in the administration of government, where the application of law as a concrete action in legal practice is theoretically supported by three layers of legal science: legal philosophy, legal theory, and legal dogmatics.<sup>2</sup> Effective handling efforts carried out by the police in serving the public and resolving cases of violations, criminal and civil are very important, because the police are a symbol of upholding justice for the community.

A number of legislative and structural reforms have been implemented to strengthen the police's effectiveness in preventing and detecting crime, maintaining public order, and enforcing legal norms. These reforms have improved the organization of all areas within the Indonesian National Police (Polri), enabling them to more optimally achieve their goal of protecting, serving, and serving the public. Furthermore, several sections within the police force have received legal training and international human rights standards. Community policing initiatives have also been implemented to develop police professionalism and accountability to the public.<sup>3</sup>

Normatively, law enforcement against acts of violence committed by police officers can be seen in Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Members of the Republic of Indonesia National Police, and Regulation of the Chief of Police Number 14 of 2011 concerning the Code of Professional Ethics of the Republic of Indonesia National Police.

Law enforcement against violent crimes by police officers, particularly the use of excessive force, involves various aspects, from criminal law enforcement to ethical sanctions. Police are responsible for every act of violence, and if the use of force exceeds the authority granted by law, criminal sanctions may be imposed. Furthermore, ethical violations can also result in disciplinary sanctions in accordance with Police Regulations.<sup>4</sup>

#### Criminal Law Enforcement:<sup>5</sup>

1. Article 26 of the Criminal Code: This article regulates criminal responsibility for anyone who is authorized to use violence but uses excessive force.
2. Article 368 of the Criminal Code: This article regulates acts of extortion with violence which can be punished by imprisonment of up to 9 years.
3. Law of the Republic of Indonesia Number 2 of 2002: This law states that members of the Indonesian National Police are subject to the authority of the general judiciary and must be an example in obeying the law.
4. Regulation of the Chief of Police: The Police's professional code of ethics, for example Regulation of the Chief of Police Number 14 of 2011, regulates ethical

<sup>2</sup>I Dewa Gede Atmadja and I Nyoman Putu Budiarta, *Legal Theories*, Malang: Setara Press Intrans Publishing Group, 2018, p. 1.

<sup>3</sup>Gandung Sardjito, "Police Actions in Handling Violent Theft in the Semarang Police Jurisdiction", Thesis, Postgraduate Program, Diponegoro University, 2008, pp. 1-3. [http://eprints.undip.ac.id/17450/1/Gandung\\_Sardjito.pdf](http://eprints.undip.ac.id/17450/1/Gandung_Sardjito.pdf).

<sup>4</sup>Aulia Nur Wihdlatil Aini, Abdul Muntholib, and Andy Suryadi, "The Dynamics of Integration and Separation of the Indonesian National Police (POLRI) from the Indonesian Armed Forces (ABRI) 1961–2002," *Journal of Indonesian History*, Vol. 8, No. 2, 2019, pp. 105–112. <https://journal.unnes.ac.id/sju/index.php/jih/article/download/36973/15233>.

<sup>5</sup>Amnesty International, *Unfinished Business: Police Accountability in Indonesia*, Jakarta, 2009). <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa210142009in.pdf>.

sanctions for members of the Police who violate the principles of integrity and professionalism.

Demonstration or demonstration is an activity carried out by a person or group of people, to express opinions or to oppose a policy that is considered inappropriate and violates legal regulations, and is contrary to human rights. The definition of demonstration is also explained in Law Number 9 of 1998 concerning Freedom of Expression of Opinions in Public (hereinafter the author refers to the Law on Freedom of Expression of Opinions in Public), in Article 1 Number 3 states that, "demonstration or demonstration is an activity carried out by one or more people to express thoughts verbally, in writing, and so on demonstratively in public".<sup>6</sup>

Freedom of expression is the right of every person. Everyone is given the freedom to express their opinion as regulated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which is regulated in Article 28E Paragraph (3) which states that, "everyone has the right to freedom of association, assembly, and expression of opinion." Furthermore, it is also explained in Article 1 Number 1 of the Law on Freedom of Expression of Opinion in Public which states that, "freedom of expression is the right of every citizen to express their thoughts orally, in writing, and so on freely and responsibly in accordance with the provisions of applicable laws and regulations."

Expressing opinions in public often causes unrest. To avoid unrest, the police are given the task or mandate from the government to provide security during demonstrations. As regulated in Article 13 Paragraph (3) of the Law on Freedom of Expression in Public, which states that, "in carrying out the expression of opinions in public, the police are responsible for providing security to guarantee public safety and order in accordance with applicable procedures." Government officials in demonstrations also have obligations and responsibilities, as stated in Article 7 of the Law on Freedom of Expression in Public, which states that:

In carrying out the delivery of opinions in public by citizens, government officials are obliged and responsible for:

- a. Protect human rights;
- b. Respect the principle of legality;
- c. Respect the principle of the presumption of innocence; and
- d. Organizing security.

Even though demonstrations are secured by police, this does not guarantee that they will proceed safely, peacefully, and orderly. The large number of people gathered in these gatherings can sometimes lead to chaotic and unsafe demonstrations, ultimately leading to anarchic actions and clashes between protesters and security forces during the demonstrations.<sup>7</sup>

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<sup>6</sup> Susi Sasmita, et al. *Criminal Law Enforcement Against Police Who Commit Violence Against Protesters*. PAMPAS: Journal of Criminal Volume 3 Number 3, 2022. Faculty of Law, University of Jambi. P. 250.

<sup>7</sup>Ibid.

A democratic state governed by the rule of law places the principle of the supremacy of law and respect for human rights as the primary foundation in all aspects of the exercise of power. In this context, the police, as a state instrument tasked with maintaining public order and enforcing the law, hold a strategic position and a significant responsibility to carry out their duties professionally, proportionally, and accountably. However, in reality, in several incidents involving the handling of demonstrations, excessive force by police officers has often resulted *in* physical injuries, psychological trauma, and even death for citizens who express their opinions openly.

Excessive use of force by police officers in the context of handling protesters is a form of state violence that not only violates the principles of national criminal law but also undermines the foundations of human rights protection. Cases such as the tragedy of handling student demonstrations, the indiscriminate firing of tear gas, mass beatings by officers, and extrajudicial killings *demonstrate serious deviations from the principles of legality, accountability, and proportionality in the exercise of police authority.*

From a criminal law perspective, police officers who use disproportionate physical force or weapons against protesters who offer no real resistance can be classified as criminal assault (Article 351 of the Criminal Code), or even as a gross human rights violation if carried out systematically. This is further complicated when such violence is not accompanied by an open and fair legal process for the perpetrators. Instead of being enforced, the law is sidelined by structural power and excessive institutional loyalty.

On the other hand, from the perspective of Law Number 2 of 2002 concerning the Indonesian National Police, the use of force by the police is strictly regulated and is only justified in certain situations, and must be based on the principles of legality, subsidiarity, and accountability. Regulation of the Chief of Police Number 1 of 2009 concerning the Use of Force also emphasizes that the use of physical force and weapons may only be carried out in certain stages of escalation, and must be accompanied by evaluation, consideration of real threats, and based on the principle of professionalism.

Furthermore, the use of excessive force by law enforcement officers also violates human rights principles guaranteed in Law Number 39 of 1999, as well as international instruments such as *the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* issued by the United Nations. These principles firmly state that the use of force and firearms by law enforcement officers must be carried out proportionally, in conditions of absolute necessity, and as a last resort. Violations of these principles, especially if not followed by a clear criminal accountability process, will undermine legal legitimacy and public trust in the police institution.<sup>8</sup>

Although there are numerous regulations governing the use of force by police officers, in practice, there is often a gap between legal norms and the reality of law enforcement (*das sollen* and *das sein*). Officers who use excessive force are often only prosecuted through ethical or internal disciplinary measures, rather than through open

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<sup>8</sup>L. Tibaka and Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia," *Fiat Justisia* 11, No. 3 (2017). Pg. 12

and independent criminal channels. This reflects the suboptimal enforcement of criminal law against state officials who exceed their authority.

Based on these conditions, it is important to critically examine how criminal law enforcement should be applied to acts of violence committed by police officers, particularly in the context of excessive use of force when securing demonstrations. This study seeks to address this issue by normatively analyzing the provisions of the Criminal Code (KUHP), the Police Law, and the Human Rights Law, and exploring their practices through actual case studies.

By formulating precisely how the correlation between legal regulations and the reality of implementation in the field, this research is expected to contribute to improving the accountability system of state officials in a state based on law that upholds the supremacy of law and human rights.

Therefore, this research is crucial to comprehensively examine how the Indonesian criminal law system, specifically as outlined in the Criminal Code, the Police Law, and the Human Rights Law, regulates and responds to excessive use of force by police officers, particularly in the context of handling demonstrations. This research also seeks to identify obstacles in the law enforcement process and formulate a model of criminal accountability that is just and upholds the principles of the rule of law.

## II. RESEARCH METHODS

The author uses the type of research used is the normative legal research method, which is a study of legal rules in legislation, jurisprudence and doctrine, which is carried out qualitatively.

This approach is also known as the library approach, which is an approach that studies materials such as books, laws and other documents related to this research.

Qualitative research methods are research that refers to legal norms contained in laws and court decisions as well as norms that exist and develop in society.

In the approaches used in the normative legal writing method, it is a writing method based on an analysis of several legal principles and legal theories, as well as laws and regulations that are appropriate and related to the problem in writing legal research. This normative legal research is a procedure and method of scientific research to find the truth based on the logic of legal science from a normative perspective.

### Method of collecting data

The author uses a data collection method through document or library research, namely by using research on various reading sources such as books, applicable regulations, scholarly opinions, newspapers, articles, dictionaries, and also news from the internet related to the title variable.

The approach used in this research is as follows:

#### a. Statute Approach

The Statute Approach *is* a research that prioritizes legal materials in the form of statutory regulations as the basic reference material in conducting research.

This approach is used to obtain an analytical description of the statutory regulations related to the problems (legal issues) raised in this research. The law must reflect the idea behind it, namely justice.

b. *Conceptual Approach*

The conceptual approach *is* a type of approach in which in this legal research the author provides an analytical perspective on solving problems in legal research seen from the aspect of the legal concepts that underlie it, or can even be seen from the values contained in the norming of a regulation in relation to the concepts used by the author. The author uses this approach to understand the concepts related to norming in a law whether they are in accordance with the spirit contained in the underlying legal concepts.

### **Sources of Legal Materials**

In this research, the sources of legal materials used in writing are primary legal materials, secondary legal materials and tertiary legal materials which are research tools to analyze and support the author in researching, the materials are obtained by carefully tracing legal materials originating from applicable laws, regulations and other library materials which cover the main issues in this research.

#### **Primary Legal Materials**

Primary legal materials are laws and official legal documents that form the basis of the main analysis in this study, some of which are: the 1945 Constitution of the Republic of Indonesia (UUD 1945), the Criminal Code (KUHP), Law No. 2 of 2002 concerning the Indonesian National Police, Law No. 39 of 1999 concerning Human Rights, Law No. 9 of 1998 concerning Freedom of Expression in Public, Law No. 8 of 1981 concerning Criminal Procedure Law (KUHP), Regulation of the Chief of the Indonesian National Police (Perkap) No. 1 of 2009 concerning the Use of Force in Police Actions ( *Use of Force Guidelines* ), Perkap No. 14 of 2011 concerning the Police Professional Code of Ethics, Perkap No. 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of Polri Duties.

#### **Secondary Legal Materials**

It is the opinion of experts, books, journals, and academic studies that discuss norms, legal theories, and critical studies on research issues. Some of them are: Barda Nawawi Arief, Legislative Policy in Crime Prevention, Moeljatno, Principles of Criminal Law, Soerjono Soekanto, Factors Influencing Law Enforcement, Jack Donnelly, Universal Human Rights in Theory and Practice, Sri Rahayu Wilujeng, "Human Rights: A Review of Historical and Legal Aspects", Olivia Adelwais Mandang, "Law Enforcement against Anarchist Demonstrators", Journal of Law and Human Rights, Journal of Lex Administratum, Journal of Judicial

#### **Tertiary Legal Materials**

These are supporting sources that provide additional understanding, such as: Legal dictionaries (Black's Law Dictionary, Indonesian Legal Dictionary), Legal encyclopedias, Police technical guides, credible legal news articles (Komnas HAM, KontraS, ICJR, etc.), LPSK data, Komnas HAM, Ombudsman, and KOMPONAS.

### III. DISCUSSION

#### Criminal Liability of Police Officers for Excessive Use of *Force*

Repressive actions taken by police in response to demonstrations are often perceived by demonstrators as obstructing their efforts to voice their aspirations. This often triggers tension and conflict between the two parties, driven by conflicting interests. Normatively, the functions of police and demonstrators should be complementary, with the police tasked with maintaining security and order, while demonstrators exercise their constitutional right to express their opinions in public. However, in practice, this difference in function often results in physical clashes that harm both parties. From a societal perspective, the use of violence by police in dealing with demonstrations presents a unique irony, given that the police institution is essentially a representation of the state tasked with protecting and serving the people. When examined through Myers' deindividuation theory, deviant or antisocial behavior is more likely to emerge when individuals feel a loss of personal identity in a crowd, which may explain why both police and demonstrators are potentially violent in heated situations.<sup>9</sup>

Demonstrations should ideally be conducted in accordance with applicable legal provisions, as stipulated in Law Number 9 of 1998 concerning Freedom of Expression in Public. If they are conducted in an orderly manner, they are categorized as peaceful demonstrations. However, in practice, demonstrations often escalate, resulting in destructive acts such as throwing objects, vandalizing public and private facilities, and causing injuries and loss of life. This type of violent behavior can be legally and sociologically classified as anarchic behavior that deviates from the essence of freedom of expression guaranteed by law.<sup>10</sup>

In the Indonesian criminal law system, excessive use of force by police officers not only violates the principles of legality and proportionality in law enforcement, but can also be classified as a criminal offense. Violent acts that are not based on a real threat and are disproportionate to the conditions on the ground can be categorized as a form of **persecution** as stipulated in **Article 351 of the Criminal Code**, or even as **a serious human rights violation** if carried out systematically and extensively.

Normatively, **Article 26 of the Criminal Code** regulates the abuse of power by state officials who commit violence without a valid legal basis. Furthermore, **Article 368 of the Criminal Code** can also be applied in the context of extortion or abuse of authority accompanied by violence. Law No. 2 of 2002 concerning the Police explicitly states that every member of the Indonesian National Police is under general legal authority and is legally responsible for every action taken in the performance of their duties.

When carrying out their duties to secure demonstrations, police officers are required to comply with **Regulation No. 1 of 2009** concerning the Use of Force in Police Actions. This regulation requires that all repressive actions be based on a credible threat, and must be subject to strict and proportional escalation. In practice, many instances of

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<sup>9</sup> Sarwono, WS 1999, *Individuals and Social Psychology Theories*, Balai Pustaka Jakarta. p. 47

<sup>10</sup> Muhammad Najib, *The Path to Democracy*, Republika Publisher, Jakarta, 2019, p. 56

force by officers fall short of these standards, even under conditions where there is no significant threat to public or officer safety.

This phenomenon demonstrates the gap between legal norms (*das sollen*) and law enforcement practices (*das sein*). In many cases, actions by officers that cause serious injury, psychological trauma, or even death are not always prosecuted criminally, but instead are subject to ethical or internal disciplinary sanctions. This imbalance has the potential to undermine **the principle of the rule of law** (*rechtsstaat*) and undermine public trust in law enforcement institutions.

From a modern criminal law perspective, the criminal accountability system for state officials must prioritize the principle of **individual accountability**, especially in cases of human rights violations. International conventions and standards such as *the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (UN, 1990) also emphasize that the use of force and weapons by officials must be **proportionate, legal, and a last resort**. Therefore, the national legal system needs to adopt a **zero-tolerance approach** to excessive violence by officials, in order to guarantee the rule of law and the constitutional rights of citizens.<sup>11</sup>

### **The State's Responsibility in Guaranteeing the Constitutional Right to Freedom of Expression and Protection of Demonstrators**

The right to express opinions in public is a **constitutional right** that is explicitly guaranteed in **Article 28E paragraph (3) of the 1945 Constitution**, and is reinforced in **Law No. 9 of 1998** concerning Freedom of Expression in Public. Within the framework of a democratic state based on the rule of law, freedom of expression is one of the main pillars of human rights protection and an indicator of the quality of substantive democracy. Therefore, the state, through government officials, especially the Indonesian National Police, has a legal and moral obligation to **protect**, not threaten, this right.

However, empirical reality reveals a paradox. In a number of demonstrations, authorities have resorted to repressive measures and used excessive force against peaceful demonstrators. Incidents of tear gas, brutal beatings, and even the deaths of demonstrators in various cases in Indonesia reflect **the disproportionate use of force** and deviate from human rights principles and the presumption of innocence.

According to **Article 7 of Law No. 9 of 1998**, when securing demonstrations, government officials are obligated to protect human rights, uphold the principle of legality, and respect the principles of **non-discrimination** and **due process of law**. When security measures turn into state violence, the state is deemed to have failed in fulfilling its constitutional obligations.

Furthermore, **Law No. 39 of 1999 concerning Human Rights**, as *lex specialis*, requires the state to guarantee the right to feel safe and be free from degrading treatment.

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<sup>11</sup>Wisnu Fragusty. 2019, *The Process of Handling Anarchist Demonstrations That Damaged Public Facilities*, Medan: Muhammadiyah University of North Sumatra. P. 41



The state's inability to prevent and respond to violence by the authorities constitutes a violation of the state's **positive obligation** under international human rights law.

In this context, the state should not simply resolve **internal** police ethical issues, but should also provide **effective remedial mechanisms** for victims, including access to independent justice, compensation, rehabilitation, and guarantees of non-repetition. Institutions such as the National Commission on Human Rights ( **Komnas HAM**), the **National Police Commission (Kompolnas)**, and the **Witness and Victim Protection Agency (LPSK)** must have their authority strengthened to independently monitor and address violations by officers.

Thus, efforts to enforce the law fairly against acts of violence by police officers are not only oriented towards **criminal sanctions** , but also towards **restoring victims' rights** and institutional reform within a comprehensive framework **of the rule of law and human rights** .

#### IV. CONCLUSION

Based on the results of a normative analysis of the criminal law framework, human rights law, and police institutional provisions, it can be concluded that the use of excessive force by police officers in handling demonstrations is a form of serious legal violation, both in ethical, administrative, and criminal dimensions. Although there are various regulations that strictly regulate the limits of the use of force by law enforcement officers, such as Regulation of the Chief of Police No. 1 of 2009, Article 351 and Article 26 of the Criminal Code, and Law No. 2 of 2002 concerning the Police, implementation in the field still often deviates from the principles of legality, proportionality, and accountability.

In law enforcement practice, excessive violence committed by officers is often not followed up through general criminal justice mechanisms, but is instead limited to internal ethical resolution, which ultimately creates the impression of impunity and damages public trust in the police institution. This situation not only violates the principle of the rule of law (*rechtsstaat*), but also ignores the protection of citizens' constitutional rights, especially the right to freedom of expression as guaranteed in Article 28E paragraph (3) of the 1945 Constitution and Law No. 9 of 1998.

Within the framework of a democratic state based on the rule of law that upholds the supremacy of law and human rights, the state has a responsibility to ensure that every act of violence by law enforcement officers is accompanied by a fair, transparent, and accessible accountability mechanism for victims. Therefore, strengthening the criminal accountability system for police officers, improving regulations protecting human rights, and reforming law enforcement institutions are needed to ensure that violent practices by officers no longer become part of a power structure that is immune from the law.

This study recommends the importance of synergy between material and formal criminal law reform, increasing the capacity and integrity of law enforcement officers, and strengthening external oversight bodies such as the National Commission on Human Rights (Komnas HAM), the National Police Commission (Kompolnas), and the Witness and Victim Protection Agency (LPSK) in independently following up on violations by officers. This is expected to create a legal system that is not only repressive against

violations of the law, but also responsive to the protection of human rights and substantive justice.

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