



LEGAL REVIEW OF THE APPLICATION OF CRIMINAL SANCTIONS AGAINST DEMONSTRATORS FROM A HUMAN RIGHTS PERSPECTIVE

Muhammad Dahlan Wijaya ¹, M. Ridwan Lubis ²

^{1,2}Fakultas Hukum Universitas Muslim Nusantara Al Washliyah Medan

Email : dahlanwijayamhd@gmail.com ¹, muhammadridwanlubis76@gmail.com ²

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ABSTRACT

Law enforcement must not violate the rights of orderly demonstrators. They still receive legal protection from the state.. The procedure for conveying aspirations based on Law Number 9 of 1998 concerning Freedom of Expression in Public is the obligation to notify the Police in writing and obtain a permit in the form of a STTP (Notification Receipt Letter) and the notification must be at least 3 x 24 hours before the activity is carried out and requires demonstrators to include the number of participants, time and duration of the route and the props used.Criminal liability for perpetrators of crimesconveying aspirations in public which causes anarchysisThe police have the authority to take firm action, from disbandment to law enforcement, in accordance with applicable procedures if violations and anarchic actions occur

1. Introduction

Indonesia adheres to a democratic system of government. Despite criticisms of democracy as a system of popular sovereignty, supreme power in a country is considered to reside in the hands of the people themselves. "Power essentially originates from the people, is managed by the people, and is for the benefit of all the people."

In practice, the democratic principle or popular sovereignty is adopted, which guarantees the participation of the people in the state decision-making process, so that every law that is established and enforced reflects the sense of justice that lives in society. "Applicable laws and regulations must not be determined and implemented unilaterally by and/or only for the benefit of those in power in a way that contradicts democratic principles." Because the law is not intended to only guarantee the interests of a handful of people in power, but rather to guarantee the interests of a sense of justice for all people without exception.





Thus, the rule of law (rechtstaat) that is developing is not an absolute rechtstaat, but rather a democratische rechtstaat or a democratic state of law.

Expressing opinions in public is an example of freedom of opinion and is adopted by the democratic rule of law which aims to voice the public interest, so that the government in carrying out its authority does not reduce the sense of justice in society.

One of the countries that upholds democracy, Indonesia has established Law Number 9 of 1998 concerning Freedom of Expression in Public. Article 1 paragraph (3) states that: "Demonstrators or demonstrations are activities carried out by one or more people to express their thoughts verbally, in writing, and so on demonstratively in public." With the establishment of this law, it is hoped that the public can carry out activities to express opinions in public freely but still uphold responsible freedom.

Expressing opinions in public is one of the human rights guaranteed in Article 28 of the 1945 Constitution which states "freedom of association and assembly, expressing thoughts orally and in writing and so on is determined by law."

Freedom to express opinions is in line with Article 19 of the Universal Declaration of Human Rights which states: "Everyone has the right to freedom to hold and express opinions without interference and to seek, receive and convey information and opinions by any means and regardless of frontiers".

The free expression of citizens' will in expressing their thoughts orally, in writing, and so on must be maintained so that the entire institutional social order, both infrastructure and superstructure, remains free from deviations or violations of the law that are contrary to the intent, purpose, and direction of the process of openness in the formation and enforcement of law so as not to create social disintegration, but rather must be able to guarantee a sense of security in the life of society. Thus, the freedom to express opinions in public must be carried out with full responsibility, in line with the provisions of applicable laws and regulations and the principles of international law as stated in Article 29 of the Universal Declaration of Human Rights

2. Research Method

This research is descriptive in nature. Descriptive research is intended to provide data as accurately as possible. In this case, it will describe the public expression of aspirations that led to anarchy. This descriptive research begins with collecting data related to the discussion above, then compiling, classifying, analyzing, and interpreting the data, so that a clear picture of the phenomenon being studied is obtained. The type of approach used is the normative juridical





method, namely research conducted by examining library materials that are secondary data such as legislation

3. Results And Discussion

Freedom of expression in public is a fundamental human right guaranteed by the 1945 Constitution and the Universal Declaration of Human Rights. This means that public expression is a manifestation of democracy within the fabric of society, nation, and state. However, in building a democratic state, a safe, orderly, and peaceful environment is also necessary, one that does not harm the interests and fundamental rights of others.

In addition to Law Number 9 of 1998 concerning Freedom of Expression in Public, which regulates the implementation of public expression activities, the Chief of Police then technically issued a Decree regulating the Issuance of Notification Receipt Letters (STTP) for Expressing Opinions in Public. The regulations, which are in the form of field instructions from the Chief of Police, were stipulated through Decree No. Pol: Skep/1600/X/1998 and are still a temporary document to date. However, the Police have issued STTP while adhering to the existing field instructions, in addition to the governing law.

The rules contained in the laws and field instructions are as follows:

1. Notification Letter to the Police

Based on Article 10 of Law Number 9 of 1998 concerning Freedom of Expression in Public, it is stipulated that the implementation of expressing opinions in public must be notified in writing to the Indonesian National Police. Written notification is submitted by the person concerned, the leader or person in charge of the group and is notified to the local Indonesian National Police no later than 3 X 24 (three times twenty-four) hours before the activity begins (Article 10 paragraph (3)).

Written notification of the planned activity can also be delivered directly by the person concerned (individual), the leader (organization), and the person in charge (group). The explanation of the law explains that the local police force refers to the activity being carried out at:

- a. 1 (one) sub-district, notification is addressed to the local police station.
- b. 2 (two) or more sub-districts within a district/municipality, notification is addressed to the local police.
- c. For 2 (two) or more districts/municipalities within 1 (one) province, notification is addressed to the local Regional Police. The notification letter is submitted to the Administrative Services Section, which will also issue a Notification Receipt Letter (STTP).



d. 2 (two) or more provinces, notification is addressed to the National Police Headquarters.

If an activity is cancelled, the cancellation letter must be submitted in writing by the person responsible for the activity to the Indonesian National Police no later than 24 (twenty four) hours before the planned time of implementation. All activities must be notified to the Indonesian National Police, and only scientific activities on campus and religious activities do not have to be notified to the Indonesian National Police (Article 10 paragraph (4)).

The contents of the notification for public opinion expression activities as stated in Article 11 of Law Number 9 of 1998 concerning Freedom of Expression of Opinions in Public are as follows:

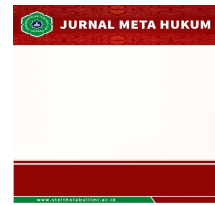
- a. Purpose and objectives
- b. Places, locations and routes
- c. Time and duration
- d. Form
- e. The person in charge of the activity is responsible for ensuring that the activity can be carried out safely, orderly and peacefully.
- f. Name and address of the organization, group or individual carrying out the activity
- e. Required props
- f. Estimated number of participants attending.

After the Indonesian National Police receives the notification, then in accordance with Article 13 paragraph (1) of Law Number 9 of 1998 concerning Freedom of Expression in Public, the Indonesian National Police must immediately provide a Notification Receipt Letter (STTP). This letter is also proof that the implementation of the activity can be legally accounted for so that it can fulfill the principles of legal certainty and justice as stated in Article 3 of Law Number 9 of 1998 concerning Freedom of Expression in Public which states: Freedom of expression in public is implemented based on:

- a. The principle of balance between rights and obligations
- b. The principle of deliberation and consensus.
- c. Principles of legal certainty and justice.
- d. Principles of professionalism
- e. The principle of benefit.

2. Place, Location and Route.

Expressing opinions in public may be carried out in all public locations, except in the presidential palace area, places of worship, military installations, hospitals, airports and seaports, train stations, land transportation terminals



and other national vital objects (Article 9 paragraph (2) letter a). This regulation is further clarified in the Police Guidelines SK No. Pol: Skep/1600/X/1998 concerning the Temporary Manuscript of the Field Guidelines for Providing STTP for Expressing Opinions in Public.

The explanation of Law Number 9 of 1998 concerning Freedom of Expression in Public, as well as field guidelines, states that the permitted distance for activities within the presidential palace grounds, including the vice president's palace, is 100 meters from the outer fence. Meanwhile, military institutions are not permitted within a 150-meter radius of the outer fence.

Other vital national objects are prohibited within a 500-meter radius of the outer fence. However, this radius does not apply to other places where public expression is also prohibited, such as hospitals and so on.

In addition, the expression of opinions in public is also prohibited from being held on national holidays (Article 9 paragraph (2) letter b of Law Number 9 of 1998 concerning Freedom of Expression of Opinions in Public), for example religious holidays and so on. Likewise with the route. In the notification letter submitted to the Police, the perpetrator must include the route or road that will be taken from the place (point of departure or gathering of the masses) to the location where the expression of opinions in public will be carried out.

Exceptions to the route are also listed in the operational guidelines. The route from the venue to the location must not pass through the aforementioned locations, namely the presidential and vice-presidential palaces, military installations, and national vital objects. Unless these locations will be used for activities, they must be within the specified radius.

3. Time

Law Number 9 of 1998 concerning Freedom of Expression in Public does not stipulate the time or duration of demonstrations. However, Field Instructions (Juklap) No. Pol: Skep/1600/X/1998 states that the permitted time for demonstrations is as follows:

- a. During the day it takes place from 06.00 to 18.00 local time.
- b. At night, demonstrations run from 6:00 PM to 10:00 PM local time. However, permits for night demonstrations are currently not granted due to security concerns. These differing regulations regarding demonstration times can sometimes be challenging for negotiators or when negotiating with protesters about the permitted time and duration of demonstrations.

4. Types of Activities and Teaching Aids

The form of expressing opinions in public can be done orally and in writing. In accordance with the law and also what is stated in the operational guidelines, it is stated that the form of expressing opinions in public orally is





demonstrations, parades, public meetings and free forums (Article 9 paragraph (1) of Law Number 9 of 1998 concerning Freedom of Expression of Opinions in Public). Especially for demonstrations or demonstrations and parades, for every 100 (one hundred) perpetrators or participants, there must be one to five (5) responsible persons who are usually called field coordinators (Article 12 paragraph (2) of Law Number 9 of 1998 concerning Freedom of Expression of Opinions in Public).

In addition to the activities mentioned above, the law and operational guidelines state that hunger strikes and silence strikes are other forms of expressing opinions. The explanation of Law Number 9 of 1998 concerning Freedom of Expression in Public defines silence as a form of silence. However, hunger strikes are currently not permitted and are advised against for humanitarian reasons.

As for the demonstration tools, they are included in the form of expressing opinions in writing. The demonstration tools used include petitions, pictures, pamphlets, posters, brochures, leaflets and banners. Meanwhile, other objects that are considered to be able to endanger public safety are prohibited from being brought and used in these activities (Article 9 paragraph (3) of Law Number 9 of 1998 concerning Freedom of Expression in Public). For example, Molotov cocktails, sharp weapons or other sharpened objects and so on. If protesters carry sharp objects or weapons, then the protesters can be arrested or the demonstration can be disbanded and the perpetrators can be charged in accordance with applicable laws.

If a criminal offender expresses his aspirations in public which causes anarchy, then he must be given a sanction for this act or in other words, law enforcement must be carried out against the perpetrator. Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationship between values outlined in established rules and attitudes as a form of action. a series of explanations of final stage values to create, maintain and defend peaceful social interactions.

Law enforcement against anarchist demonstrators must still comply with the corridor of Human Rights (HAM), where the right to express opinions in public is guaranteed by the 1945 Constitution and Law No. 9 of 1998. Anarchic actions such as violence, destruction, and looting cannot be justified and must be dealt with firmly, but proportionally, while still protecting the rights of law-abiding participants. Firm action must be taken by prioritizing proportionality and must not violate human rights, and perpetrators must be processed according to the applicable criminal code (KUHP).



The right to express an opinion is a fundamental human right: Freedom of expression and public opinion is a human right guaranteed by Article 28E paragraph (3) of the 1945 Constitution. The state has a responsibility to protect this right, but also to maintain public order. When demonstrations turn anarchic with acts of violence, destruction, or looting, individual human rights protected by law are threatened, so legal action can be taken.

Perpetrators of anarchy must be dealt with firmly and proportionately, and legal action must be taken to stop such anarchic actions. The legal sanctions imposed must be based on the Criminal Code (KUHP), for example, Article 170 of the KUHP concerning violence against people or property. Nevertheless, the right to protection remains. The state is obliged to protect law-abiding demonstrators while prosecuting those who violate the law.

Security forces have a responsibility to protect demonstrators from potential threats, including from the anarchic crowd itself. Legal action against perpetrators of anarchy must be proportionate and should not target all demonstrators. Security forces can use security measures based on the situation to ensure the demonstration does not deviate from orderly conditions

4. Conclusion

The procedure for conveying aspirations based on Law Number 9 of 1998 concerning Freedom of Expression of Opinions in Public is the obligation to notify the Police in writing and obtain a permit in the form of a STTP (Notification Receipt Letter) and the notification must be at least 3 x 24 hours before the activity is carried out and requires demonstrators to include the number of participants, time and duration of the route and the props used.

Criminal liability for perpetrators of crimes conveying aspirations in public which causes anarchy is The police have the authority to take firm action, ranging from disbandment to law enforcement, in accordance with established procedures in the event of violations and anarchic acts. Investigators will determine the role of the perpetrator (primary perpetrator, accomplice, or instigator) based on valid and convincing evidence to establish criminal responsibility.

Law enforcement against anarchic actions of demonstrators in conveying aspirations in public from a Human Rights Perspective does not eliminate the right to express opinions, but differentiates criminal violations from conveying aspirations. Anarchic actions such as destruction, violence, or crimes against public order can be subject to criminal law sanctions (for example, Article 170 of





the Criminal Code), while other law-abiding participants remain protected and their rights are guaranteed

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