



“Other Responsible Legal Measures”: Indonesia Legal Perspective

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Abstract

The study aimed to analyze the concept of “to conduct other actions in accordance with laws” based on the prevailing law in Indonesia as well as examines the concept of “other responsible legal measures” as one of the authorities of the State Police of the Republic of Indonesia. This was normative legal research using statutory approach and conceptual approach. The study indicated that the State Police of Indonesia is allowed to take other responsible legal measurement as other actions as long as it is in accordance with law, such as firearm in exigency in maintain the security and public orderliness, law enforcing, and providing protection, safeguard, and services to public. It is in accordance with the Code of Criminal Procedure, the State Police Law, and other prevailing laws in Indonesia. Further, the concept of “take other responsible legal measures” is regulated in the provisions of Article 48, Article 49 paragraph (1) and paragraph (2), Article 50, and Article 51 paragraph (1) and paragraph (2) of the Indonesian Penal Code.

Keywords: *Responsible; Legal Measures; Legal Perspective*

Introduction

The development of information, technology and communication in the current revolution industry 4.0 has resulted in changes in people’s lives. The development of technology in the digital era also brings easiness in accessing various information on acts of violence that have occurred.

This condition brings both positive and negative impact to the society. In positive way, the development of technology is helping the society to develop for a better quality of life. On the other hand, the development of technology does bring negative impact such as the easiness to gain information of criminal act that can be carried out by certain people. Any information related to crimes of theft, rape, sexual violence, robbery, robbery, murder, crimes in the virtual world, fraudulent investment offers and other crimes against humanity can be accessed easily.

Law enforcement has been known as one of the Officials of the State Police of the Republic of Indonesia (*hereinafter* State Police of Indonesia). According to Warsito Budi Utomo, the State Police of Indonesia has the authority to conduct investigation and examination in accordance with the Law No. 8 of 1981 concerning the Code of Criminal Procedure (*hereinafter* Code of Criminal Procedure).¹

The authority of the State Police of Indonesia can be classified into two major authorities, namely general authority and special authority. General authority of the State Police of Indonesia is carried out with legality and *Plichtmatigheid* that focusing on preventive action. Meanwhile, the special authority is carried out by the State Police of Indonesia to conduct investigation and examination in accordance with the prevailing law in Indonesia.

According to the Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia (*hereinafter* the State Police of Indonesia Law), the principal tasks of the State Police of Indonesia is stipulated under the provision of Article 13 of the State Police of Indonesia Law, which includes “maintaining public orderliness and safety, law enforcing, and providing protection, safeguard, and services to public”.²

Theoretically, the State Police of Indonesia in carrying out the principal task has the obligation to maintain public orderliness and safety of the society. Therefore, there are several things need to be fulfilled *inter alia*: the society shall be free from physical pressure, free from worries of losing properties, free from psychological disturbance, and feel peace.

This feeling of security can be realized if every person obeys and implements the laws and regulations properly. According to Theory Hierarchy of Needs from Abraham Maslow, safety needs is the second needs shall be fulfilled. There are several needs within the hierarchy, namely: 1) Psychological Needs; 2) Safety Needs; 3) Social Needs; 4) Esteem Needs; and 5) Self Actualization.³

Disturbances of security and order in society are caused by the occurrence of various crimes in the community. Recently, there are several criminal acts that arise, which can be seen in various mass media, both print media, electronic media, as well as cyberspace and others. This condition is troubling the community.

The State Police of Indonesia as officials is obliged to maintain public orderliness and safety as part of their principal task as stipulated in the State Police of Indonesia Law.⁴ It is in accordance with the provisions in Code of Criminal Procedure. Thus, the operational activities of the State Police of Indonesia are formally regulated in Code of Criminal Procedure, while the materially is focusing on the elements of criminal act, the actors, and the punishment.

With regard to criminal acts legally and materially, the State Police of Indonesia’s operational activities carry out acts of violence both physically and non-physically, even using firearms when facing extraordinary circumstances. It is only allowed only if strictly necessary to preserve human life. Responding to this issue, some people think that the acts of violence carried out by the State Police

¹ Warsito Hadi Utomo, *Hukum Kepolisian Di Indonesia* (Prestasi Pustaka Publisher, 2005).

² Sufmi Dasco Ahmad, “Settlement of Violations of the Professional Code of Conduct of the West Java Regional Police in Connection With Regulations of The Head of The State Police of The Republic of Indonesia,” *Journal of Law Science* 4, no. 2 (2022): 96–104.

³ Shannon L Navy, “Theory of Human Motivation—Abraham Maslow,” in *Science Education in Theory and Practice* (Springer, 2020), 17–28.

⁴ Mohammad Kemal Dermawan, “A Study of the Aspects of Community Capacity, Principles of Democracy, and Civil Supervision in the Context of Community Policing,” *International Journal of Arts Humanities and Social Sciences Studies* 6, no. 7 (2021): 12.

Indonesia have exceeded the limits of their authority and violated human rights, which have become the commitments of democratic countries in the world.

According to the Code of Criminal Procedure as the substitute of *Het Inlansch Reglement*, also known as HIR stated that the State Police of Indonesia are authorized as interrogator and investigators violate human rights, however in particular the authority of the State Police of Indonesia is regulated in the provision of Article 5 paragraph (1) letter a number 4 and Article 7 paragraph (1) letter j of the Code of Criminal Procedure, it is stated that “an interrogator and investigator because of their duties have the authority to take other responsible legal measures”. Meanwhile, according to Article 16 paragraph (1) letter l of the State Police of Indonesia Law, it is stated that “in implementing its tasks, the State Police of the Republic of Indonesia shall authorize to conduct other actions in accordance with laws.”

The authority to take other responsible legal measures is carried out in order to maintain public orderliness and safety as well as law enforcement and providing protection, safeguard, and services to public. Therefore, the State Police of Indonesia is allowed to conduct their actions based on their own judgement in accordance with the prevailing law and regulations but still considering both the benefit and risk of the actions. According to I Wayan Juwahyudhi,⁵ the provision of Article 7 paragraph (1) letter j of the Code of Criminal Procedure and Article 16 paragraph (1) letter l the State Police of Indonesia Law, it is stipulated that “an investigator because of his duties has the authority to take other responsible legal measures”.

Based on the abovementioned, there seems a problem related to the interpretation of “other responsible legal measures” as one of the authorities of the State Police of Indonesia. Therefore, the writing will analyze the concept of “to conduct other actions in accordance with laws” and the concept of “other responsible legal measures” as one of the authorities of the State Police of the Republic of Indonesia based on the prevailing law in Indonesia.

Previous study was conducted in 2013 by I Wayan Juwahyudhi concerning “*Wewenang Kepolisian Mengadakan Tindakan Lain dalam Memberikan Perlindungan Hukum Terhadap Anak Menurut Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak*”.⁶ The study was focusing on the authority of the police to carry out action of diversion in dealing the juvenile offenders to protect children’s right to get justice which only applies to children under sentence of less than 7 years in prison and does not apply in children who are subject to punishment of more than 7 years in prison. In 2012, Abbas Said conducted a study concerning “*Tolak Ukur Penilaian Penggunaan Diskresi oleh Polisi Dalam Penegakan Hukum Pidana*”.⁷ The study analyzed the use of discretion by police as the implementation of the law enforcement in criminal cases.

According to the abovementioned, there seems to be similar topic with the previous studies but with different focus. This study focusing on the concept of “other responsible legal measures” according to the prevailing law in Indonesia.

The study aimed to analyze the concept of “to conduct other actions in accordance with laws” based on the prevailing law in Indonesia. This study also examines the concept of “other responsible legal measures” as one of the authorities of the State Police of the Republic of Indonesia.

⁵ I Wayan Juwahyudhi, “Wewenang Kepolisian Mengadakan Tindakan Lain Dalam Memberikan Perlindungan Hukum Terhadap Anak Menurut Undang-Undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak,” *Jurnal Magister Hukum Udayana* 2, no. 3 (2013): 44076.

⁶ Ibid.

⁷ Abbas Said, “Tolak Ukur Penilaian Penggunaan Diskresi Oleh Polisi Dalam Penegakan Hukum Pidana,” *Jurnal Hukum Dan Peradilan* 1, no. 1 (2012): 147–70.

Research Method

This study was normative legal research using several approaches, namely statutory approach and conceptual approach. According to Peter Mahmud Marzuki, normative legal research focusing on providing answer to legal problems in society. This study used primary legal materials in the form of legislation and jurisprudence, and secondary legal materials which include books, journals, and other written legal materials. Research legal materials are collected through document studies, in search of conceptions, theories, legal opinions that are relevant to the research problem. The collected legal materials were analyzed qualitatively and comprehensively. After being analyzed, then the legal material is presented in a descriptive analysis

Result and Discussion

The Concept of “To Conduct Other Actions in Accordance with Laws”

The State Police of Indonesia is bound to the State Police of Indonesia Law, the Code of Criminal Procedure and several laws and regulations in carrying out their duties. With regard to the tasks and authorities of the State Police of Indonesia is regulated in Chapter III of the State Police of Indonesia Law.

Based on the provision of Article 16 paragraph (1) letter l of the State Police of Indonesia Law, it is stipulated that “the State Police of Indonesia shall authorize to conduct other actions in accordance with laws”.⁸ In order to prevent the State Police of Indonesia from conducting actions arbitrarily or violating human rights, then a specific regulation shall be implemented as limitation of the State Police of Indonesia’s authority. The limitation of the authority includes: a) it does not contrary to the prevailing law and regulation; b) in accordance which necessitates functional measures; c) the measure is proper and logical and belongs to the domain of his function; d) it is based on proper consideration and exigency; and e) it respects basic human rights.

Further, the limitation of the authority shall be implemented during the process of investigation and examination by implementing the principle of presumption of innocence. It is a legal principle that imposes on “the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt”.

According to the Team for the Preparation of the Guidebook on Human Rights for the State Police of Indonesia in accordance with the provision of Article 11 paragraph (1) of the Universal Declaration of Human Rights (*hereinafter* UDHR), it is stated that:⁹

“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”

Based on the provision of Article 11 paragraph (1) of the UDHR, there are several elements shall be fulfilled, namely:

1. Whereas, a person guilty or not guilty, can only be determined by an authorized court, through a properly conducted trial where the suspect has received all of his defense guarantees;

⁸ Agung Anugrah Lubis et al., “Police Description In The Investigation of Criminal Narcotics (Study at the North Sumatera National Narcotics Agency),” *LEGAL BRIEF* 10, no. 1 (2020): 26–38.

⁹ Siddharth Bhardwaj and Ritu Bhardwaj, “Survival of the Accused and His Rights through Media Trial,” *Supremo Amicus* 28 (2022): 562.

2. Whereas, the right to be presumed innocent shall be applied until proved guilty according to law in a public trial is a fundamental right to ensure a fair trial.

The investigation process carried out by the State Police of Indonesia is started with the process of arrest and detention. During the process, every person shall be presumed innocent.¹⁰

Further, the provision of Article 10 of the UDHR stipulated that:¹¹

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

This provision emphasized that everyone has the right to a fair and public hearing by an independent and impartial tribunal. According to the provision of Article 10 of UDHR, there are several things needs to be taken seriously by the investigator and examiner, namely: a) gathering evidence, b) interviewing suspects, and c) giving testimony properly in court.¹² The State Police of Indonesia as Investigator and Examiner in the criminal procedure can be called as witness. The testimony of the members of the State Police of Indonesia relates to the actions carried out at the crime scene.

The authority of State Police of Indonesia to take other responsible legal measures in carrying out their duties has been regulated under the provision of Article 5 paragraph (1) point a number 4 of the Code of Criminal Procedure. It is also known as “discretion or discretion power” means the power of officials to act according to the dictates of their own judgment and conscience. Often also referred to in Dutch as *plihmatigheid*, which means that police actions are considered valid if they are in accordance with the obligation to create public order and security.

The principal tasks of the State Police of Indonesia related to human rights is stipulated in the State Police of Indonesia Law, there is a contradictory, on the other hand required obligation in carrying out the principal tasks, but it also violates human rights. According to the provision of Article 18 of the State Police of Indonesia Law, it is stipulated that:

“For general interest, officials of the State Police of the Republic of Indonesia may act based on their own consideration in implementing tasks and authorities.”

For general interests, officials of the State Police of the Republic of Indonesia may act based on their own consideration in implementing tasks and authorities. The elucidation of Article 18 paragraph (1) of the State Police Law, it is emphasized that:

“The term of “acted based on his adjustment” means an action that may be executed by member of the State Police of the Republic of Indonesia, which in taking action he must consider advantages and risks of such action and it must be for the interest of public completely.”

For instance, acts to attack, namely hitting, handcuffing, checking hard on criminal suspects who tried to defend themselves and even hit officers, issued harsh and dirty words brought to the Police office. These police actions are often reported by the suspect/his family and even legal representatives to carry out pretrial.

¹⁰ Ali Imron Oktavia Wulandari, Briliyan Ernawati, and Nazar Nurdin, “Presumption of Innocence Against Criminal Offenders in the Police: A Critical Study,” *Jurnal Walisongo Law Review (Walrev) Volume 2* (2020).

¹¹ Mindaugas Simonis, “Effective Court Administration and Professionalism of Judges as Necessary Factors Safeguarding the Mother of Justice-The Right to a Fair Trial,” in *IJCA*, vol. 10 (HeinOnline, 2019), 47.

¹² Chris Wiersma, “Scoping the Journalists’ Freedom to Conduct Newsgathering at the European Court of Human Rights: A Step Toward a More Human Rights-Based Approach to the Coverage of ECHR Article 10?,” *Communication Law and Policy* 26, no. 4 (2021): 507–57.

The State Police of Indonesia is allowed to take other responsible legal measurement, such as firearm in exigency, for instance if the suspect try to run away and ignore the warning from the State Police. The consequence is that members of the National Police are examined at the Disciplinary Council of Police Members and even the Police Code of Ethics Session, even being subject to light to severe sanctions in the form of dismissal from the National Police service and being tried in the General Court.

The principal tasks of the State Police of Indonesia in maintaining public orderliness and safety have consequences in the process of investigation and examination with the fifth requirement with the Code of Criminal Procedure. However, the fact is that the actions taken by the State Police of investigator and examiner in carrying out only one or more of the conditions formulated by the Code of Criminal Procedure are sufficient to act by the State Police of Indonesia.

It can be clarified that the efforts to create security and maintain public orderliness from any disturbance of criminality in the community in the actions of the State Police of Indonesia require firm and clear action that is immediate, complete and spontaneous, even though the duties and authorities are written in the Code of Criminal Procedure. The State Police of Indonesia as officials who maintain the security and public orderliness, law enforcing, and providing protection, safeguard, and services to public should not hesitate to carry out his tasks and authorities as long as the implementation of the tasks is in accordance with laws and regulations.

The Concept of “To Take Other Responsible Legal Measures”

The Law No. 1 of 1946 concerning Indonesian Penal Code (*hereinafter* Indonesian Penal Code) regulates other responsible legal measurements. Other responsible legal measurements regulated in the provisions of the laws and regulations for an Investigator and/or Examiner who requires to act justified by law, but that action is something that should be done by the Investigator and/or Examiner. It is justified by the provisions of the laws and regulations for criminal acts as regulated in the norms.

The concept of “take other responsible legal measures” is regulated in the provisions of Article 48, Article 49 paragraph (1) and paragraph (2), Article 50, and Article 51 paragraph (1) and paragraph (2) of the Indonesian Penal Code. The actions of the Investigator and/or Examiner in the field are real actions, immediate actions and spontaneous actions, the said actions must comply with the requirements based on Article 5 paragraph (1) letter a number 4 of the Code of Criminal Procedure, which includes the following:

a. Actions Do Not Conflict with Law and Regulation

The actions that do not conflict with law and regulation means that actions are justified with the regulations of the prevailing law, including the Code of Criminal Procedure and the State Police Law, as follow:

1. Commits an act to which is compelled by force majeure according to Article 48

According to the provision of Article 48 of the Indonesian Penal Code, it is stipulated that:¹³

“Not punishable shall be the person who commits an act to which he is compelled by *force majeure*”.

¹³ Mifta Hulzannah, Sriono Sriono, and Elviana Sagala, “Legal Aspect of an Agreement Cancellation in the State of Majeure Force during the Pandemic Covid-19,” *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 4, no. 2 (2021): 2541–50.

The act which is compelled by *force majeure* is defined as the result of the influence of mind and body. It means that any investigators and/or examiners in exercising their tasks and authorities cannot be punished. For instance:

- a. an Investigator and/or Examiner catches a criminal who requires to shoot his weapon up, but another criminal seizes the weapon so that it explodes on a person to death;
- b. the member of State Police of Indonesia fights with criminals, because the power is not balanced so that members of the Police are thrown about the community and suffer injuries;
- c. the member of State Police of Indonesia while escorting prisoners on a ship, at that time in the middle of the deep sea, suddenly came a big wave that hit the ship until the ship sank. Due to the panic situation, the criminals who were being escorted got a board to use for swimming, but the member of the State Police of Indonesia were unable to swim, so the criminal on the board got shot to death and the board was used to swim by the member of the State Police of Indonesia.

According to R. Soegandhi,¹⁴ an act to which is compelled by *force majeure* can be classified into 3 (three) types, namely: 1) absolute power, that is, the person cannot do anything else, something that is absolutely inevitable, it is impossible to choose another way; 2) Relative power is the power that forces a person to choose which one to do, which is determined by the coercive person. Thus, someone's actions are forced to be in a state of coercion; and 3) power which is a state of emergency, namely someone who is forced to commit a criminal act of his own choice.

2. Commits an act necessitated by the defense of his own or another one's body

Committing an act necessitated by the defense of his own or another one's body, defending decency, or property belonging to oneself or the property of others from attacks that violate rights and threaten others from attacks that violate rights and threaten at the same time is regulated in the provision of Article 49 paragraph (1) of the Indonesian Penal Code, which stated that:

“Not punishable shall be the person who commits an act necessitated by the defense of his own or another one's body, chastity or property against direct or immediate threatening unlawful assault.”

Such actions are as abovementioned in Article 49 paragraph (1) of the Indonesian Penal Code, namely:

- a. A member of State Police of Indonesia was attacked by criminals, hence the he shot one of the criminals, and the other criminals fled because of fear, then his actions cannot be punished;
- b. A group of criminals tortured the victim until he was almost dead, then a member of State Police of Indonesia came and shot the criminal dead, so the member of State Police of Indonesia could not be punished;
- c. Members of State Police of Indonesia are attacked with firearms and sharp weapons, so members of State Police of Indonesia in order to save themselves before shooting dead criminals, the actions of members of the Police cannot be punished.

3. Commits act in accordance with Article 49 paragraph (2) of the Indonesian Penal Code, it is stated that:¹⁵

¹⁴ Umar Faruk, “TINJAUAN YURIDIS OVERMACH DALAM TINDAK PIDANA PENGANIAYAAN,” *Dinamika: Jurnal Ilmiah Ilmu Hukum* 25, no. 14 (2019).

¹⁵ Asmak UI Hosnah, Supto Handoyo Djakarsih Putro, and Umar A Azis, “The Implementation of Noodweer Exceeds to Perpetrators of Murder in the Practice of Criminal Justice Practices in Indonesia,” *International Journal of Multicultural and Multireligious Understanding* 7, no. 2 (2020): 540–51.

“Not punishable shall be the overstepping of the bounds of necessary defense, if it has been the immediate result of a severe emotion caused by the assault.”

This provision emphasizes that: 1) a condition in a state of emergency defense, which is carried out by a person who must be forced to defend himself or there is no other way; 2) The defense is intended to threaten the life of oneself, others, decency, one’s own property or others, so such actions is not punishable; and 3) There must be attacks against rights and threats that are sudden (at the same time). Against rights means against the rights of that person, who does not have the right to it.

4. Commits an act for the execution of a statutory provision in accordance with Article 50 of Indonesian Penal Code.¹⁶ According to the provision of Article 50 of the Indonesian Penal Code, it is stated that:

“Not punishable shall be the person who commits an act for the execution of a statutory provision.”

According to the Law No. 12 of 2011 concerning Legislation Making (*hereinafter* Legislation Making Law), which has been amended by Law No. 15 of 2019 concerning Amendment to Law No. 12 on Legislation Making (*hereinafter* Law on Amendment to Law No. 12 on Legislation Making), the statutory regulations referred to the provision of Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (*hereinafter* the 1945 Constitution), namely: “The President shall be entitled to submit bills to the House of Representative (DPR).”¹⁷

According to Pataniari Siahaan,¹⁸ it is known that Indonesia adheres to a diffusion system, which is a system that regulates close and harmonious relations between state institutions, the President and the House of Representative in drafting laws and regulations. Therefore, both the President and the House of Representative work together complement each other in the administration of State government. According to the Article 7 paragraph (1) of the Legislation Making Law, it is stated that:

“Types and hierarchy of Legislation are as follows:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. The People’s Consultative Assembly Decision;
- c. Law/Government Regulation in Lieu of Law;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Provincial Regulation; and
- g. Regency/Municipal Regulation.”

In carrying out the provisions of the legislation, it is not only limited to the provisions contained in the law but the laws and regulations relating to Article 7 paragraph (1) of the Legislation Making Law. Law enforcement officials who are regulated based on statutory regulations to law enforcers in accordance with the authority based on regional regulations, committing criminal acts cannot be punished because the action is ordered by law, which includes acts carried out with the authority granted by a law.

¹⁶ Anirut Chuasanga and Ong Argo Victoria, “Legal Principles Under Criminal Law in Indonesia Dan Thailand,” *Jurnal Daulat Hukum* 2, no. 1 (2019): 131–38.

¹⁷ Ali Masykur Musa, “THE RELATIONSHIP BETWEEN THE PRESIDENT AND THE HOUSE OF REPRESENTATIVES IN BUDGET RIGHTS,” *Journal of Legal, Ethical and Regulatory Issues* 24, no. 1 (2021): 1-1L.

¹⁸ Erik Santio and Bahder Johan Nasution, “ANALISIS KEWENANGAN PRESIDEN REPUBLIK INDONESIA DI BIDANG LEGISLATIF MENURUT UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945,” *Limbago: Journal of Constitutional Law* 1, no. 1 (2021): 152–69.

With regard to the provisions of Article 50 of Indonesian Penal Code, the actions of the Investigators and/or Examiners ordering criminals to lie on their stomachs, but the orders were not carried out by the criminals therefore, members of the State Police of Indonesia kicked criminals to bruises, then the actions of members of the State Police of Indonesia could not be punished. Likewise, criminals take legal resistance to members of the State Police of Indonesia, so that members of the State Police of Indonesia commit violence against criminals, then the actions of members of the State Police of Indonesia cannot be punished.

5. Commits an act for the execution of an official order issued by the competent authority in accordance with Article 51 paragraph (1) and paragraph (2) of the Indonesian Penal Code, namely:¹⁹

- (1) “Not punishable shall be the person who commits an act for the execution of an official order issued by the competent authority;
- (2) An official order issued incompetently shall not exempt the punishment, unless it was considered in good faith by the subordinate to be issued competently and its execution lied within the limit of his subordination.”

According to the provision of Article 51 paragraph (1) and paragraph (2), it is emphasized that there are conditions need to be fulfilled, namely:

1. It is an act for the execution of an official order issued by the competent authority. The person who commits the act must be on the order of the position. Between the person giving the order and the person being ordered there must be a relationship that is a civil servant, not a private employee. The relationship between civil servants is not only limited to direct superiors and subordinates, but has the scope and obligations of the order.
2. It is official order issued by competent authority.

6. Commits principal tasks of the State Police in accordance with Article 13 of the State Police of Indonesia, namely:²⁰

- a. “Maintaining public orderliness and safety;
- b. Law enforcing;
- c. Providing protection, safeguard, and services to public.”

b. Actions Is in Accordance with the Legal Obligation Which Necessitate Functional Measure

Actions are only taken if it is absolutely necessary to eliminate an event or prevent disturbances to security and public orderliness, if action is not taken, a worse situation will occur. Security and public order are the basic capital of national development, because the realization of conducive security in the Indonesian state will support the implementation of state government.

National security and development towards improving the quality of life of the nation to create state goals and national ideals. The goals of the state are in accordance with the Preamble to the 4th Paragraph of the 1945 Constitution, as follow:²¹

¹⁹ Hosnah, Putro, and Azis, “The Implementation of Noodweer Exceeds to Perpetrators of Murder in the Practice of Criminal Justice Practices in Indonesia.”

²⁰ Nanang Tomi Sitorus and Nasrullah Hidayat, “The Role of Social Media as a Tool for the Indonesian National Police in Revealing the Perpetrators of the Crime of Theft,” *International Journal of Progressive Sciences and Technologies* 31, no. 2 (2022): 117–22.

²¹ Khudzaifah Dimiyati et al., “Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis,” *Heliyon* 7, no. 8 (2021): e07865.

“... a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice ...”

Meanwhile, our national aspiration, the Indonesian nation and state, is to create a prosperous, prosperous society with justice, peace of mind and heart, and guaranteed security. Juridically, the obligation of Indonesia in providing security is stipulated in the Article 30 paragraph (4) of the 1945 Constitution as follow:

“The State Police of Indonesia, as an instrument of the state that maintains public order and security, has the duty to protect, guard, and serve the people, and to uphold the law.”

Thus, according to the provision of Article 30 paragraph (4) of the 1945 Constitution, it is emphasized that the State Police of Indonesia has a principal task and authority to maintain public order and security in the society. It is in accordance with the provision of Article 13 of the State Police Law which regulates about the principal tasks of the State Police of Indonesia.

Further, the authority of State Police of Indonesia is also regulated under Regulation of the Chief of the National Police Number 1 of 2009 concerning the Use of Force in Police Actions (*hereinafter* Perkap 1/2009), especially under the provision of Article 1 point 2 of Perkap 1/2009, as follow:

“Police actions are coercive efforts and/or other actions that are carried out responsibly according to applicable law to prevent and inhibit or stop the actions of criminals that threaten the safety or endanger the body, property or honor of morality, in order to realize order and law enforcement as well as fostering public peace”.

With regard to the Perkap 1/2009, then the action of the State Police of Indonesia using violence, including other actions with conditions including: the actions of the perpetrators of the crime threatening the safety of the body and soul for the State Police of Indonesia and the community, safeguarding property and the honor of decency. This means that the police action must meet these requirements to be seen as carrying out actions in accordance with legal obligations. Therefore, the implementation of the State Police of Indonesia shall be carried out in accordance with the provision of Article 30 paragraph (4) of the 1945 Constitution, the Article 13 of the State Police Law as a form of other responsible legal measures.

c. The Measure Is Proper and Logical and Belongs to The Domain of His Functions

It is meant that the action must be appropriate and reasonable within the scope of the position is that the action must be carried out in accordance with definite beliefs, so that it will be able to minimize the consequences and the action, if it actually occurs, and in accordance with public opinion, is not excessive to achieve the goal by pay attention to or consider the nature of the situation and conditions and some criteria for those actions.

d. It Is Based on Proper Consideration and Exigency

The definition of proper consideration and exigency is that the action can take into account both the quality of the act and the nature of the disturbance in security and public order caused or the severity of the object being acted upon on the other party.

e. It Respects Basic Human Rights

According to the Article 4 of the State Police Law, it is emphasized that “the establishment of peace of peace for public with holding high human rights”. Based on the Law No. 39 of 1999 concerning Human Rights, it is defined as “a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to protect human dignity and worth”.

The protection of human rights is basic rights that are naturally inherent in every human being in the life of society, include not only individual rights but also the rights of the community, nation and state which are fully contained in the 1945 Constitution and are in accordance with and the UDHR and other international conventions.

In order to guarantee the protection of human right, the government issued several regulations, namely Law No. 5 of 1998 concerning the Ratification on Convention against Torture and Other Degrading Treatment or Punishment Cruel, Inhuman, or Lowers Human Dignity, Law No. 39 of 1999 concerning Human Rights, and Law No. 26 of 2000 concerning Human Rights Courts.

Human rights are very important to be enforced, therefore every action taken by members of the State Police of Indonesia must always pay attention to human rights, not solely for personal interests. According to the Perkap 1/2009, it is emphasized that “that the implementation of the use of force in police actions must be carried out in a manner that does not conflict with the rule and regulation, is in line with legal obligations and still respects and upholds human rights”.

In the implementation in the field, both parties between the State Police of Indonesia and the community are obliged to jointly pay attention to the human rights of the police officers and also the human rights of criminals. This means that there is a significant balance between the human rights of the police officer and the human rights of the criminal with obligations. The balance between the State Police of Indonesia and criminals with actions includes, (1) if criminals are willing to respect the rights and obligations of the State Police of Indonesia, the rights of criminals will be respected and protected which is the obligation of the State Police of Indonesia; (2) If the perpetrator of a crime always pays attention to his human rights rather than the rights and obligations of the State Police of Indonesia being dumped or not paying attention, the State Police of Indonesia or victim shall comply with the prevailing law and regulation.

Conclusion

The State Police of Indonesia is allowed to take other responsible legal measurement, such as firearm in exigency in maintain the security and public orderliness, law enforcing, and providing protection, safeguard, and services to public. It is in accordance with the Code of Criminal Procedure, the State Police Law, and other prevailing laws in Indonesia. The State Police of Indonesia must understand their principal task; hence they will foster legal awareness for the community in carrying out their rights and obligations as Indonesian citizens. Further, the concept of “take other responsible legal measures” is regulated in the provisions of Article 48, Article 49 paragraph (1) and paragraph (2), Article 50, and Article 51 paragraph (1) and paragraph (2) of the Indonesian Penal Code. It is considered as an action that can be taken which is in accordance with the prevailing law and regulation related to the principal task and authorities of the State Police of Indonesia. For members of the State Police of Indonesia in taking legal actions who are responsible for not being criminally prosecuted according to legal demands from the community, then every assignment by members of the Police must be accompanied by an Assignment Order (*Springas*), Report on the Results of Task Execution, and Minutes of Investigation of Cases (BA-TKP) and other administration. For the Institutions of State Police of Indonesia, with regard to the task of

its member in taking other responsible legal measures, it has been legally regulated under the Code of Criminal Procedure and the State Police Law, thus for legal certainty proposes to the Government to issue a Government Regulation of the Republic of Indonesia as a guideline for the members of State Police of Indonesia in the field in carrying out their duties, hence legal certainty is guaranteed for the members of the State Police of Indonesia who act intellectually, proportionally, and professionally.

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