

Research Article

# Ius Contituedum Regulation of the Substance of Police Repressive Actions in Protests that Result in Riots

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**Abstract:** The purpose of the study was to analyze the legality and limits of police repressive actions against protests that resulted in riots. This type of research is normative legal research with a legislative approach, a case approach and a conceptual approach. The analysis used in this study is an analytical descriptive technique. The results of the research show that the law is always used as a guideline in limiting all citizens' behavior to stay on the right path. Protests often lead to riots, destruction of public facilities, attacks on officers, and violations of public order, so that there is a criminal threat for protesters who do not maintain order and security. The regulation of police repressive actions in protests that result in chaos still needs special refinement in the context of protests, among which the substance of repressive actions must also harmonize technological developments and digitalization in security maintenance. The rules need to be updated by adding objective indicators of threats, public accountability mechanisms, transparent documentation obligations, measurable proportionality standards, and room for recovery for victims of abuse of power.

**Keywords:** Authority; Protest; Public Order; Repressive Action; Riot.

## 1. Introduction

The National Police or in its entirety is the National Police of the Republic of Indonesia is a state institution that functions to maintain the national police, enforce the law, and protect, protect and serve the community to maintain domestic security.<sup>18</sup> The main duties of the National Police are clearly stated in Article 13 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia. Through Article 13 of Law No. 2 of 2002, we can understand that the National Police is not solely tasked with enforcing the law if violations and crimes occur in the community as thought by the public in general, in addition to enforcing the law, the National Police also has other duties such as maintaining public security and order and providing protection, protection, and services to the community. On the basis of these duties, the National Police has a division of labor system based on the nature of the police duties, or within the National Police itself known as the pre-emptive, preventive, and repressive functions of the police.

Interestingly, in the context of repressive actions carried out by the police in protests that resulted in chaos, it is a police action carried out with the aim of bringing justice by enforcing the law against law violators in Indonesia. When an act of the community have caused disturbances and threats that can harm others, then repressive actions will be carried out by the National Police. Repressive actions are carried out by means of investigations and investigations into acts that are suspected of being criminal acts.

The main task of the police is to protect and serve to protect and serve the community.<sup>19</sup> In this point, law enforcement is one of the main milestones, even placed as a separate part of the legal system. The creation of law enforcement is an absolute requirement for a peaceful and prosperous Indonesian state.<sup>20</sup> The law itself plays a role in society seen from two fundamental things, namely, as a means of social control and as a means of social engineering.<sup>21</sup> It is one that deserves to be examined in relation to the current law

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enforcement, especially during protests that result in riots. Departing from the problems that have been described, prospective researchers are interested in studying in depth and comprehensively related to police repressive actions in protests and how to regulate the substance of police repressive actions in future protests.

## 2. Research Method

This type of research is normative legal research or juridical research. Normative legal research is research that is carried out by examining literature materials. The approaches used in this study are the statutory approach and the case approach as well as the conceptual approach. Where the issue of the problem is studied and analyzed through laws and regulations related to the legal issue to be solved and analyzes the case which is one of the objects that is the focus of this research. The approach in this study is understood as the "way of view" used by researchers in conducting studies and analysis, in English translated as "research approach". The analysis used in this study is Descriptive data analysis using a Qualitative approach to secondary data and primary data. The descriptive includes the content and structure of positive laws and court decisions in this study, starting from general explanations and then withdrawn to more specific explanations.

## 3. Results and Discussion

The legality of police repressive actions regulated in Indonesia's positive law is certainly inseparable from the issue of legal objectives, which can be studied from 3 (three) points of view:

- a. From the point of view of positive-normative or dogmatic juridical law, where the purpose of law is emphasized in terms of legal certainty.
- b. From the point of view of legal philosophy, where the purpose of law is emphasized in terms of justice.
- c. From the perspective of legal sociology, the purpose of law is emphasized in terms of its usefulness.

Normatively, repressive actions by the police have a legal basis regulated in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Law Number 9 of 1998 concerning Freedom of Expression of Opinions in Public, and Regulation of the National Police Chief Number 16 of 2006 concerning Guidelines for Mass Control (Dalmas) and Perkap Number 1 of 2009 concerning the Use of Police Force. In this context, repressive actions can be taken if the protest turns anarchic, causes chaos, or threatens the safety of life and property, however, its implementation must still refer to the principles of legality, proportionality, and accountability.

The principle of legality, means that all police actions must be based on clear (not arbitrary) legal provisions, and must not be outside the legal framework. In the context of crowd control, the police are obliged to carry out the use of force in accordance with the Regulation of the Chief of Police (Perkap), especially Perkap No. 1 of 2009 concerning the Use of Force. Based on the analysis that "every firing of a member of the National Police must pay attention to the principle ... Legality... The principle of legality in human rights ... The police must know the national legislation..." Upholding the principle of legality, the police cannot use arbitrary force in dealing with demonstrators; Their actions must have a valid and measurable legal basis.

The principle of proportionality, emphasizes proportionality, which demands that the use of force by the police must be "balanced" against the threat faced. This means that it should not use excessive force (overkill), but it should also not be too weak when facing serious threats. In the study "Juridical Review of the Use of Mass Control Weapons..." by Tampubolon & Yusela, it was stated that the use of tear gas and rubber bullets by the authorities has been regulated in the SOP (Protap Dalmas), but in practice violations can occur if they do not follow proportionate procedures, and can pose a risk of human rights violations. This proportionality is important so that law enforcement continues to respect the human rights of protesters, while maintaining public safety without undermining the legitimacy of the police.

The principle of accountability, means that police actions must be legally and institutionally accountable, there is a mechanism for supervision, evaluation, and accountability in the event of abuse of authority. The Journal of the Study of Criminal Law and Human Rights on Violence by Officers in Protests (Buldani) emphasizes that police discretionary policies (e.g. the right to establish security strategies) are vulnerable

abused because of "discretionary authority ... has no clear boundaries, is prone to abuse." Without strong accountability, repressive actions can become a tool of repression and undermine public trust in the police institution. In summary, it can be interpreted that:

- a. The principle of legality guarantees that any police action in controlling the mob is based on formal, not arrogant rules.
- b. The principle of proportionality keeps the use of force balanced with the threat, avoiding excessive violence.
- c. The principle of accountability ensures that if the police make a mistake (or abuse), there is a mechanism of oversight and accountability.

These three principles are interrelated and very important in the context of potentially chaotic protests. Weak implementation of one of the principles can lead to human rights violations, erode the legitimacy of the police, and exacerbate social conflicts.

Furthermore, based on the theory of authority, as stated by Philipus M. Hadjon, every action of a government official must have a legal authority basis, which comes from attribution, delegation, or mandate. This means that repressive police actions are only valid if they are carried out:

- a. Based on clear legal rules (attribution);
- b. Run by an authorized office; and
- c. It is taken through means that do not exceed the limits of authority (not *ultra vires*).

However, in practice on the ground, repressive measures are often debated because of the difference in interpretation between "enforcing the law" and "curbing freedom of speech". This creates a dilemma between maintaining public order and respecting human rights.

According to the theory of authority, every action of a public official must meet three main elements:

- a. A clear legal basis (*rechtmatigheid*), the action must have legal legitimacy.
- b. A legitimate goal (*doelmatigheid*), the action must be aimed at the public interest, not personal or political interests.
- c. The proportionality of the action, the action must be balanced between the goal and the consequences it causes.

In the context of repressive police actions, if they are carried out to control riots and maintain public safety, then these actions can be said to have legality. However, if the action is carried out excessively, without warning, or violates the human rights of the protesters, then the action becomes legally invalid and beyond the authority.

Repressive actions certainly have positive and negative impacts, including as a positive impact, namely, maintaining public order and national security, especially when protests have the potential to cause violence or mass riots, preventing material losses and casualties, both from action participants and the general public, showing the role of the state in enforcing the law and protecting the public interest, increasing the authority of law enforcement officials, as long as it is carried out in accordance with legal procedures and police professional ethics.

Meanwhile, the negative impacts that can be caused are, the potential for human rights violations, such as physical violence, arbitrary arrests, or restrictions on freedom of expression, a decrease in public trust in the police institution, if the action is considered excessive or disproportionate, the emergence of horizontal conflicts between the authorities and the community, which can trigger social and political instability, the creation of social fear or repression, so that public participation in expressing opinions in public decreased.

Under the theory of authority, repressive police actions can be considered legal only if they are carried out in accordance with the law, by authorized officials, and for legitimate purposes, however, procedural violations, excessive use of force, or the absence of a clear legal basis make such actions beyond authority (*detournement de pouvoir*). Therefore, in order to achieve a balance between law enforcement and respect for human rights, it is necessary:

- a. Supervision internal and External against Implementation police action,
- b. Professionalism and ethics training of the apparatus, and
- c. Increased transparency and accountability in crowd control.

Furthermore, if referring to the Standing Procedure of the Chief of the National Police of the Republic of Indonesia Number: Protap/ 1 /X/2010 concerning Countering Anarchy Command and Control In terms of handling anarchy, the leaders who are responsible for carrying out command and control, namely:

- a. National Police Chief, for the national level;
- b. Police Chief, for the provincial level;
- c. Police Chief, for the district/city level;and
- d. Police Chief, for the sub-district level.

In the event of an escalation of anarchy, command and control were taken over in stages. In terms of handling anarchy involving the external functions of the National Police, tactical command and control are in the hands of the Head of the Regional Unit of the National Police, while command and technical control are in the leadership of their respective external functions.

The carrying out of the internal supervision and security function is obliged to carry out security and inspection of National Police personnel who take decisive action as referred to in Protap in the context of administrative completeness and procedures to face transparency and accountability.

#### **Regulation of the Substance of Police Repressive Actions in Future Protests**

Based on the results of research on various laws and regulations, it was found that the regulation of police repressive actions in protests still needs improvement, especially in terms of legal substance, implementation procedures, and legal accountability mechanisms. The current arrangements, such as in Law No. 2 of 2002 concerning the Police, Law No. 9 of 1998 concerning Freedom of Expression of Opinion in Public, and National Police Chief Regulation No. 16 of 2006 concerning Crowd Control (Dalmas), National Police Chief Regulation No. 1 of 2009 concerning the Use of Force in Police Actions, have not fully provided strict normative limits on when and to what extent repressive actions may be carried out.

The regulation of the substance of police repressive actions in future protests must be oriented towards strengthening the principle of a democratic state of law. In the Indonesian context, the constitution through Article 28 E paragraph (3) of the 1945 Constitution guarantees freedom of assembly and expression. Therefore, any form of police repressive action must be placed as an exception that can only be carried out within clear, specific, and accountable legal limits. The affirmation of the limits of this action is important considering the potential for abuse of power often arises during mass control.

Forward substance regulation should clarify objective indicators of when the use of force is permissible, particularly with reference to the principle of legality. Articles 5 and 15 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia provide the basis for the authority of the authorities to carry out police actions, but these regulations are still general. Therefore, more detailed rules are needed in the form of a National Police Chief Regulation or changes to existing regulations, to ensure that the use of force, including physical force and special tools, is only carried out based on measurable standards. The standard must include threat levels, escalation capacity, and risk assessments to public safety.

In addition to the principle of legality, regulating the substance of future repressive actions must prioritize the principle of proportionality. The National Police Chief's Regulation No. 1 of 2009 concerning the Use of Force in Police Actions has actually affirmed the principles of necessity and proportionality, but it still needs special improvements in the context of protests. Proportionality must be interpreted as the conformity between the level of threat and the level of force used by the apparatus. For example, actions such as the use of tear gas, water cannons, or rubber bullets cannot be taken as a first response, but rather only when there is a significant escalation that endangers lives or public safety. Thus, this approach ensures that repressive actions are the last resort in handling mass actions.

Future arrangements should strengthen the aspect of accountability as a control mechanism for repressive actions. Accountability here includes not only legal and ethical accountability to the authorities, but also the obligation of transparency of information to the

public. It is necessary to build a post-incident review scheme that involves independent institutions such as Komnas HAM or the Ombudsman as an external evaluator of police actions in every major protest. Strengthening internal supervision through the National Police Propam Division must also be accompanied by periodic publications related to handling violations of the use of force. This is an important part of maintaining public trust and preventing a culture of impunity.

In the future, the substance of repressive measures must also align technological developments and digitalization in security maintenance. Arrangements regarding the use of body cameras, drone monitoring, and digital recording systems should be clarified so that visual evidence can be the basis for an objective assessment of the use of force in protests. In addition to increasing accountability, this technology also functions as a tool to prevent conflicts, because both officials and action participants will act more carefully when they know that there is official documentation that can be held legally accountable.

The regulation of the substance of repressive actions in the future must certainly be based on the paradigm of human security, not just state security. This paradigm places citizens as the main subjects whose rights must be protected, including when they express their opinions in public, thus, regulations regarding the use of force by the police must be designed to minimize risks to the safety of citizens, while still ensuring public order. This approach is in line with the principle of the National Police as a civilian apparatus that prioritizes prevention through dialogue, negotiation, and de-escalation, before implementing repressive measures. In simple terms, it can be stated that there are several challenges faced by the Police in carrying out repressive actions at protests which resulted in chaos, namely:

- a. The implementation of repressive measures is often based on situational considerations.
- b. Rules internal Police cenderung Is Administrative and operational, has not reached the dimensions of human rights and substantive justice.
- c. There is no effective legal evaluation mechanism against repressive actions that cause casualties or violations of citizens' rights.
- d. The public still considers that repressive measures are more often used as a form of social control than legal protection.

This condition shows that substantively, the existing legal arrangements have not met the principles of legal certainty, justice, and usefulness as mandated by progressive legal theory and the principle of the Pancasila state of law.

According to the theory of authority, every government action, including the police, must have a clear legal basis and a legitimate purpose. However, in practice, repressive actions are often carried out with broad discretionary power. Without strict substantive limits, this has the potential to lead to abuse of authority (*detournement de pouvoir*). In the context of the Pancasila legal state, police actions are not only judged from compliance with positive laws, but also from human values, social justice, and respect for human rights. Therefore, the substance of the repressive action forward should be directed to:

- a. Affirm the limits of authority and procedures for the use of force,
- b. Ensure that there is a public accountability mechanism, and
- c. Integrating human values in every law enforcement action.

Based on the results of the analysis, the regulation of the substance of police repressive actions in future protests needs to be directed to the following important aspects:

#### **Substantive Legal Aspects**

- a. There is a need for codification or revision of laws that expressly regulate the use of force, including the type, level, and limits of its use in demonstrations.
- b. Establish objective indicators of when a protest can be categorized as a legitimate riot to be dealt with repressively.
- c. Affirming the principle of proportionality and necessity, that physical force is only used when persuasive and preventive measures are no longer effective.

#### **Procedural Law Aspects**

- a. Require documentation of every repressive act, whether through videos, written reports, or independent witnesses.
- b. Increase transparency and external supervision, for example by Komnas HAM or independent supervisory institutions.

- c. Implement ethical standards and human rights training for every officer assigned to crowd control.

#### ***Aspects of Accountability and Law Enforcement***

- a. Strengthen legal and ethical accountability mechanisms, including sanctions for officials who exceed their authority.
- b. Opening up a space for public lawsuits or class actions for victims of unlawful repressive actions.
- c. Guarantee victims' rights to reparation, both legally and socially.

The National Police Chief's Regulation (Perkap) Number 1 of 2009 concerning the Use of Force in Police Actions is one of the main legal bases that regulates the limits and procedures of repressive actions of police officers, including in the context of handling protests.

This Perkap was created to provide guidelines for every member of the National Police in using force appropriately, proportionately, and responsibly, in accordance with:

- a. Human rights principles;
- b. Applicable laws and regulations; and
- c. The Police professional code of ethics.

The goal is so that police actions do not violate the law and do not cause unnecessary impacts on society. The Regulation of the National Police Chief (Perkap) Number 1 of 2009 concerning the Use of Force in Police Actions stipulates 6 main principles in the use of force, namely:

- a. Legality, the use of force must be based on lawful law.
- b. Necessity, power is only used when it is absolutely necessary.
- c. Proportionality, the force used must be balanced with the threats faced.
- d. Rationality, actions must be reasonable and accountable.
- e. Preventively, avoid the use of physical force as much as possible.
- f. Accountability, each Usage Strength must can be legally and ethically accountable.

Meanwhile, the National Police Chief's Regulation (Perkap) Number 1 of 2009 concerning the Use of Force in Police Actions also regulates the Stages of Use of Force (Articles 5-8).

This Perkap regulates the stages of escalation of the use of force that must be followed by members of the National Police, namely:

- a. The presence of the police (Police Presence), the initial effort to calm the situation only with the presence of the authorities.
- b. Verbal command, giving reprimands or instructions in a clear and humane manner.
- c. Soft Hand control, touch or hold lightly to control people without violence.
- d. Hard Hand control, forcing with non-lethal martial techniques.
- e. The use of a tool (Impact Weapon), such as a stick, water spray, or tear gas in a measured manner.
- f. The use of deadly force (Deadly Force) should only be used to protect the lives of both officers and citizens.

The use of lethal force is the last resort, and the obligation after the use of force is, every action that uses force must be followed by:

- a. Written reporting and complete documentation;
- b. Post-action evaluation by a direct supervisor;
- c. Internal investigation in the event of injury or death;
- d. Coordinate with external supervisory agencies (such as Komnas HAM) if necessary.

Some of the above are quite crucial arrangements in minimizing violations of protests by the police, but it does not mean that in the Regulation of the National Police Chief (Perkap) Number 1 of 2009 concerning the Use of Force in Police Actions there are no weaknesses and substantial weaknesses of Perkap 1 of 2009 in the context of potentially chaotic protests, including:

- a. Not regulating in detail the context of "demonstrations" or "protests" is still common to all police actions.
- b. There is no objective threat level indicator that determines when a particular stage can be used.

- c. Does not require electronic documentation (bodycam or video recording) for transparency and accountability.
- d. It has not regulated independent external supervision, for example the involvement of Komnas HAM in the evaluation of repressive actions.
- e. There is no recovery or compensation mechanism for victims of abuse.
- f. The application of the principle of proportionality has not been measured, there is no technical guidance distinguishing between "mild riot" and "serious threat to life".

Direction of Strengthening Substance Forward (Regulatory Development Suggestion)  
To strengthen the effectiveness and legitimacy of police actions in protests, the substance of this Perkap needs to be developed into:

- a. Affirmation of Threat Indicators and Action Stages
  - 1) Compile a matrix of use of force that distinguishes the threat level (low-medium-high) and permissible response.
  - 2) Establish quantitative indicators (number of masses, hazardous tools, damage caused, casualties, etc.).
- b. Documentation and Transparency Obligations
  - 1) Require Usage Bodycam or Drone Video during mass control operations.
  - 2) The results of the documentation should be available to the supervisory or public agencies when required.
- c. Public Oversight and Accountability Mechanism
  - 1) Establish an Independent Evaluation Team involving Komnas HAM, the Ombudsman, and community leaders.
  - 2) Any repressive incident must be evaluated a maximum of 14 days after the incident.
- d. Integration with Pancasila Values and Legal Objectives, the new substance must contain the following values:
  - 1) Fairness, non-discriminatory and proportionate actions.
  - 2) Legal certainty, there are clear standards and limits.
  - 3) Utility, maintaining public safety without violating human rights.
  - 4) A just and civilized humanity as the spirit of legal action.
- e. Apparatus Training and Certification
  - 1) Mandatory human rights training and de-escalation on a regular basis for all crowd control personnel.
  - 2) Uncertified officers should not be involved in Dalmis operations.

The National Police Chief's Regulation No. 1 of 2009 has become an important foothold for the use of force by the police, however, in the context of democracy and respect for human rights today, this regulation needs to be updated by adding:

- a. Objective indicators of threats;
- b. Public accountability mechanisms;
- c. Transparency documentation obligations;
- d. Measurable proportionality standards; and
- e. A space for recovery for victims of abuse of power.

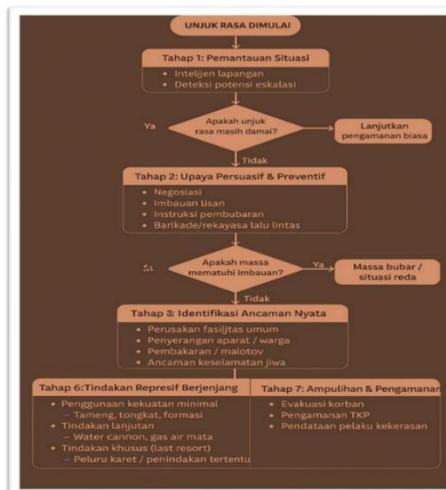
Through this update, future police repressive actions will be more in line with the principles of legal goals and justice, certainty, and utility, as well as the values of Pancasila that place humanity and social justice as the main foundation. More substantive and comprehensive arrangements in the future will have two main impacts:

- a. Increase legal certainty and public trust in law enforcement officials.
- b. Encourage the creation of professional, humane, and fair police actions.
- c. It is an important instrument in maintaining a balance between national stability and civil liberties.

Overall, the direction of regulating the substance of police repressive actions in future protests must be oriented towards fair and humane law enforcement. This means that every form of use of force by the apparatus must have a clear legal basis, be carried out with strict limits of authority, and be supervised accountably.

Such an arrangement not only strengthens the rule of law, but also ensures that freedom of opinion as a constitutional right of citizens is still protected, in line with the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, and the principles of a democratic state of law.

The flow of police action in carrying out repressive actions against acts of persuasion that result in chaos can be seen briefly based on the following processed image:



**Figure 1.** The flow of police action in carrying out repressive actions against persuasion actions that result in chaos

Objective indicators that must be met before repressive action is carried out (indicators must be measurable, tiered, and provable):

- a. Pre-condition indicators (must be met first)
  - 1) There is a real threat to the safety of life, for example mass beatings, the use of sharp weapons/firearms, and many injuries.
  - 2) There is a significant threat to important public property, such as arson, destruction of vital facilities (hospitals, stations, government buildings).
  - 3) Persuasive efforts have been taken and proven to be ineffective, verbal warnings, written notices, negotiations and mediation at least 2 times by field officers.
  - 4) The achievement of the time escalation threshold, for example, the demonstration has already taken place X hours after the last warning and there is no intention to disperse. (Time thresholds must be set: e.g. 1–3 hours depending on the context.)
  - 5) The presence of external triggering factors, such as the entry of armed provocateurs, incendiary devices, or groups that clearly commit criminal acts.
- b. Threat Level Indicator (scale, to determine the type of response)
  - 1) Level 1 (Low): peaceful action turns rowdy, use dialogue, area restrictions.
  - 2) Level 2 (Medium): limited anarchist actions (minor destruction, throwing) use coordinated dispersal, non-lethal tear gas as per the procedure.
  - 3) Level 3 (High): massive violence, use of weapons, threats to critical infrastructure, use of measurable force that could include targeted mass arrest; The use of harder tools remains strictly regulated.
- c. Evidence & Documentation Indicators (must be present)
  - 1) Video/voice recordings of the apparatus (bodycam/streetcam) that were active at the time of treatment.
  - 2) A written report of the field command containing: the time of the warning, the content of the warning, the response of the demonstrators, the name/number of the officer in charge.
  - 3) Statements of independent witnesses (minimum 2) or external observers.
- d. Legal/Formal Indicators
  - 1) An operating order stating the legal basis, purpose, and time limit of action.
  - 2) Appointment of the officer in charge and internal contact number for quick complaints.

#### 4. Conclusion

The regulation of the substance of police repressive actions in future protests must be oriented towards strengthening the principle of a democratic state of law. In the Indonesian context, the constitution through Article 28 E paragraph (3) of the 1945 Constitution guarantees freedom of assembly and expression. Therefore, any form of police repressive action must be placed as an exception that can only be carried out within clear, specific, and accountable legal limits. Forward substance regulation should clarify objective indicators of when the use of force is permissible, particularly with reference to the principle of legality. The Regulation of the National Police Chief Number 1 of 2009 concerning the Use of Force in Police Actions has actually emphasized the principles of necessity and proportionality, but it still needs special improvements in the context of protests, in the future the substance of repressive actions must also harmonize technological developments and digitalization in security maintenance. This rule needs to be updated by adding: objective indicators of threats; public accountability mechanisms; transparency documentation obligations; measurable proportionality standards; and a space for rehabilitation for victims of abuse of power.

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