

FREEDOM OF SPEECH AS A CONSTITUTIONAL RIGHT: A REVIEW OF DEMONSTRATION HANDLING PRACTICES

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Abstract

This study aims to analyze the legal guarantees of the principle of non-discrimination in fulfilling the voting rights of people with disabilities in general elections in Indonesia and to identify technical obstacles to its implementation in the field. The right to vote is a constitutional right of citizens that must be fulfilled without exception. This study uses a normative legal research method with a statute approach and a conceptual approach. Secondary data sourced from primary, secondary, and tertiary legal materials are analyzed qualitatively and descriptively. The results show that normatively, Indonesia has a strong and multi-layered legal framework, starting from the 1945 Constitution, ratification of the Convention on the Rights of Persons with Disabilities (CRPD), and the Election Law, which mandates affirmative policies for people with disabilities. However, at the empirical level, technical implementation at Polling Stations (TPS) still faces serious obstacles. These obstacles include the lack of physical accessibility for wheelchair users, limited voting aids (braille templates), the absence of visual communication media for deaf voters, inaccurate data on the Permanent Voters List (DPT), and the low sensitivity of KPPS officers. The conclusion of this study emphasizes the need for standardization and audit of TPS accessibility, reform of the technical guidance curriculum for organizers through disability awareness training, and strengthening synergy with organizations of people with disabilities in order to realize inclusive and fair elections.

Keywords: *Voting Rights, Disability Groups, Non-Discrimination, General Elections, Polling Stations (TPS).*

A. INTRODUCTION

Freedom of expression is a key pillar of a democratic nation. As a democratic state governed by the rule of law, Indonesia explicitly guarantees the protection of citizens' rights to express their aspirations in public (Nuna & Moonti, 2019). This guarantee is not merely a political commitment, but rather a mandate of the highest authority, legally legitimized. Through national legal instruments, the state is obliged to respect, protect, and fulfill the right of every individual to speak without fear (Riskiyono, 2015).

Constitutionally, the legal basis for freedom of expression is strictly regulated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This provision states that everyone has the right to freedom of association, assembly, and expression (Bakhtiar & Bima, 2020). Furthermore, this provision is reinforced by Law Number 9 of 1998 concerning Freedom of Expression in Public. This series of regulations demonstrates that demonstrations are a legitimate means recognized by law to oversee the functioning of government (Nur & Herianto, 2022).

However, in the empirical reality on the ground, these constitutional guarantees often clash with the dynamics of law enforcement and security. The right to freedom of expression is not absolute and unlimited, as it is limited by the rights of others and the obligation to maintain public order (Auliania & Aprilia, 2019). The tension between maintaining national security and protecting human rights often triggers tensions. When a mass demonstration takes

place, the public space becomes an arena for contestation between citizens' rights and state authority (Raskasih, 2020).

Recent events demonstrate an increasing trend of repressive actions by law enforcement officers in handling demonstrations. Excessive use of tear gas, arbitrary arrests of demonstrators, and even acts of physical violence are still frequently reported in mass media (Siregar, 2017). On the one hand, authorities argue that these actions are intended to disperse crowds that have begun to behave anarchically. On the other hand, civil society believes that the response given by the authorities is often disproportionate and beyond the bounds of reasonableness (Samad & Persadha, 2022).

This gap constitutes a crucial issue (gap analysis) in this research. There is a clear inconsistency between the legal idealism enshrined in the 1945 Constitution and the tactical implementation of police Standard Operating Procedures (SOPs) in the field. Although the Indonesian National Police has issued National Police Chief Regulation (Perkap) Number 9 of 2008 concerning Procedures for Providing Services, Security, and Handling Freedom of Expression Cases in Public, in practice, the security approach remains far more dominant than the rights-based approach (Putra, 2022).

Several previous studies have examined the human rights aspects of demonstrations, but most have focused on the sociological impact of the conflict (Hairi, 2016; Agustina et al., 2022). There are few studies that specifically examine the extent to which synchronized internal regulations within law enforcement agencies accommodate citizens' constitutional rights without violating democratic principles. Therefore, this study aims to fill this gap by emphasizing a normative review of demonstration management practices.

Against this background, this study aims to analyze and evaluate freedom of expression as a constitutional right within the framework of demonstration management practices by law enforcement. Through this discussion, it is hoped that an ideal model for securing demonstrations can be formulated that is humane, persuasive, and in line with international legal principles. The results of this study are expected to contribute to the improvement of police tactical regulations and the strengthening of the protection of citizens' constitutional rights in Indonesia.

B. METHOD

This research employs a normative (doctrinal) juridical legal research method that focuses on the study of legal principles, the vertical-horizontal synchronization of laws and regulations, and abstract norms related to freedom of expression (Rusli, 2006). The approach employed is a statute approach to examine the 1945 Constitution, Law Number 9 of 1998, and the related Regulation of the Chief of Police, and a conceptual approach to analyze the doctrine of protecting citizens' constitutional rights. The primary data sources used are secondary data, consisting of primary legal materials in the form of regulations and official state documents; secondary legal materials in the form of textbooks, scientific journals, and reports from human rights institutions; and tertiary legal materials in the form of legal dictionaries and encyclopedias.

The collection of legal materials in this research was conducted through library research by identifying, inventorying, and classifying legal documents relevant to the object of study. After the data was collected, the data analysis technique used was qualitative analysis using deductive reasoning. Legal materials were interpreted systematically and grammatically to evaluate the extent to which operational regulations for securing demonstrations in the field align with constitutional values. Through this method, the research can produce objective normative conclusions regarding regulatory gaps and formulate improvements to the law enforcement system in handling demonstrations in Indonesia.

C. RESULT AND DISCUSSION

1. Analysis of Freedom of Expression in the 1945 Constitution and Law Number 9 of 1998

Freedom of expression is the embodiment of popular sovereignty, placing citizens as the primary subjects in governance. In a democratic system of government, this right serves as a legal instrument of social control to oversee the exercise of power to prevent it from falling into authoritarianism. The Indonesian Constitution, through a series of post-Reformation amendments, has provided strong recognition of this civil and political right. This recognition affirms that expressing opinions in public is no longer merely a grant or permission from those in power, but rather a natural right inherent in every human being from birth.

From a formal legal perspective, Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) serves as the cornerstone for protecting the rights of assembly and expression. This provision explicitly states that everyone has the right to freedom of association, assembly, and expression. The placement of this article in the Human Rights chapter demonstrates the state's strong moral and legal commitment to refraining from arbitrary interference with the thoughts and expressions of its citizens. The Constitution mandates that differing political views or criticism of policies should not be viewed as a threat, but rather as part of national maturity (Zaini, 2020).

This constitutional protection is further emphasized by Article 28F of the 1945 Constitution, which guarantees the right of every person to communicate and obtain information for personal and social development. In the context of demonstrations, the expression of ideas or criticism in public spaces constitutes a form of mass communication protected by this article. When people demonstrate, they are exercising their communication rights to convey moral, social, and political messages directly to policymakers (Heryanto, 2021). Therefore, any unlawful obstruction or restriction of this communication space constitutes a violation of the constitutional mandate.

As a follow-up to this constitutional mandate, Law Number 9 of 1998 concerning Freedom of Expression in Public was enacted. This law, enacted at the beginning of the Reformation era, holds strong historical and sociological value as an antithesis to the repressive New Order regime. This law aims to establish a legal foundation that balances the protection of human rights and the maintenance of public order. Through this law, the state seeks to establish a legal framework so that public expression can be channeled in an orderly, safe, and responsible manner without losing its critical essence.

Article 1, number 1 of Law Number 9 of 1998 provides a normative definition that freedom of expression is the right of every citizen to express their thoughts orally, in writing, and so on freely and responsibly (Kodiyat & Asdhie, 2018). This definition contains two key, inseparable elements: freedom and responsibility. Freedom implies the absence of repression or preventative censorship by authorities before ideas are expressed. Meanwhile, responsibility implies that such expression must respect applicable laws, the rights of others, and prevailing moral values in society.

Furthermore, Article 5 of Law Number 9 of 1998 imposes clear obligations and responsibilities on citizens who exercise their rights in public. Citizens are obliged to respect the rights and freedoms of others, respect generally recognized moral rules, obey the laws and provisions of applicable laws and regulations, maintain and respect public security and order, and maintain the integrity of national unity. These restrictions demonstrate that Indonesian law does not embrace absolute or anarchic freedom, but rather freedom that is just and respects shared living space.

On the other hand, this law also demands an active role from the state through law enforcement officials and related agencies. Based on Article 7 of Law Number 9 of 1998, government officials have the obligation and responsibility to protect human rights, respect the

principle of legality, respect the presumption of innocence, and provide security (Hairi, 2016). This security obligation means that police officers are present at demonstrations not to disperse or obstruct the crowds. Their primary duty is to oversee the demonstration to prevent interference from outside parties intending to provoke or disrupt the situation.

One technical aspect that often sparks controversy in the field is the interpretation of demonstration notification letters. According to Article 10 of Law Number 9 of 1998, public expression of opinions must be notified in writing to the National Police. Many operational misinterpretations consider these notification letters to be the same as permits. Normatively, the principle adopted is the notification system, not the permit system. The absence of a notification receipt does not automatically render a peaceful demonstration illegal, allowing it to be forcibly dispersed without a clear threat to public order.

It is important to understand that restrictions on citizens' constitutional rights can only be implemented through legitimate and measured mechanisms. Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) through Law Number 11 of 2005. Based on Articles 19 and 21 of the ICCPR, restrictions on the rights of assembly and expression are only justified if prescribed by law and are necessary in a democratic society in the interests of national security, public safety, or the protection of the rights of others (Prameswari & Galingging, 2025). Restrictions may not be imposed solely on the political preferences of those in power or bureaucratic convenience.

In constitutional law doctrine, these restrictions are also aligned with Article 28J paragraph (2) of the 1945 Constitution. This article states that in exercising their rights and freedoms, everyone must comply with restrictions established by law. The purpose of these restrictions is solely to guarantee recognition and respect for the rights and freedoms of others and to meet just demands based on moral considerations, religious values, security, and public order. Therefore, the interpretation of Article 28J paragraph (2) must be carried out restrictively and carefully to prevent it from being used as a universal justification for suppressing citizens' constitutional rights.

A vertical synchronization reveals a normative harmony between the 1945 Constitution, Law Number 9 of 1998, and ratified international legal instruments. All three levels of regulation view freedom of expression as a pillar of democracy that must be protected proportionally. The fundamental problem lies not in the absence or weakness of norms at this legal level, but rather in how these abstract norms are translated into technical operational policies. This disparity in perception between the philosophy of the law and the security paradigm in the field triggers the vulnerability of violations of citizens' rights.

Protection of freedom of expression is also closely linked to the principle of equality before the law. Every group in society, regardless of political affiliation or the substance of their demands, has an equal right to use public space as a means of expression. Discrimination in providing security or responding differently to protesters supporting the government and those criticizing it is a clear violation of general legal principles. State authorities, particularly the police, are required to maintain absolute neutrality and professionalism in overseeing every aspect of the expression of opinion.

Furthermore, Law Number 9 of 1998 provides criminal protection for citizens exercising their constitutional rights. Article 18 of the law explicitly threatens criminal penalties for anyone who, through violence or the threat of violence, obstructs a citizen's right to express their opinion in public in accordance with the law. These sanctions demonstrate that obstructing, arbitrarily disbanding, or criminalizing peaceful demonstration participants constitutes a violation of the law with serious legal consequences.

However, the effective enforcement of Article 18 of Law Number 9 of 1998 remains extremely rare in Indonesian legal practice. There is virtually no legal precedent for law enforcement officers or third parties being punished for obstructing peaceful civil

demonstrations. The lack of sanctions creates a veiled sense of impunity and weakens the public's bargaining power with security authorities. This situation exacerbates the imbalance of power relations between citizens seeking to express their rights and the authorities who control the state's powerful apparatus.

The concept of responsible freedom stipulated in our national law also demands an active role from the corporator or field coordinator (Korlap) of demonstrations. The Korlap is fully responsible for ensuring that the protesters move according to the designated route, maintain peace, and refrain from provocative actions that could lead to the destruction of public facilities. If infiltration or anarchic actions by certain individuals occur, the Korlap must actively coordinate with security forces to isolate the perpetrators. This is crucial to ensure that the essence of the demonstration's political or social message is not distorted by the violent actions of a small group.

2. Evaluation of Procedures and Practices for Handling Demonstrations by Law Enforcement Officers in the Field

The security practices of demonstrations by law enforcement officers in Indonesia are technically regulated through a series of internal police regulations. The primary legal instruments used are National Police Chief Regulation (Perkap) Number 16 of 2006 concerning Guidelines for Crowd Control (Dalmas) and National Police Chief Regulation (Perkap) Number 9 of 2008 concerning Procedures for Providing Services, Security, and Handling Freedom of Expression Cases in Public. These two regulations were established to translate the principles of human rights protection into tactical measures in the field. Through these regulations, police personnel are expected to clearly distinguish between preventive security measures for peaceful demonstrators and repressive measures against rioters.

In addition to these two Perkaps, the Indonesian National Police also has National Police Chief Regulation Number 1 of 2009 concerning the Use of Force in Police Actions. This regulation outlines the procedures and stages officers must go through before deciding to use force against crowds or certain weapons. Normatively, the use of force must meet the principles of legality, necessity, and proportionality. This means that law enforcement's force may only escalate or increase if the level of threat and resistance from the protesters significantly increases and endangers lives.

However, evaluations of empirical practice in the field often reveal a sharp disconnect between the text of internal regulations and the reality of security forces' actions. In many large-scale demonstrations, the response patterns displayed by security forces tend to skip the stages stipulated in the Regulation on the Use of Force. The use of tear gas, water cannons, and even beatings with batons are often prematurely unleashed before persuasive and negotiating efforts have been maximized. Failure to adhere to these stages indicates weak tactical discipline of personnel under the pressure of dynamic field situations.

The primary factor underlying these repressive actions is the continued dominance of the security approach paradigm within law enforcement. This paradigm views demonstrations not as expressions of citizens' constitutional rights, but as potential disturbances to public order and security (kamtibmas) that must be immediately suppressed. When demonstrations are perceived as a threat to public order, the security system's spontaneous response is to sterilize protesters, restrict movement, and forcibly disperse them. Consequently, physical clashes between protesters and security forces become unavoidable.

This situation is exacerbated by the minimal implementation of a rights-based approach in the training curriculum for police personnel, particularly the Dalmas (Community Defense) and Brimob (Mobile Brigade) units. A rights-based approach requires officers to position themselves as facilitators and protectors of citizens' rights during peaceful demonstrations. In this approach, officers primarily focus on isolating provocateurs or infiltrators, without

sacrificing or attacking the entire crowd, who are peacefully expressing their aspirations. The lack of sensitivity to human rights leaves officers on the ground vulnerable to blanket action at the slightest disturbance in demonstrations.

The phenomenon of excessive use of force is also often triggered by disproportionate deployment of personnel and intimidating riot gear from the outset. When the protesters were confronted directly by barricades of iron shields, tactical vehicles, and heavily armed personnel, the psychological atmosphere in the public space became extremely tense. This psychological pressure was experienced not only by the demonstrators but also by the police personnel on the front lines. This atmosphere of mutual suspicion and tension facilitated verbal friction, which then quickly escalated into mass physical violence due to minor provocations.

One of the most frequently highlighted procedural violations by non-governmental organizations and human rights organizations is the use of tear gas, which violates international safety standards. According to internal guidelines and international standards, tear gas should not be fired directly at the bodies or faces of demonstrators, and it is strictly prohibited to fire it into enclosed spaces or crowds without clear evacuation routes. However, the facts on the ground show that tear gas is often fired randomly, even targeting public facilities, residential areas, and journalists covering the protests. This action reflects panic on the part of the command and a complete disregard for the public health impact.

Evaluation should also focus on the practice of arbitrary arrests, which frequently occurs during or after demonstrations are dispersed. Security forces often conduct mass arrests without sufficient preliminary evidence that the individuals arrested have committed a crime or caused damage. Many of those arrested are schoolchildren, university students, or civilians trapped at or simply in the vicinity of the demonstration. These mass arrests without proper administrative investigative procedures violate the presumption of innocence and the right to personal liberty guaranteed by the Criminal Procedure Code (KUHP).

Furthermore, the criminalization of field coordinators or activists driving demonstrations using ambiguous articles in positive law has become a particular problem. The use of articles on insulting authorities, incitement (Article 160 of the Criminal Code), or articles in the Electronic Information and Transactions Law (UU ITE) is often used as a tool to repel civil society movements. These legal efforts are often not purely about upholding legal justice, but rather a systematic silencing strategy to create a chilling effect on the public, discouraging them from returning to the streets to voice criticism of government policies.

The issue of impunity among law enforcement officers who use violence during demonstrations is also a contributing factor to the impediment of police reform. When human rights violations or physical violence result in serious injuries or even death of demonstrators, the legal process often ends in internal disciplinary hearings or code of ethics hearings. Sanctions typically involve written warnings, suspensions, or job transfers. Cases of violence by officers during demonstrations are rarely brought to the general criminal courts, thus failing to provide substantive justice for victims and their families.

The unclear chain of command and high-level legal responsibility (command responsibility) in protest security operations complicates accountability. When mass violence occurs, there is often a shift in responsibility between field commanders leading the tactical operation and regional leaders, who hold the authority for security policy. This ambiguity makes it difficult to prove who gave the order to fire tear gas or use repressive force. Without transparency in command, improving operational standards within security institutions will always be a dead end.

In addition to internal obstacles within the security forces, external factors such as infiltration by anarchist groups (black blocs or professional rioters) also complicate the dynamics of handling demonstrations. These groups exploit the momentum of peaceful demonstrations to incite riots, damage public facilities, and attack officers with rocks or

Molotov cocktails. The presence of these infiltrators often provokes the authorities into a repressive response. The police's greatest challenge is honing their intelligence and tactical skills to separate these rioters from the main protesters without harming the rights of the majority of peaceful protesters.

The development of information technology in the current digital era can actually be an effective oversight tool for policing demonstrations. Through live broadcasts on social media and video recordings from civilians' mobile phones, every act of violence by police can be immediately recorded and widely consumed by the public. This digital public pressure has been proven several times to force the police to investigate and apologize. However, this response remains reactive to viral cases, not yet a systemic awareness that improves the overall behavior of the police force.

On the other hand, there is also a trend of restricting digital space before and during demonstrations, such as limiting internet access or blocking messaging applications in certain areas under the pretext of preventing hoaxes and provocation. This practice is considered a violation of digital rights that directly impacts the right to express opinions. When communication access is cut off, coordination between protesters to maintain peace is disrupted, and public accountability for monitoring police actions is lost. These digital restrictions actually create a dark space that is vulnerable to being exploited for violence without public oversight.

The involvement of military elements (TNI) in securing civil demonstrations also requires critical normative evaluation. By law, the TNI's primary duty is national defense, while domestic security and demonstrations fall under the purview of the civilian police. TNI involvement in securing demonstrations must be auxiliary (under the command of the police), with very specific threat escalations and a state political decision. The practice of deploying military personnel on the front lines of securing civil demonstrations raises concerns that it could revive memories of past militarism and blur the boundaries of civil criminal law enforcement.

The role of external oversight bodies such as the National Commission on Human Rights (Komnas HAM), the Indonesian Ombudsman, and the National Police Commission (Kopolnas) in monitoring demonstration handling practices still needs to be strengthened. To date, recommendations and findings of procedural violations issued by these institutions have often been merely moral appeals that lack the binding force to enforce the police. As a result, comprehensive reports on rights violations during demonstrations have simply accumulated as administrative documents without any concrete policy improvements from decision-makers. From the entire evaluation above, it is clear that the practice of handling demonstrations in Indonesia remains trapped in a conflict between the rule of law and the rule of security. The law guarantees broad rights, but security operations on the ground erect repressive barriers. Strong political will is needed from the highest leadership of law enforcement institutions to completely overhaul the doctrine of securing demonstrations. Change must be directed from the original orientation of crowd control to a humane approach to crowd management.

Ultimately, the alignment between citizens' constitutional rights and law enforcement practices on the streets is a key indicator of the quality of democracy in a state based on the rule of law. Neglecting procedures for securing demonstrations is tantamount to allowing the pillars of democracy to slowly erode from within. Police institutions must recognize that their true legitimacy in the eyes of the public is derived not from their ability to disperse crowds with violence, but from their success in maintaining a space for public expression.

D. CONCLUSION

This study concludes that freedom of expression, as a constitutional right guaranteed in Article 28E paragraph (3) of the 1945 Constitution and Law Number 9 of 1998, still

experiences a sharp gap in the practice of handling demonstrations in the field. Although regulations at the statutory level and internal police regulations have included principles of human rights protection, tactical implementation by law enforcement officers in the field is still dominated by a security approach rather than a rights-based approach. As a result, excessive use of force, arbitrary arrests, and criminalization of demonstrators still frequently occur and violate citizens' civil and political rights. Therefore, comprehensive procedural reform is needed within security institutions through changing security doctrine from crowd control to humanistic crowd management, strengthening command accountability to eliminate impunity, and aligning technical operational regulations with international human rights standards in order to maintain the sustainability of democracy in Indonesia.

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