



## THE CRIMINAL LAW POLICY IN THE COUNTERMEASURES OF ANARCHIST DEMONSTRATION IN INDONESIA

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**Abstract:** *Everyone has the right to freedom of expression, where the opinion referred to can be expressed either in writing or in the form of a statement in public. For an opinion expressed in public, one of them is by using a method in the form of a demonstration. Demonstrations in everyday reality often cause problems at the level of implementation. However, it is guaranteed in our constitution, the procedures and implementation of demonstrations often hurt the spirit of democracy itself. Demonstrations often turn into anarchic actions and violate the social order that has been built in society. As stated in the facts, the number of anarchic demonstrations has resulted in a lot of material and immaterial losses, where the safety of the residents around the demonstration site is not guaranteed. This is very contrary to the purpose of democracy as the basis for the demonstration, so it is necessary that if there is a policy formulation in overcoming demonstrations carried out in anarchism*

**Keywords:** *Anarchist; Demonstration; Democracy.*

**Abstrak:** *Setiap orang berhak atas kebebasan mengeluarkan pendapat, dimana pendapat sebagaimana dimaksud dapat dikemukakan baik dalam bentuk tulisan maupun dalam bentuk pernyataan dimuka umum. Atas suatu pendapat yang dikemukakan dimuka umum salah satunya dengan menggunakan cara dalam bentuk aksi demonstrasi. Demonstrasi dalam kenyataan sehari-hari sering menimbulkan permasalahan dalam tingkatan pelaksanaan, meskipun telah dijamin dalam konstitusi kita namun tata cara dan pelaksanaan demonstrasi seringkali melukai semangat demokrasi itu sendiri. Aksi demonstrasi seringkali berubah menjadi aksi yang anarkis dan melanggar tertib sosial yang telah terbangun dalam masyarakat. Banyaknya aksi demonstrasi yang bersifat anarkis sebagaimana disebutkan pada faktanya telah mengakibatkan banyak kerugian baik secara materi dan imateriil, dimana warga di sekitar lokasi demonstrasi menjadi tidak terjamin keamanannya. Hal ini sangat bertentangan dengan tujuan dari demokrasi sebagai dasar dilakukannya demonstrasi tersebut sehingga perlu agar sekiranya terdapat suatu formulasi kebijakan dalam mengatasi demonstrasi yang dilakukan secara anarkisme.*

**Kata Kunci:** *Anarkis; Demonstrasi; Demokrasi.*

### A. Introduction

The 1945 Constitution of the Republic of Indonesia has regulated the right of every citizen to express an opinion as stated in Article 28E paragraph 3, which expressly reads, “*Everyone has the right to freedom, association, assembly, and opinion*”.(Lestari & Bahmid, 2020) The article means that everyone has the right to freedom of expression, which can appear/be carried out in the form of expression, public statements, or in the form of demonstrations. (Mustafa Kamal pasha dkk, 2013)

The freedom of every citizen to express opinions in public is the embodiment of democracy in the life of the nation and state. Freedom of expression is further regulated in Law Number 9 of 1998, "On Freedom of Expression in Society." Article 1 paragraph 1 regulates: "*Freedom of expression is the right of every citizen to freely and responsibly express his ideas orally and in writing following the provisions of the legislation.*" (Fragusty, 2019)

People who will carry out demonstration activities are obliged to notify the police in advance. This has become the person's obligation in charge of the action, considering that normatively its existence can be seen in Article 10 and Article 11 of Law Number 9 of 1998 concerning the right to express opinions freely. Although there is a guarantee for the public to express their opinions in public, demonstrations in everyday reality often cause problems at the implementation level. The manner and implementation of demonstrations often damage the spirit of democracy itself. Demonstrations often turn into anarchic behavior and violate the established social order. (Nastatih & Rachmaria, 2020)

Demonstrations are part of the democratic life of a country because demonstrations are a way of expressing opinions in public. Demonstrations or demonstrations that have recently started to bloom are sometimes accompanied by irresponsible actions, namely the destruction of public facilities, which violates the demonstration or demonstration itself. Furthermore, the anarchist demonstrations carried out in large numbers have caused many material and non-material losses, and residents around the demonstration site cannot be protected. (Winarno, 2019)

The activity of expressing opinions in public is considered an illegal act when anarchy occurs, accompanied by a crime or crime that endangers public order, a crime that endangers personal safety or property, and a crime that endangers public authority.

Based on the explanation above, it can be concluded that basically, freedom of expression in public is a constitutional right of citizens. However, the empirical phenomenon shows that in Indonesia today, there are still frequent demonstrations carried out in an anarchic way, so that this is a dilemma in itself. Based on this, the purpose of writing this article is to examine and discuss the application of the policy of criminal acts against demonstrations carried out in an anarchic manner so that we all know about any efforts to overcome these problems.

## **B. Research Method**

The approach method used in this study is an empirical juridical approach. A juridical approach is an approach in terms of legislation and legal norms according to existing problems. In contrast, the empirical approach emphasizes research to obtain knowledge of laws and regulations concerning research problems based on existing facts. (Dr. Wahidmurni, 2017)

The approach method used is an empirical juridical approach, so the data collected comes from primary data as primary data and secondary data as supporting data. The primary data in this study were obtained by conducting field studies using interview techniques or methods. Primary data is data obtained directly from data sources. This data was obtained by conducting direct interviews with informants. (Bellina et al., 2020) The interview is a question, and answer process in research that takes place orally by two or more people face to face listening directly to information or descriptions. The secondary data was obtained by conducting library research. This data collection is done by study or library research, namely by studying regulations,

documents, and books that have to do with the problem being studied and the doctrines or opinions of scholars. (Bambang Sunggono, 2013)

The data needed in this research was obtained through library research and field surveys. To classify primary data, data collection is done using interviews. Interviews were conducted by asking questions related to the problems studied.

In discussing this thesis, the author uses a qualitative analysis method, namely data analysis, based on finding principles and information from informants. Data is obtained from the results of field research and literature, then analyzed by qualitative analysis methods to answer the problems that have been formulated, namely by analyzing the quality of the data obtained so that a clear and relevant picture is obtained. The way of thinking to conclude the research conducted by the author using the inductive method is a method to draw conclusions based on a specific understanding and then conclude to a general understanding.

## **C. Discussion**

### **1. Crime Countermeasures Policy with Criminal Law**

Mazmanian and Sabatier believe that policy implementation means understanding what actually happens after a plan is formulated or formulated, i.e., events and activities that occur after the approval or legislation of public policy, regardless of the management work or management work involved. Strive to have an extraordinary impact on the community or event. Subarsono argues that public policy is what the government chooses to do or not (public policy is what the government chooses to do or not do). (Akib, 2012) The public policy process consists of five stages, namely as follows: (Suriasumantri, 2009)

- a. Agenda setting, which is a process that draws the government's attention to a problem;
- b. Policy formulation, the process of formulating policy options by the government;
- c. Decision making, which is the process by which the government decides to take action or not;
- d. Policy implementation, namely the process for implementing policies to achieve a result;
- e. Policy evaluation, namely the process for monitoring and evaluating policy results or performance.

The following variables usually determine the public policy framework:

- a. Goals to be achieved. This includes a complexity of goals to be achieved;
- b. What kind of value messages should be considered in making a policy;
- c. The resource that could support the path of policy;
- d. The ability of the management who will be involved in making a policy;
- e. The environment includes the economy, social environment, politics, and so on.

The problem of crime prevention in society cannot be separated from criminal politics. According to Sudarto, the notion or definition of criminal politics is a reasonable effort by society in dealing with crime. (Sudarto, 1986) Efforts to eradicate this crime can be criminal or non-criminal. Efforts to prevent crime by formulating criminal law norms include substantive, structural, and cultural aspects of the community that enforce the criminal law system.

The criminal policy is a policy that determines behavior that was not initially a crime (unconvicted) as criminal behavior (conviction-able behavior). Therefore, the criminal policy becomes part of the criminal policy through criminal law (criminal law) and thus becomes part of the criminal policy. (Sudarto, 1986)

Using legal remedies, including criminal law, to address social problems, including law enforcement policies. In addition, because the general goal is to achieve public welfare, law enforcement policies are included in social policy, namely all reasonable efforts to achieve public welfare. In policy, the use of criminal law is not necessary. There are no absolutes in the policy field because, in essence, the community is faced with the problem of evaluating policies and selecting various alternatives. (Barda Nawawi Arief, 2006) The policy of repressive sanctions also includes prevention because it is expected to threaten and carry out criminal acts to act as a deterrent. Roeslan Saleh (Roeslan Saleh) put forward three relatively long reasons about criminal law and the need for criminal law, the main points of which are as follows: (Muladi dan Barda Nawawi Arief, 1984)

- a. One kind. Whether or not criminal law is necessary is not about the goal to be achieved, but about the extent to which force can be used; the problem is not about the results to be achieved, but the consideration between the value of the result and the value of the limit of personal freedom;
- b. Efforts to repair or maintain are meaningless to the cursed person; besides, he must still respond to the principles he has practiced, which cannot be ignored;
- c. Criminal law or the influence of criminal law targets criminals and impacts those who are not bad, namely citizens who are subject to social norms.

Law enforcement is an attempt to tackle crime rationally, fulfill a sense of justice and be efficient in the context of tackling crimes against various means as a reaction that can be given to criminals, in the form of criminal and non-criminal means, which can be integrated with one another.

Soerjono Soekanto expressed his opinion on law enforcement Conceptually, the essence and meaning of enforcement lie in coordinating the relationship between values and values. These values and values are summarized as a series of final stage value descriptions with solid and concrete rules and attitudes to create and maintain and maintain social peace. In the implementation of human life, the legal principles are embodied in the value of order and peace, the value of the public interest and the value of personal interest, the value of sustainability, and the value of innovation which then becomes the norm or benchmark. Moreover, it is considered as appropriate behavior or attitude aimed at creating and maintaining peace. (Ishaq, 2017)

Satjipto Raharjo issued an opinion on law enforcement as follows. Law enforcement is an effort to realize the idea of legal certainty, social welfare, and justice. The process of realizing these three ideas is the core of law enforcement. Law enforcement can also be interpreted as the legal management of law enforcement officials and everyone who has interests and has their authority following applicable legal rules. (Satjipto Raharjo, 1980)

According to Moeljatno, it can be concluded that criminal law provides the basics and rules for: (Moeljatno, 1992)

1. Determine the mass actions that should not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain crimes for anyone who violates the prohibition;

2. Determine when and in what cases those who have violated the prohibitions can be imposed or sentenced to a criminal sentence as has been threatened;
3. Determine how the imposition of the punishment can be carried out if there are people who are suspected of having violated the prohibition.

The enforcement of criminal law is a system that involves the harmonization of values with the rules and actual behavior of the community. These rules then become guidelines or benchmarks for behavior or actions that are considered appropriate or should be. The behavior or attitude aims to create and maintain peace.

## **2. Anarchy and Anarchism**

Peter Kropotkin argues that anarchy comes from the Greek, which means opposition to rulers. Although the Greek words “anarchy” and “anarchy” usually mean no government or no government. Anarchy means no rules or, more generally, “no power.” It is in this sense that anarchists continue to use the term. Anarchy means that there is no need for order, as is commonly believed, but a lack of order. (Sarayeva & Tsoy, 2020) It is also possible to define anarchism according to several experts: (Farhan, 2020)

- a. According to Peter Kropotkin (Peter Kropotkin), anarchism is a socialist system without a government that starts with humans, as long as it is a human movement, it will maintain its vitality and creativity;
- b. According to Errico Malatesta: The elimination of human exploitation and oppression can only be achieved by eliminating greedy capitalism and oppressive governments;
- c. According to Alexander Berkman: Anarchism means you must be free. No one can enslave you, be your master, rob, or coerce you.

Anarchism is a political theory that aims to create anarchy, “no master, no reigning king.” In other words, anarchism is a political theory that aims to create a society where individuals can assemble freely on an equal footing. Anarchism opposes all forms of hierarchical contradictions controlled by the state and capitalism because hierarchies are dangerous for individuals and individuals.

Anarchism is a doctrine (understanding) that opposes every state’s power, or it can be interpreted as a political theory that does not like the existence of government and laws. As an understanding or philosophical or political stance that believes that humans as members of society will bring the best benefits to all if they are not ordered or authorized, it may be necessary. Such anarchist views and thoughts voice a belief that humans are essentially creatures who are naturally able to live harmoniously and freely without the intervention of power, nor is it a wrong belief.

Anarchy usually occurs when a group of people gathers to commit violence, usually as an act of retaliation for perceived unfair treatment or an attempt to oppose something. The reasons that often lead to anarchy include unrealized public welfare, government policies that harm the community, and so on.

Anarchy is closely related to the term violence. The term violence describes overt and covert behavior, including offensive or prolonged behavior, accompanied by violence against others. (Muhammad Farid, 2018)

## **3. Demonstration**

Demonstrations, especially the recent rallies, seem to be the most appropriate choice to convey the wishes and criticisms of certain Indonesian people, especially student activists, who are detrimental to government policies, which are detrimental to

the community. Maybe they feel that the delegates entrusted to them are not enough, so demonstrations are the last and best option to take.

Law of the Republic of Indonesia, Number 9 of 1998 concerning freedom of expression in public, Article 1 paragraph (3), stipulates that demonstration is an activity in which one or more people express their thoughts orally or in writing. Public face-to-face is an action activity carried out by various organizations/components of society in government/organizations.

A demonstration is a protest movement carried out by a group of people in public. Demonstrations are usually carried out to express group opinions or oppose policies implemented by one party and can also be an effort to suppress group interests politically. In current developments, demonstrations are sometimes narrowly defined as long marches, shouts, burning tires, and theatrical performances. The public's understanding of the demonstration is getting worse because the behavior of the perpetrators interferes and ignores the true meaning of the demonstration.

Demonstration or demonstration is defined as a protest movement carried out by a group of people in a public place. Demonstrations are usually carried out to express group opinions or oppose policies implemented by one party and can also be carried out to suppress group interests. Groups usually carry out protests. (Syahrul Jiwandono & Oktavianti, 2020)

Demonstrations may be positive or negative. This means that demonstrations that adhere to democratic values are considered positive and valuable in the community's eyes. Demonstrations or demonstrations are the rights of citizens, but this is a very worrying right because, under normal circumstances, demonstrations involving hundreds or even thousands of people do not have a direction that leads to anarchy and crime.

In practice, demonstrations about freedom or independence to convey wishes do not go as expected. Many of the demonstrators' actions ended in riots that led to anarchy. The demonstrators themselves carried out anarchic actions. Demonstrations are a form of expression of opinion. Demonstrations or demonstrations are the rights of citizens, but this is a very worrying right because, in general, demonstrations involving hundreds or even thousands of people without direction can lead to anarchy and lead to criminal acts.

Anarchist demonstrations can be classified as criminal acts. According to Moeljatno, criminal acts are prohibited by law, prohibited acts, followed by threats of punishment (sanctions) against violators of the prohibition.

Law Number 9 of 1998 concerning Freedom of Expression in Public Places is indeed the right of citizens to express their opinions through freedom of expression of ideas. In addition, expressing opinions in public must fulfill certain obligations. As clearly stated in Article 6:

Citizens who express opinions in public have obligations and responsibilities:

- a. Respect the rights and freedoms of others;
- b. Respect generally accepted moral rules;
- c. Comply with the laws and provisions of applicable laws and regulations;
- d. Maintaining the integrity and unity of the nation.

#### **4. Crimes that Arise From Anarchic Acts**

The term "criminal incident" or "criminal act" is a translation of the Dutch word "strafbaar feit." Moeljatno is more likely to use the term "criminal act" rather than the

term “criminal act.” According to him, the term “criminal behavior” is well known because it is widely used in legislation to refer to “criminal behavior.”

Police Commissioner Regulation Number 7 of 2012, Article 23 e concerning the provision of opinions in public places, protection and procedures for handling cases, in the following circumstances, the act of expressing an opinion in a public place is declared a violation of the law of Anarchic Behavior that occurs accompanied by a criminal act or crime, crimes that endanger public order, crimes that endanger personal safety or property, and crimes that endanger public authority.

Procedures for taking action against anarchists during demonstrations. Actions that can be taken include:

- a. Stopping anarchic actions through appeals, persuasion, and education;
- b. Applying coercion as a last resort after persuasion fails;
- c. Implementing legal action in a professional, proportional, and necessary manner that is adapted to the situation and conditions;
- d. If legal action cannot be carried out immediately, efforts are made to collect evidence and activities in order to support efforts to take action in the future; and
- e. Carrying out rehabilitation and consolidation of the situation.

However, if legal action cannot be taken immediately, and considering the possibility of a wider riot or the possibility of a large-scale riot, law enforcement actions will continue to be carried out after the situation allows for action to be taken.

Disclosure of public opinion can be done through the following procedures:

- a. Prosecution of traffic ticket;
- b. Minor crime;
- c. Fast case investigation; and
- d. Ordinary case investigation.

Anarchist demonstrators Demolished and searched nearby residents’ homes and shops that were passed during the anarchist demonstration. Perpetrators can be threatened by Article 365 of the Criminal Code, which reads as follows:

*“A person who intends to prepare or facilitate the theft, or in the case of being caught red-handed, will be sentenced to up to nine years in prison for the theft accompanied by or subsequent threat of violence. Participants escape or continue to control the stolen items.”*

## **D. Closing**

### **1. Conclusions**

The conclusions of the discussion above are as follows: based on the data that the authors obtained from informants related to optimizing the handling of student demonstrations, most of the informants assessed that the methods applied by the police and universities were still not optimal.

Faced with obstacles caused by police destroying public facilities in anarchic demonstrations, including many demonstrators who did not inform the police that they were going to protest, lack of coordination between demonstrators and officials on the ground, provocateurs infiltrating the crowd, planned during demonstrations, no representatives were willing to respond to the protesters, the attitude of the officers who did not obey the orders of the person in charge of the location, and the lack of personnel and tools to carry out security demonstrations. In addition, efforts will be made to improve the professionalism of the police in guarding demonstrations, coordinate with

relevant agencies to find out the description of the protesters they will face, and provide legal advice to the public, especially legal advice regarding orderly demonstration procedures.

## **2. Suggestions**

The researcher's suggestions are as follows: Responding to the anarchy of demonstrators, we should start by looking for the factors that cause demonstrations to become anarchic and take early preventive steps so that demonstrations can be carried out in an orderly and safe manner. The police must overcome obstacles or work hard to deal with anarchic demonstrations by emphasizing that efforts to raise legal awareness of the demonstrators need to be pursued because awareness in the assembly is considered more effective in preventing demonstrations that lead to anarchy.

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