

CRIMINAL LIABILITY FOR PROVOCATIVE ACTS COMMITTED BY DEMONSTRATORS DURING DEMONSTRATIONS

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Abstract

This study analyzes criminal liability for provocative acts committed by demonstrators during demonstrations and also explains the obstacles to law enforcement according to positive law in Indonesia. Freedom of speech guaranteed by the 1945 Constitution is strongly related to demonstrations because people are given the freedom to express their opinions in public with rules that must be implemented. However, in reality, in the field, there are still many provocative acts carried out by demonstrators that cause riots during demonstrations. This research method uses normative juridical with a statutory approach by examining the Criminal Code, Law No. 9 of 1998, the Security Law, Perkapolri 7/2012, and other laws relevant to the research conducted. The results of this study indicate that perpetrators of provocation can be subject to criminal liability under Articles 160, 170, and 212–214 of the Criminal Code, depending on the form of the act and the consequences.

Keywords: *Provocation, Demonstration, Criminal Responsibility*

INTRODUCTION

As a democratic nation, Indonesian citizens have the right to express their opinions freely in public. This freedom, of course, does not mean that people are free to express their opinions as they please or in any arbitrary way. Freedom of expression in public by Indonesian citizens must be based on norms and laws that apply in Indonesia.¹ Compliance with the norms or laws that apply in Indonesia can certainly prevent division or chaos in terms of expressing opinions in public by the public. Expressing opinions in public is certainly closely associated with the terms "demonstration" and "protest."² A demonstration is an activity or movement carried out by a group of people in public with the intention of expressing interests or opinions, which is guaranteed by law. Demonstrations are generally carried out by groups of individuals or student groups who feel aggrieved and their rights have been disregarded. These demonstrations are usually carried out because they disagree with government policies.

Human Rights (HAM) guarantees the public the freedom to express opinions, which is a form of legal protection that applies in Indonesia to demonstrators or protesters. Human Rights (HAM) regulates the freedom to express opinions in public, in Article 28 of the 1945 Constitution which states "Everyone has the right to freedom of association, assembly, and expression of opinion."³ As a democratic country that guarantees its citizens the right to express opinions in public, however, this does not merely mean that citizens are free to express their opinions as they please without complying with the legal regulations in force in Indonesia.⁴ However, in reality, many groups or protesters still ignore the rules that must be followed when holding demonstrations. Demonstrations should be conducted with priority in mind to avoid activities that could incite division or unrest during demonstrations. Article 23 letter e National Police Chief Regulation 7/2012 states that the activity of expressing opinions in public is declared a form of violation if it occurs in an anarchic manner, accompanied by criminal acts or crimes against public order,

¹ Mahmudah, H., Suhariyanto, D., Fajrina, R. M., Marwenny, E., Husnita, L., Nazmi, R., ... & Sa'dianoor, S. D. (2023).

Introduction to citizenship: Shaping quality citizens. PT. Sonpedia Publishing Indonesia.

² Mandang, OA (2023). Law Enforcement Against Anarchist Demonstrators Resulting in the Destruction of State Property. *Lex Administratum*, 11(5).

³ Law Number 39 of 1999 concerning Human Rights

⁴ Yuli, Y., & Satino, S. (2024, July). Patriotism as a Form of National Defense in Realizing Resilient Human Resources. In *National Conference on Law Studies (NCOLS)* (Vol. 6, No. 1, pp. 303-320).

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crimes that endanger public safety for people or goods, and crimes against public authorities.⁵ Although demonstrations are permitted activities in the form of expressing opinions or interests regarding policies or regulations in Indonesia, there are of course regulations regarding the types of demonstrations that are prohibited, namely demonstrations carried out with the intention of expressing hostility, insults, or hatred. Demonstrations are also prohibited without prior written notification of the demonstration activities that will be carried out and also demonstration participants are of course prohibited from bringing objects that can endanger public safety during demonstration activities. Referring to Articles 212-214 of Law Number 1 of 1946 concerning the Criminal Code, it explains that anyone who commits an act of violence or makes threats against officials on duty can be threatened with imprisonment. In this case, demonstrators who commit acts of violence or make threats can also be charged under Articles 212-214 of the Criminal Code if they commit acts of violence against law enforcement officers.⁶ However, many demonstrators still engage in activities that deviate from the applicable rules as regulated and adhered to in carrying out demonstrations. Many cases of provocation are carried out by provocateurs during demonstrations. In this case, there will certainly be accountability for the provocation carried out by demonstrators. Provocation is an action carried out by an individual or group with the aim of triggering a certain reaction from another party, usually by instigating or providing bait that can arouse emotions and encourage a response, either in the form of attitudes or actions. Provocation is usually carried out through hate speech, such as swearing at the police who are guarding the demonstration. In practice, demonstrators acting as provocateurs often throw certain objects with the intention of eliciting an emotional reaction from the crowd. These actions indirectly encourage other demonstrators to follow the same pattern of behavior, so that the demonstration has the potential to escalate and turn into anarchic acts that violate the law.

Article 170 of the Criminal Code is one of the articles that can ensnare demonstrators who carry out deviant activities during demonstrations, where Article 170 of the Criminal Code reads "Anyone who openly and with joint force uses violence against people or property, is threatened with a maximum prison sentence of 5 years and 6 months." Likewise with Article 160 which explains that "Anyone who in public, verbally or in writing, incites to commit a criminal act, commits violence against public authorities or does not comply with either the provisions of the law or official orders given based on the provisions of the law, is threatened with a maximum prison sentence of six years or a maximum fine of four thousand five hundred rupiah."⁷ The existence of various rules and sanctions governing perpetrators of provocation during demonstrations demonstrates that demonstrators are obliged to comply with applicable legal provisions. This is because the role of provocateurs in demonstrations significantly influences other demonstrators and has the potential to trigger riots on a larger scale. Despite the existence of rules and sanctions governing provocative actions carried out by demonstrators, this is also inseparable from the challenge of enforcing accountability for perpetrators who act as provocateurs in demonstrations. One challenge in this case lies in the difficulty of identifying who truly plays the role of provocateur in the crowd of demonstrations. Not only is it an obstacle to enforcing accountability for perpetrators of provocation, preventive measures are also needed to prevent riots during demonstrations.

RESEARCH METHODS

1. Types of research

The type of research used by the author in this research is juridical-normative because the topic discussed by the author in this research is based on applicable positive law and statutory regulations that explain the expression of opinions in public or often called demonstrations.

2. Problem Approach

In achieving the research objectives, the author uses a problem-solving approach, namely the statutory approach (Statute Approach), where the author studies and analyzes applicable laws and regulations such as the Criminal Code, Law No. 9 of 1998, the Security Law, Police Chief Regulation 7/2012, and other laws that are relevant to the research conducted by the author.

⁵ Police Chief Regulation Number 7 of 2012 Concerning Procedures for Organizing, Serving, Securing, and Handling Cases of Expressing Opinions in Public

⁶ Law Number 1 of 1946 concerning the Criminal Code

⁷ Law Number 1 of 1946 concerning the Criminal Code

3. Data source

a. Primary legal sources are legal materials that have authority (authoritative). The legal sources used in the research by the author include:

- The 1945 Constitution of the Republic of Indonesia
- Criminal Code
- Regulation of the Chief of the Republic of Indonesia National Police No. 7 of 2012

b. Secondary Sources of Law

In this research, the author uses secondary legal sources, namely journals and existing research results.

c. Tertiary Sources of Law

In this research, the author uses tertiary legal sources to complement primary and secondary legal sources that support providing guidance and explanations for research materials such as the internet.

4. Data Collection Method

In this research, the author collected data by means of library research by conducting research and studying legal regulations related to the research material.

5. Data Analysis Techniques

The data analysis technique used by the author is a qualitative method, which produces data with descriptive information that explains the problem solving in detail and systematically.

RESULTS AND DISCUSSION

A. Forms of Criminal Responsibility for Provocative Acts Carried Out by Demonstrators According to Positive Law in Indonesia

As Indonesian citizens, all citizens have the right to express their opinions in public. As in a democratic country, this is regulated in article 28 of the 1945 Constitution which states "Everyone has the right to freedom of association, assembly, and expression of opinion." In this case the state provides freedom in conveying or expressing their opinions in public or known as demonstrations, of course an action must be based on rules that must be obeyed so that no riots arise in expressing opinions in public. Public expression, also known as a demonstration, is an action taken by a group of people to express their thoughts verbally or in writing in public. Although demonstrations are permitted, there are certainly legal regulations that must be followed to prevent unwanted actions such as riots that will cause losses to various parties involved. In reality, anarchic actions often occur during demonstrations, which result in riots during the demonstration. Riots that occur during demonstrations are certainly caused by an action carried out by an individual or group of people that causes the beginning of a riot.⁸

A person or group of people who initiate action to move others to do something can be called a provocative act. Provocation is an action carried out by an individual or group with the aim of triggering a certain reaction from another party, usually by inciting or using bait that can arouse emotions and encourage a response, either in the form of attitudes or actions. In this case, a person who encourages others to commit acts of violence is called a provocateur. When holding a demonstration, demonstrators must comply with all applicable regulations regarding public expression. In practice, violations often occur during demonstrations. An action that can be considered a violation is regulated in Article 23, letter e. National Police Chief Regulation 7/2012 This article explains that the activity of expressing opinions in public is declared a form of violation if it occurs in an anarchic manner, accompanied by with criminal acts or crimes against public order, crimes that endanger public security for people or property, and crimes against public authorities.⁹

Provocateurs in demonstrations typically engage in hate speech, such as swearing, and often throw objects at or burn them, aiming to provoke an emotional reaction from the crowd. Provocative actions by individuals or groups during demonstrations can lead to heated demonstrations, potentially leading to clashes with the police. Legal regulations regarding the sanctions imposed on demonstrators who act as provocateurs during demonstrations are a response to ensure that those who provoke demonstrations are held accountable for their actions. Provocative actions by demonstrators that trigger riots are regulated in Article 160 of Law Number 1 of 1946 concerning the Criminal Code. This article explains that anyone who intentionally in public incites to

⁸ Waluyo, B. (2022). Law enforcement in Indonesia. Sinar Grafika.

⁹ Police Chief Regulation Number 7 of 2012 Concerning Procedures for Organizing, Serving, Securing, and Handling Cases of Expressing Opinions in Public

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commit a criminal act, verbally or in writing, will be subject to a maximum of six years in prison or a fine. Article 170 of Law Number 1 of 1946 concerning the Criminal Code also outlines strong sanctions against demonstrators who cause riots. Article 170 explains that anyone who commits violence against people or property during a demonstration can be subject to a maximum of five years and six months in prison.¹⁰ As explained, there are criminal liability regulations related to unlawful acts that cause unrest by demonstrators. Article 160 of Law Number 1 of 1946 concerning the Criminal Code states that demonstrators who act as provocateurs during demonstrations must face criminal liability for their actions that incite unrest. The provocations that trigger unrest also lead to the involvement of other demonstrators. Article 170 of Law Number 1 of 1946 concerning the Criminal Code states that if an act of incitement causes other demonstrators to commit acts of destruction against people or property, the demonstrators will be subject to existing criminal liability. As demonstrators focused on the goals and demands they wish to convey during a demonstration, they should not be easily provoked to avoid causing harm to themselves or others. Articles 212 to 214 of Law Number 1 of 1946 concerning the Criminal Code also explain the criminal liability of people who carry out acts of resistance to law enforcement officers during demonstrations. Provocative actions carried out by demonstrators are very detrimental to various parties in the demonstration. An act of provocation by a demonstrator can cause clashes between the demonstrators and the security guards during the demonstration, namely the police. In Articles 212 - 214 of the Criminal Code regarding demonstrations, it explains that criminal liability applies to individuals or groups who make threats/violence against police officers in carrying out their duties to maintain conducive conditions in the field. Explanation of Articles 212 - 214 of Law Number 1 of 1946 concerning the Criminal Code regarding demonstrations:

1. Article 212

Article 212 explains that anyone who commits acts of violence or makes threats against police officers will be subject to a maximum prison sentence of one year and four months.

2. Article 213

Article 213 explains that anyone who resists the police will be subject to prison sentences in each category. These categories are: a maximum of five years' imprisonment if it results in injuries, a maximum of eight years and six months' imprisonment if it results in serious injuries, and a maximum of twelve years' imprisonment if it results in death.

3. Article 214

Article 214 explains that if an act of resistance to the police is carried out by two or more people in collaboration, it will be punishable by a maximum of seven years' imprisonment. In this case, the guilty party will be subject to a maximum of eight years and six months' imprisonment if it results in injuries, a maximum of twelve years' imprisonment if it results in serious injuries, and a maximum of fifteen years' imprisonment if it results in death.

As explained above, any action during a demonstration that could harm various parties will be subject to criminal liability. Provocateurs will be charged under Article 160 of the Criminal Code, which has caused the heated atmosphere during the demonstration. Other demonstrators who are provoked by participating in damaging people or property will also be charged under Article 170 of the Criminal Code and Articles 212 - 214 of the Criminal Code if they resist law enforcement officers during the demonstration. Provocative actions by provocateurs during demonstrations have a significant impact, which will require an individual or group to be able to control their anger and focus on the purpose of the demonstration to avoid being caught in a criminal act due to detrimental actions carried out during the demonstration.¹¹

B. Obstacles in Law Enforcement against Protesters Who Become Provocateurs in Demonstrations

In demonstrations, provocateurs who incite unrest have a significant impact on the course of a demonstration. It's a common occurrence in demonstrations where initially peaceful demonstrations turn into riots and anarchy by demonstrators. Provocateurs, through their hate speech, throwing objects, and burning property, play a very dangerous role, potentially harming various parties involved in a demonstration. In a demonstration, the provocateur can certainly be held accountable if proven to have committed provocative acts. An act can be categorized as provocative if it is proven that the perpetrator committed an act that Directing public opinion against the police by inciting demonstrators to commit violence or unlawful acts. Provocateurs during demonstrations can also be held criminally liable if proven to have incited public anger during

¹⁰ Law Number 1 of 1946 concerning the Criminal Code

¹¹ Law Number 1 of 1946 concerning the Criminal Code

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demonstrations, potentially leading to riots. In practice, the police face unique challenges in proving that demonstrators are provocateurs. Strong evidence is the police's answer to ensuring that demonstrators and provocateurs are held accountable for their actions. In essence, provocateurs in demonstrations can come from various sources. These provocateurs can be from within the protesters themselves or from outsiders who simply want to cause unrest during the demonstration. Proving and arresting these provocateurs by the police certainly presents a very significant challenge because provocateurs usually carry out their actions using masks or face shields to conceal their identities. Proving the perpetrators of provocateurs is the responsibility of the police, which must be considered from various angles to prevent incidents of mistaken arrests of demonstrators.¹² The challenge of establishing evidence and arresting police in identifying provocateurs during demonstrations is also caused by the large crowds involved. Provocateurs are often unrelated outsiders who seek only to incite unrest during demonstrations. Many provocateurs carry out their actions by posing as legitimate participants from a particular group, thus pitting the police against the crowd, often for reasons that must be addressed. Recording and documentary evidence can also be used as a reference in arresting provocateurs during demonstrations. In reality, many demonstrators have damaged street CCTV to conceal their identities while provoking protests, such as attacking police or vandalizing property on objects. Mobile phone video recordings of incidents such as hate speech, throwing objects, burning tires, or burning public facilities can also be used as evidence to prove who the provocateur is. Such recorded evidence can identify the perpetrator, but in practice, provocateurs often completely cover their faces during their actions to make identification difficult.¹³

Authorities must demonstrate with evidence that the provocateur committed the mens rea through his words, actions, and the direct consequences of his actions¹⁴. Law enforcement must be able to distinguish between legitimate demonstrators conducting their activities in accordance with the law and those committing violations, which will certainly prevent the wrongful arrest of demonstrators. Overall, the factors at play include proving the perpetrators who acted as provocateurs due to the large crowds. Perpetrators can disguise themselves as members of the protesters or outsiders while carrying out their actions. The difficulty of obtaining digital evidence and recordings during demonstrations is also a key factor in identifying provocateurs. Furthermore, police must be fair and careful in securing the protesters to avoid being perceived as criminalizing freedom of expression. Collaborative efforts between security forces and protest coordinators are also crucial in identifying protesters who acted as provocateurs. Emphasis on criminal liability for provocation and anarchy must also be prioritized to ensure demonstrations can proceed peacefully.¹⁵

CONCLUSION

In demonstrations, provocation by provocateurs is a highly provocative act that can lead to unrest and disrupt public order. Under Indonesian law, all criminal liability related to provocative and anarchic actions is regulated in Law Number 1 of 1946 concerning The Criminal Code. This is regulated in Article 160 of the Criminal Code, which deals with incitement, Article 170 of the Criminal Code, which deals with violence against people or property, and Articles 212-214 of the Criminal Code, which deal with resistance to law enforcement. These regulations regarding criminal liability mean that demonstration participants must comply with applicable legal regulations regarding the limitations on expressing opinions in public. In reality, law enforcement officers face unique challenges in identifying provocateurs during demonstrations. This difficulty stems from the difficulty of identifying provocateurs in large crowds, the use of disguises, and the limited availability of recorded evidence. Authorities must demonstrate with evidence that the provocateurs committed the mens rea through their words, actions, and the direct consequences of their actions. Therefore, legal education regarding the orderly and peaceful conduct of demonstrations is crucial to prevent harm to various parties, leading to criminal acts.

¹² Legal Services Partners. (nd). Legal accountability of provocateurs in riots. Accessed November 20, 2025, <https://mitrajasahukum.com/legal-responsibility-of-action-provokators-in-a-riot/>

¹³ Muchtar, A. T., & Koban, A. W. (2010). Menegakkan Hukum dan Hak Warga Negara: Pers, Buku dan Film.

¹⁴ Agus Rusianto, S. H. (2016). *Tindak Pidana dan Pertanggungjawaban Pidana: Tinjauan Kritis Melalui Konsistensi Antara Asas, Teori, dan Penerapannya*. Prenada Media.

¹⁵ Nasution, Fannysa Roshadi, Police Efforts to Enforce the Law on Provocation and Incitement of Demonstrators (Study at Medan City Police Headquarters), Thesis, Faculty of Law, Medan Area University, Medan, 2022, p. 71.

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