

Obstruction Of Justice By The Mass Against The Arrest Of Drug Syndicate

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Abstract

Institution is a government organ that is designated as an institution and is given the authority to carry out its functions based on the Republic of Indonesia Law Number 2 of 2002 concerning the Republic of Indonesia National Police, contained in article (2) which contains the function of the police as one of the functions of the State government in the field of maintaining public security and order, law enforcement, protection, protection, and service to the community , in Indonesia, the government continues to strive to emphasize and reduce the number of crimes that occur, one of which is crimes caused by drug abuse , but in the arrest of narcotics dealers, there are often acts of obstruction of justice by the masses . The research method used is a type of qualitative legal research . The results of the study indicate that police officers can fire warning shots 3 (three) times, as regulated in Protap No.1/V/2001 concerning the Use of Firearms against masses who obstruct/ *Obstruction of justice* in the arrest of drug dealers .

Keywords: Drug , Syndicate, Obstruction Of Justice , Arrest

INTRODUCTION

The police are all matters relating to the functions and institutions of the police in accordance with laws and regulations, and likewise the police of the Republic of Indonesia aims to realize domestic security which includes maintaining public security and order, orderly and upholding the law, providing protection, protection and service to the community and fostering public peace by upholding human rights.¹

Furthermore, regarding the Police institution, it is a government organ that is designated as an institution and given the authority to carry out its functions based on the Republic of Indonesia Law Number 2 of 2002 concerning the Republic of Indonesia National Police, which is contained in Article (2) which states that the function of the police is one of the functions of the State government in the field of maintaining public security and order, law enforcement, protection, protection and service to the community.

Thus, the understanding of the implementation of government functions carried out by the police includes the act of making decisions and the authority to carry out its duties, both at the central and regional levels.

¹Muhammad Egiprayoga Dalimunthe. " *Analysis of Police Performance in Eradicating Narcotics Crimes in the Marbau District, North Labuhan Batu Regency* ". in the Journal of Law Thesis, Faculty of Law, University of North Sumatra, Medan 2017 accessed on November 25, 2022

The existence of the police in Indonesia, although an institution left over from the colonial era, theoretically its birth began from the needs and desires of the community to create a safe, orderly, peaceful and peaceful situation and condition in everyday life. then developed in line with the development and changes in the condition of the country where the police became a state necessity as a tool to deal with society. This is where the shift in the function of the police occurred, which was originally born from the desires of the community then became the desires of the state, so that the concept was that the police were on the side of the state.²

The shift in concept is already contrary to the initial philosophy of the birth of the police institution, because the police were born from the police function that already existed in society in connection with the interests and needs to maintain and safeguard a sense of security, peace, order and order in the life of society. Therefore, to understand the existence of the police cannot be separated from the function and organ or institution of the police, and cannot be separated from the concept of thinking about the existence of legal protection for the people. In the perspective of the function of the institution, crimes and disturbances can cause a sense of insecurity, disorder and peace.³

According to EM Meyers in Utang Rasyidin⁴, law is all regulations that contain considerations of decency, are aimed at human behavior in society, and serve as guidelines for state authorities in carrying out their duties.

In accordance with the definition of Article 1 point 1 of the Narcotics Law, narcotics are defined as substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependency.⁵

The use of this substance has gone beyond the limit. The number of people addicted to drugs (narcotics and other addictive substances) is increasing. The demand for drugs on *the black market* is also increasing. The number of crimes arising from the urge to get drugs and those that occur after someone consumes them is also increasing.

The law related to the substance was made to control the community so that they do not fall into the "drug circle". Therefore, it is said that drug crimes are all crimes related to narcotics that cause negative impacts from the act and violate Law 35 of 2009 concerning Narcotics. Examples of drug crimes such as drug abuse, illicit drug trafficking, drug manufacturing and other acts that violate the Narcotics Law.

Furthermore, with the existence of the greatest threat to society with the widespread network of narcotics crimes in remote areas of Indonesia, the performance of the police in their respective areas of duty is very much needed in accordance with the structural procedures of the police .

Drug dealers can be interpreted as people who control a drug crime secretly or as a party that finances the crime. And drug dealers in their residential areas can be good people who always contribute both materially and morally to the progress of their residence, but the

²Ibid.

³Ibid

⁴Rasyidin and Dedi Supriyadi's Debt. *Introduction to Indonesian Law* . (Bandung: Pustaka Setia, 2014) page 5

⁵Gatot Supramono, *Indonesian Drug Law* . (Jakarta: Djambatan, 2017) p. 159.

people in their residential areas do not know the performance of the drug dealer, that is why when the police want to arrest them, the masses come to obstruct them (*Obstruction of Justice*) .

The abuse and distribution of narcotics in secret (*black market*) shows an increasing level of crime. day to day that will affect the living conditions of the wider community. The existence of police officers is very much needed by the community. No community has a police institution. The police are tasked with maintaining public security and order, in addition, the police also act as law enforcement officers.

In Indonesia, the government is trying to continue to emphasize and reduce the number of crimes that occur, one of which is crime caused by drug abuse. Drug abuse by people who have minimal knowledge of the dangers that occur if they use certain drugs will disrupt the stability of the security of people's lives, both in families, neighbors and residential environments.

METHOD E

In line with the scope, objectives and problems that have been conveyed previously, the researcher uses a qualitative type of legal research, namely research that is conducted or aimed only at written regulations or other legal materials.

RESULTS AND DISCUSSION

Police standard procedures for *Obstruction of Justice* by the masses in an attempt to arrest drug dealers.

The Indonesian National Police is given the authority to conduct investigations and inquiries, which is written in Article 16 of the Criminal Procedure Code (KUHP) and Article 14 letter g of Law Number 2 of 2002 concerning the Indonesian National Police.

In the case of police investigations, arrests of suspects are often faced with different circumstances, so that every member of the police in such circumstances is required to have the ability to deal with suspects properly and correctly and in accordance with previously established procedures. However, often members of the police face different situations that cause different responses.

Although the use of force is the last alternative, not a few members are forced to use firearms in carrying out their duties in the field. Therefore, it is very necessary to have an understanding of the code of ethics and basic principles of the use of force by members of the Police in implementing the authority to carry out force so that later in its implementation it does not violate the law.

It is very important for Polri members to know about various techniques of using force in the field, methods that are appropriate to various situations and the right skills will provide confidence in choosing the level of violence that is in accordance with established procedures. The following are the stages of using force in police actions/stages of using violence and firearms in article 5 of Perkap No.1 of 2009:

- a) Stage 1: Forces that have a preventive effect such as police presence, the presence of uniformed police is considered a preventive measure. Well-trained police, who have technical and tactical knowledge, complete knowledge of police duties and have ethics are the main characteristics that can be an effective deterrent to crime.

- b) Stage 2: Verbal commands or negotiation, Police must be able to communicate well, so that verbal commands can be understood well. Communication can be an effective level of violence so the language and tone used are very important.
- c) Stage 3: The use of soft bare hands requires police officers to be in good physical condition so that they are able to stop the suspect or intervene in risky conditions, especially if the suspect resists.
- d) Stage 4: Incapacitating techniques, for example the use of a police baton or other means most appropriate to the circumstances when non-violent techniques prove ineffective.
- e) Stage 5: Control of blunt weapons, chemical weapons including tear gas, chili spray or other tools according to Polri standards. Can be used in situations of handling demonstrations if the masses have acted anarchically.
- f) Stage 6: Control using firearms or other tools that stop criminal acts or behavior or suspects that can cause serious injury or death to members of the Police or members of the public.⁶

That when the author interviewed TP. Saragih, Head of the South Tapanuli Police Narcotics Unit, explained about the case of the raid on a drug dealer in Sidadi Village, Sayur Matinggi District, South Tapanuli Regency. Initially, the intelligence police conducted surveillance on a person suspected of being a crystal meth dealer, after the data was A1 (accurate) then the intelligence called his superior and joint personnel were sent, consisting of the Narcotics Unit, Criminal Investigation Unit, Sabhara, and Batang Angkola Police personnel, totaling approximately 100 people, using long and short-barreled weapons, conducting a raid in Sidadi Village, Sayur Matinggi District, South Tapanuli Regency against a drug dealer, but when the police were about to raid, the local community had obstructed the police by chasing them away and throwing stones at the police, and the officers had fired warning shots into the air 2X so that the people who were obstructing would disperse, and then the police personnel were able to swiftly arrest the drug dealer and found and secured 1 ounce of crystal meth worth Rp. 80,000,000 (eighty million rupiah).⁷

That the suspect along with evidence of 1 ounce of crystal methamphetamine was taken to the Padang Sidempuan Police for examination and development. Officers again conducted searches at residents' homes for the perpetrators who obstructed or drove away the police officers but were no longer found and are suspected of having fled after the incident.

Based on one of the case examples above, it is known that the Police used coercive measures in the arrest in accordance with the standard procedures that have been regulated in existing regulations. As has been explained, although in the series of their duties the police are indeed given the authority to use violence and firearms, the use of firearms is the last alternative in dealing with suspects or perpetrators of crimes. Firearms may only be used in extraordinary circumstances, to restrain or prevent the escape of someone who is threatening and who is trying to resist efforts to stop the threat.

The provisions in each case, where softer measures are not enough, the use of violence and firearms intentionally, is only allowed if it is truly to protect human life. That

⁶Regulation of the Chief of Police No. 1 of 2009 concerning the Use of Force in Police Actions

⁷TP. Saragih, Head of Narcotics Unit of South Tapanuli Police, Interview on January 31, 2023

the results of the author's interview with TP. Saragih, Head of the South Tapanuli Police Narcotics Unit, explained that in choosing the action that must be taken by a police officer and the action turned out to choose the violence that must be used, firearms may only be used to defend oneself or defend others against the threat of death or serious injury, and to prevent serious crimes involving threats to life. The police must pay attention to the level of cooperation of the suspect in certain situations and consider the logical sequence and law of cause and effect. In such situations the police must decide what method will be taken, the specific technique and the level of violence to be used based on the circumstances.⁸

The implementation of the duties of the Republic of Indonesia National Police states that police officers must provide a clear warning by identifying themselves as officers, giving orders to stop; raising hands; and laying down weapons, giving sufficient time for the warning to be obeyed, giving warning shots which are then shot on sight by police officers if the suspect does not obey these methods.

Provisions in the case of the actions of the perpetrator or suspect can cause the threat of serious injury or death to members of the Police or the community or can endanger public safety and are not immediate, warning shots can be fired. It has been regulated in Protap No.1/V/2001 concerning the Use of Firearms that the stages of action using firearms are not directly aimed at the perpetrator of the crime, but are preceded by 3 (three) warning shots.⁹

Warning shots are fired with safe, reasonable and reasonable considerations to stop the actions of the perpetrator or suspect, and do not pose a threat or danger to people around them. Warning shots are only fired into the air or onto the ground with great caution if other alternatives have been tried and failed. Basically, warning shots are fired with the aim of lowering the morale of the perpetrator or suspect who will attack members of the Police or the public and to provide a warning before shots are directed at the perpetrator or suspect.

That according to the results of the author's interview with TP. Saragih, Head of the South Tapanuli Police Narcotics Unit, explained that the provision of warning shots is not necessary when dealing with the danger of threats that can cause serious injury or death is immediate, so that it is not possible to carry out warning shots, police officers can immediately open fire towards the suspect while still paying attention to the principles of legality, nessesitas, and proportionality. This is in accordance with Article 15 of the Regulation of the Chief of Police No. 1 of 2009 which explains:¹⁰

- 1) In cases where the actions of the perpetrator or suspect could pose a threat of serious injury or death to members of the Police or the public or could endanger public safety and are not immediate, warning shots may be fired.
- 2) The warning shots as referred to in paragraph (1) are carried out with safe, reasonable and reasonable considerations to stop the actions of the perpetrator or suspect, and do not pose a threat or danger to people around them.
- 3) Warning shots are only fired into the air or on the ground with extreme caution when other alternatives have been unsuccessful for the following purposes:
 - a. To lower the morale of criminals or suspects who intend to attack members of the Police or the public;

⁸Ibid Interview

⁹Procedure No.1/V/2001 concerning the Use of Firearms

¹⁰Ibid

b. To provide a warning before shooting is directed at the perpetrator or suspect.

- 4) Warning shots are not necessary when dealing with a threat that could cause serious injury or death immediately, making it impossible to fire warning shots.¹¹

The procedural guidelines for the use of firearms in both the National Police Chief's Standard Procedure No. Pol: Protap/01.V/2001 and the National Police Chief's Regulation No. 1 of 2009 explain that members of the National Police may only use violence when absolutely necessary and only to the extent required in carrying out their work. The use of firearms is considered an extreme measure/last resort. Various efforts must be made to prevent the use of firearms, in general firearms should not be used, unless the suspect intentionally resists or endangers the lives of others, and/or when less violent measures are not sufficient to control or arrest the suspect. In every incident where a firearm is used, a report to the authorities must be made immediately. In addition, it is stated that the government and authorities must ensure and guarantee that the Police must be equipped with adequate skills and abilities regarding the use of violence and firearms.

As stated in Perkap No.1 of 2009, police officers may not use firearms against people they are facing, except in self-defense or in defense of others when facing a threat to life or serious injury, and to prevent other crimes that threaten life. Police officers must understand that the purpose of using firearms is only to prevent, hinder or stop the actions of criminals or suspects who are attempting or are committing acts that are contrary to the law.

Preventing criminals or suspects from escaping or committing acts that endanger members of the Police or the public. And protecting oneself or the public from the threat of acts or actions by criminals or suspects that can cause serious or fatal injuries. And protecting the honor of morality or property of oneself or the public from attacks that violate rights and or threaten human life.

Another thing in handling demonstrations by anti-riot troops or commonly abbreviated as PHH, PHH troops from the Brimob (*Mobile Brigade*) unit. Brimob Polri is a unit that carries out police functions which include the tasks of handling high levels of public order and security disturbances, mass riots, organized crime using firearms and explosives. Brimob is on duty in conditions where the mass of demonstrators has committed unlawful acts in the form of threats, violent theft, vandalism, arson, serious assault, terror, intimidation, hostage-taking, and so on. So the handling is transferred from the Dalmas Unit to the PHH Unit. in stages and in stages in order to control the masses or riots according to the escalation of the situation faced. In the process of carrying out its duties, the PHH Unit remains based on the principles of legality, necessity, proportionality, humanism and integration.

Regulation of the Chief of Police No. 8 of 2010 concerning Procedures for Cross-Change and Handling of Riots, regulates the use of firearms in Dalmas and PHH troop formations in the field only to be enforced upon orders from the Head of Detachment or Head of Regional Unit at the lowest level of the Chief of Police, where all actions are based

¹¹Regulation of the Chief of Police No. 1 of 2009 Opcit

on established procedures and pay attention to other applicable laws, for example firing tear gas before firing a firearm as a form of preventive action.¹²

That the results of the author's interview with TP. Saragih, Head of the Narcotics Unit of the South Tapanuli Police, explained that there is authority to take action in the field based on the personal assessment of the members of the investigation team referred to as discretion, which directly affects each Polri member who carries out the task of arresting perpetrators of criminal acts using firearms in the process of arresting drug dealers by considering the following circumstances, among others:¹³

- a) Situational in the field
- b) The perpetrator's response
- c) The perpetrator put up resistance.
- d) The perpetrator fled
- e) Crowded/Quiet Situation
- f) The losses that will be incurred.
- g) Location Conditions
- h) Social Conditions of Society
- i) Character of the perpetrator

One of the considerations of the detectives in the field using firearms (pulling the trigger of a firearm) in the process of arresting the perpetrator is the character of the perpetrator. The character is classified into several things, namely:¹⁴

- 1) *Recidivist*
- 2) The status of the perpetrator in his environment
- 3) Crime case

Another thing that makes the detectives consider using firearms in the process of arresting the perpetrators of the crime is that the crime has caused a lot of losses to the victim. Crimes that cause a lot of losses to the victim, both property and injuries will trigger detectives to use firearms in the arrest process. If the losses are caused by the actions of There are so many suspects, it will make the detectives in the field restless so that the detectives who will make the arrest will use firearms. Before making an arrest of the perpetrator of theft with violence, usually the members who will make the arrest will coordinate first, the criminal history of the perpetrator will be a consideration in the use of firearms during the arrest .

The difficulty of implementing rules in accordance with procedures caused by conditions in the field that are sometimes very disadvantageous for members in using firearms in the process of arresting drug dealers, but this is still one of the factors that are considered by detectives in making arrests of drug perpetrators. The procedures and provisions that are usually carried out by detectives in the field in using firearms in the arrest process are to fire 3 warning shots before firing a disabling shot, unless the circumstances do not allow detectives to fire warning shots first.

¹²Police Chief Regulation No. 8 of 2010 concerning Procedures for Cross-Change and Handling Riots.

¹³Ibid Interview on February 3, 2023

¹⁴Ibdi Interview

If a perpetrator flees when being arrested by detectives, three warning shots will be fired first. If the perpetrator still ignores the warning shots, shots will be fired to paralyze the perpetrator.

Obstruction of Justice by the masses in an attempt to arrest a drug dealer according to police standard procedures .

The development of drug abuse is very concerning. In the past, drug distribution and addicts were only in urban areas, now there is not a single sub-district, or even village in this republic that is free from drug abuse and illicit trafficking. In the past, drug distribution and addicts were only in teenagers and well-off families, now its spread has spread to all corners of the socio-economic strata and community groups from poor families to conglomerates, from rural to urban areas, from young to old.

Illegal drug distribution must be addressed immediately considering the negative effects that will be caused not only to users, but also to families, communities, and even the nation and state. The increase in drug crimes is generally caused by two things, namely: first, for dealers it promises greater profits, while for users it promises peace and tranquility of life, so that the psychological burden experienced can be eliminated. Second, the promise given by drugs causes the fear of the risk of being caught to decrease, and on the contrary it will create a sense of courage.¹⁵

This is the homework that must be addressed by the police in eradicating drug trafficking, but the police in carrying out their obligations to eradicate narcotics must be based on human rights and not violate the principles of law enforcement. The authority to carry out repressive duties in this case shooting on sight by police officers is called active police discretion, and generally this task is given to the police unit of the investigation. Every time they take action, the police have the authority to act according to their own judgment and this is what is sometimes misused by the police.

This authority is written in Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Republic of Indonesia National Police, which states: "For the public interest, officials of the Republic of Indonesia National Police in carrying out their duties and authorities can act according to their own judgment". This article can be called discretionary authority. The definition of police discretion according to Thomas J. Aaron in Adnan Alit Suprayogi is "An authority given to the Police, to make decisions in certain situations that require their own consideration and concern moral issues, and lie on the borderline between law and morals".¹⁶

In carrying out their duties, the police often shoot on sight perpetrators who are strongly suspected of being drug dealers. Formally, the procedure for using firearms has been regulated in the Regulation of the Chief of Police No. 1 of 2009 concerning the Use of Force in Police Actions.

The principle that regulates the protection of human dignity and honor contained in this Law is the protection of the principle of the presumption of innocence. The principle of

¹⁵Adnan Alit Suprayogi. " *Shoot-on-Sight Actions by Investigators Against Drug Dealers Linked to Human Rights Protection*". (in Cepalo Journal Volume 2, Number 2, July-December 2018) accessed February 2, 2023

¹⁶Ibid

the presumption of innocence is one of the manifestations of human rights. In the 1945 Constitution, the principle of the presumption of innocence is not expressly stated in a particular article. However, in the formulation of Article 27 paragraph (1) of the 1945 Constitution, it seems as if the meaning of the principle of the presumption of innocence is contained. This article contains the understanding that this provision can provide guarantees to every citizen for personal security where everyone has the same status before the law and government, and also in the obligation to uphold the law and government.

The police in making arrests must adhere to the principle of presumption of guilt. The police must be sure that the person to be arrested is strongly suspected of being the perpetrator of a crime based on either a report or the discovery of sufficient initial evidence. So that police action related to shooting on sight is an action that can be qualified as a violation of human rights. However, on the other hand, the illegal distribution of narcotics has become an extraordinary crime that can damage the next generation of the nation.

Crime is a normal social phenomenon that occurs in a society. Some crimes or deviant behavior are based on the socio-cultural conditions of the local community. Crime today is no longer something to be feared or avoided, but rather loved and approached.

Crime is an identity that is always close to the development of human civilization. Crime is referred to as deviant behavior, always exists and is attached to the form of society, there is no society free from crime. Therefore, efforts to combat crime are actually continuous and ongoing efforts. Efforts to combat crime cannot promise with certainty that the crime will not be repeated or will not give rise to new crimes. However, these efforts must still be made to better guarantee the protection and welfare of society.¹⁷

There are several obstacles that affect the duties and functions of the Police in the effort to arrest drug dealers, namely the rapid development of technology is also utilized by drug abuse syndicates through communication facilities such as mobile phones. Drug dealers and buyers communicate using mobile phones before making their transactions to determine the time and place of the transaction. Illegal drug trafficking using sophisticated technology is unfortunately not supported by sophisticated facilities and infrastructure in dismantling the activities of the perpetrators. One of these facilities and infrastructure is a detector or telephone tapping device, then community participation and control in several areas is still very low because of a sense of indifference to their own environment even though drug abuse is clearly visible directly. This is because of the assumption that the Police will wash their hands of it and not provide security protection for the reporter. In addition, the fear that witnesses will be used as a threat to drug trafficking syndicates in the future, and the low quality of several police officers tasked with carrying out special operations against drug abusers are among the obstacles in eradicating drug abuse. The operation in question is a urine test on people suspected of using drugs during a drug raid.

CONCLUSION AND SUGGESTIONS

Conclusion.

The masses who obstruct/ *Obstruction of justice* in the arrest of drug dealers, then the police can fire warning shots 3 (three) times, as regulated in Protap No.1/V/2001 concerning

¹⁷Ibid

the Use of Firearms. Warning shots are fired with considerations that are safe, reasonable and reasonable to stop the actions of criminals or suspects who resist police officers, and do not pose a threat or danger to people around them.

Obstacles that affect the duties and functions of the Police in efforts to arrest drug dealers, namely means and facilities in law enforcement , community participation and control in several areas that are still very low because of a sense of indifference to their own environment even though it is clearly visible directly that there is an act of drug abuse. This is due to the assumption that the Police will wash their hands of it and not provide security protection for the reporter , and the still low quality of several Police members who are tasked with carrying out special operations on drug abuse perpetrators is one of the obstacles in eradicating drug abuse.

Suggestion.

It is very necessary to have self-control and an understanding of the police's strict procedures, especially strict measures using firearms against perpetrators.

There is a need for training for police officers, especially members of the Narcotics Unit in the field, by making persuasive efforts to control mob violence or preventing arrests by the mob.

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