

JURIDICAL REVIEW OF THE PRINCIPLE OF POLICE COERCION EFFORTS IN JUSTICE-BASED LAW ENFORCEMENT

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Abstract

This study aims to analyze the juridical review of the principle of police coercion in justice-based law enforcement. The research method used is normative juridical. The results of the study show that forced effort comes from the Dutch language "Discretionair" which means wisdom in deciding an action based on provisions of regulations, laws or applicable laws but on the basis of wisdom, consideration or justice. Coercive measures involve decision-making that is not strictly legally bound, in which personal judgment also plays a role. Forced effort is the freedom to choose various steps of action (Courses of action or inaction). Forced efforts are one of the investigative activities carried out by POLRI investigators, as in Article 15 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 14 of 2012, namely that investigative activities are carried out in stages including; a) Investigation; b) Delivery of Notification Letter of Commencement of Investigation (SPDP); c) Forced efforts; d) examination; e) Case title; f) Settlement of case files; g) Submission of case files to the public prosecutor; h) Delivery of suspects and coals; i) Termination of investigation.

Keywords: Principle, Coercion, Police, Law Enforcement, Justice.

A. INTRODUCTION

The Indonesian National Police is a state tool that plays a role in maintaining public security and order, law enforcement, protection, protection, and service to the community in the context of maintaining homeland security. The National Police of the Republic of Indonesia as referred to is REGULATED in Law Number 2 of 2002 concerning the State Police. In principle, the Indonesian police were formed as agents of change Police Chief Idham Aziz stated that the police are expected to be agents of change when carrying out their duties, namely not only as a tool to eradicate crime, but also as a good leader through the process and forged at various stages to produce leadership character.

The challenges faced by the national police in the future are also increasingly complicated and complex, therefore it requires leaders who are qualified, rich in experience and have the courage to make decisions and have high integrity.^{1, 2} The police are the frontline institution in law enforcement, the police have the most dominant role in the process, this is stated in Law No. 2 of 2002 concerning the Police of the Republic of Indonesia in an

effort to enforce it, the police have the authorities as described in Perkap No. 1 of 2009 concerning the Use of Force in Police Actions.

In this regard, for police investigating officers, there are several laws and regulations that are direct or indirect in relation to the problem of police coercion efforts. The laws and regulations are regulated in the provisions of Article 7 paragraph (1) letter j of the Criminal Procedure Code (KUHP) Number 8 of 1981 which authorizes investigators because of their obligation to "carry out other actions according to responsible law".

In the examination of a case or criminal case, be it a general criminal or a special criminal case, the police / investigators often have to make forced efforts, forced attempts are basically coercive actions that deprive a person of their independence, freedom, or restrict a person's human rights. Before making forced efforts, it is necessary to make preparations such as monitoring, analyzing, and collecting all existing evidence so that it has a strong and clear basis for the investigation process and future investigators. Implementation of forced efforts in the context of law enforcement. According to Satjipto Raharjo, the essential meaning of^{3, 4} *law enforcement* is: "a process to realize legal desires into reality. The legal desires here are the thoughts of the law-making body formulated in the form of legal regulations that will be applied in all aspects of social and state life."⁵

The Criminal Code (KUHP) does not explain in detail the meaning of forced attempts. However, coercive effort can be interpreted as one of the powers or a set of actions given by law to law enforcement to deprive them of freedom. Coercive efforts are a series of investigative actions to carry out investigations, namely in terms of making arrests, detention searches, seizures, and examination of letters. Under normal circumstances, if the act is carried out without the basis of the provisions of the law, it can be qualified as a violation of human rights, in particular regarding the personal rights and freedoms of the person being acted upon.⁶

B. DISCUSSION

1. The Concept of Police Efforts in Law Enforcement

Forced efforts are one of the investigation activities carried out by POLRI investigators, as in Article 15 of the Regulation of the Chief of Police of the Republic of Indonesia Number 14 of 2012, namely investigation activities are carried out in stages including.⁷

Investigation; b) Delivery of a Notice of Commencement of Investigation (SPDP); c) Coercive efforts; d) Examination; e) The title of the case; f) Settlement of case files; g) Submission of the case file to the public prosecutor; h) Surrender of suspects and bara; i) Termination of investigation.

Forced attempts in the *Black Law Dictionary* come from the Dutch "*Discretionair*" which means discretion in terms of deciding an action based on the provisions of a regulation, law or applicable law but on the basis of discretion, consideration or fairness. According to Wayne La Farve, forced efforts involve decision-making that is not strictly bound by law, where personal judgment also plays a role.^{8,9}

From some of the definitions of forced effort, it can be said that in simple terms a forced effort is an authority regarding the making of a decision under certain conditions on the basis of one's personal considerations and beliefs, in this case the police.

The granting of coercive efforts to the police according to Chambliss and Seidman is essentially against the state based on the law. This forced attempt deprives the certainty of what will happen. But an order in society that is completely grounded in law is also an ideal that cannot be achieved. Here it is desired, that all things and actions be governed by clear and unequivocal regulations, an unattainable circumstance.¹⁰

With the power of coercion by the police, the police have great power because the police can make decisions where decisions can be outside the provisions of the law, but are justified or allowed by law. It is as stated by Samuel Walker that: "One thing that can explain the power of the police or other institutions in carrying out their duties, namely the existence of coercive efforts or the authority conferred by law to act in special situations in accordance with the judgment and heart of the agency or officer himself"¹¹

In article 5 paragraph (1) letter a number 4 and article 7 letter j of the Criminal Procedure Code, it is explained that the principle of obligation is to carry out other actions according to the responsible law. With the explanation referred to as other actions are the actions of the investigator for the purposes of investigation on the condition that:

1) does not conflict with a rule of law; 2) in line with legal obligations that require the conduct of office actions; 3) the action must be appropriate and reasonable and belong to the environment of his office; 4) for proper consideration based on coercive circumstances, as well as respect for human rights.

In article 16 paragraph 1 letter l of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, it is also explained that holding other actions according to responsible law is an investigation and investigation that is carried out if it meets the following requirements:

1) It does not conflict with a rule of law; 2) In line with legal obligations that require the conduct of office actions; 3) The action must be appropriate and reasonable and belong to the environment of his office; 4) For proper consideration based on coercive circumstances, as well as respect for human rights.

Meanwhile, in article 18 of the Police Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, it is explained that for the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities can act according to their own judgment; with the explanation meant by acting according to his own judgment is an action that can be done by members of the Indonesian Republic State Police who in their actions must consider the benefits and risks of their actions and are really in the public interest.

The formulation of the authority of the National Police of the Republic of Indonesia in article 18 paragraph (1) of Law Number 2 of 2002 is an authority derived from the principle of general obligations of the Police (*plichtmatigheids beginsel*), which is a principle that

gives authority to police officials to act or not act according to their own judgment, in the context of their general obligations to maintain, maintain order and ensure public safety. In general, this authority is known as the "forced attempt of the police" whose validity is based on the consideration of its necessity for the duty of obligation (*Pelichmassiges Ermessen*).

Forced efforts on the one hand provide solutions, but on the other hand forced efforts can cause conflict among the community when law enforcement does not carry out their duties in accordance with applicable regulations. Therefore, in exercising their authority, the Police must pay attention to the principles of exercising the authority of the Police, there are 2 (two) types, namely:

- a) The Principle of Legality is the principle by which every police action must be based on laws and regulations;
- b) The *Plicmatigheid* Principle is a principle by which the Police have been deemed valid if they are based on/sourced to general power or authority.

Forced attempts made by the Police are an act that is not separated from the provisions of the law and occurs a lot in the daily lives of the general public, but the forced efforts are still carried out within the framework of the law. Coercive efforts have also led to a loss of public trust in law enforcement officials.

Therefore the rights of the suspect in the attempt to coerce the Suspect must be presumed innocent, in accordance with the legal principle of the "*presumption of innocent*" until a court decision has been obtained that has permanent legal force. Police investigators are not necessarily able to carry out investigation activities at will, but there are also restrictions that must be followed by the investigator so as not to violate human rights considering that the investigator's power in carrying out these series of actions is too great. The limitations of the investigator's activities are contained in the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of Police Duties of the Republic of Indonesia. In Article 13 paragraph (1) of the Regulation, it is stated that, in carrying out investigation activities, every POLRI officer is prohibited from:¹²

- a. Intimidating, threats, physical, psychological or sexual torture to obtain information, information or confession;
- b. Instructing or inciting others to commit acts of violence outside the legal process or arbitrarily
- c. Preaching the secrets of a litigant;
- d. Manipulate or lie in making or delivering reports on the results of investigations;
- e. Engineering reports so as to obscure investigations or distort the truth;
- f. Carrying out actions aimed at requesting compensation from the litigant

The examination conducted by the investigator is focused on matters concerning legal issues. The base point of the inquest before the investigator is the suspect. It was from him that information was obtained about the criminal event under examination. However, even if it is the suspect who is the starting point for the investigation. The suspect must be placed in a position of a man of dignity. He should be judged as a subject, not as an

object. It is the criminal acts committed by him that are the object of examination. The inquest was aimed at the wrongdoing of the criminal offence committed by the suspect.

At the examination of criminal acts, it is not always only the suspect who must be examined. Sometimes a witness or expert examination is required. For the sake of the light and clarity of the alleged criminal event. However, to the accused must be upheld the protection of dignity and human rights, to witnesses and experts, must also be treated in a humane and civilized manner.

2. The Role of Coercive Efforts in Equitable Law Enforcement

To realize fair law enforcement in Indonesia, the role of law enforcement agencies is very important. In fact, this has been regulated in accordance with laws and regulations. In this case, the institution in question is the Indonesian National Police (Polri). The police force is a property related to the functions and institutions of the police in accordance with laws and regulations. The police force is at its core a law enforcement officer who is in charge and responsible for public order, safety and security of the community.¹³

One of the forced attempts is *arrest*, according to Article 1 number 20 of the Criminal Procedure Code which reads:

"Arrest is an act of the investigator in the form of temporary restraint of the freedom of the suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and or trial in the case and according to what is provided for in this law.¹⁴

According to Maidin Gultom, in carrying out the act of arrest, the principle of presumption of innocence must be respected and upheld in accordance with dignity and dignity. The principle of¹⁵ *presumption of innocent* can be found in the General Explanation of point 3c of the Criminal Procedure Code, namely:

"Any person who is suspected, arrested, detained, prosecuted and/or confronted before the court, shall be presumed innocent until a court ruling declares his guilt and obtains permanent legal force".

In addition, it is also regulated in Law No. 48 of 2009 concerning the Power of Justice, in Article 8 paragraph (1) it is stated that:

"Any person who is suspected, arrested, detained, prosecuted, or confronted before a court shall be presumed innocent before any court judgment declaring his guilt and having acquired the force of law remains".

The arrests to be made are aimed at persons who are strongly suspected of committing criminal offences based on preliminary evidence. What is meant by sufficient preliminary evidence is preliminary evidence to suspect a criminal act. The performance of the task of arrest cannot be carried out arbitrarily, but is aimed at the person who actually committed the criminal act. In the event of being caught, the arrest is made without an arrest warrant, but must immediately hand over the arrested person along with the available evidence to the investigator.^{16, 17}

Arrest is the arrest of a person while committing a criminal offence or immediately after a short period of time the crime has been committed, or a moment later it is described by the public as the person who committed it, or if a moment later a person is found to have been used to commit the crime that shows that he is the perpetrator or participated in committing or assisting in the crime.¹⁸

The next attempt at coercion is *Detention*, that is, the placement of a suspect or defendant in a certain place by the investigator, or the public prosecutor or judge by his determination, in the case and in the manner provided for in this law. The Criminal Procedure Code only provides in the details of the article on the material of the suspension of detention which concerns the bail of money or the person and the official authorized to establish the suspension of detention as well as the whereabouts of the suspect or defendant if escaping from the status of suspension of detention.^{19, 20}

Another opinion says that detention is essentially an act that restricts a person's freedom of independence. The person here is not everyone but rather people who by law can be subject to detention. A person who by law may be subject to detention under the above clause is a person who has been designated as a suspect or defendant.²¹

Therefore, the Criminal Procedure Code determines that officials or agencies authorized to make arrests, namely investigators or auxiliary investigators, public prosecutors, and judges who according to the level of examination consist of judges of the district court, the high court, and the Supreme Court (Article 20 to Article 31 of the Criminal Procedure Code).²²

The validity of detention is specified in Article 21 paragraph (4) of the Criminal Procedure Code, namely that detention can only be imposed on suspects or defendants whose criminal acts are regulated in points a and b. The need for detention is regulated in Article 21 paragraph (1), namely an order of further detention or detention is carried out against a suspect or defendant who is strongly suspected of committing a criminal act based on sufficient evidence, in the event that there are circumstances that give rise to concerns that the suspect or defendant will flee, tamper with or eliminate evidence and/or repeat the criminal act.²³

There are 3 types of detention, namely: 1) State detention center, namely detention placed in a certain building called the State Detention Center (Rutan). If there is no building available somewhere, the Penitentiary, Court Detention Center or Prosecutor's Office is used. 2) House arrest, that is, detention carried out in the residential house or residence of the suspect or defendant by conducting supervision of him. 3) City detention carried out in the city of residence or residence of the suspect or defendant with the obligation to self-report at the specified time.²⁴

The types and periods of detention include the following; 1) Detention carried out by the Investigator with a period of 20 days and can be extended by the JPU for 40 days. 2) Detention carried out by the General Prosecutor with a period of 40 days and can be extended by the PN Chairman for 30 days, 3) Detention carried out by the PN Judge with a period of 30 days and can be extended by the PN Chairman for 60 days, 4) Detention

carried out by the PT Judge with a period of 30 days and can be extended by the Chairman of the PT for 60 days, 5) Detention made by the Supreme Court Judge with a period of 50 days and can be extended by the Chief Justice for 60 days.²⁵

A search is an examination to collect goods and evidence and information related to a legal case. The act of search is a coercive effort whose authority is given to the investigating party. This examination action is carried out on a closed place (house, building, and type) or a person's body Article 32 of the Criminal Procedure Code states that for the purposes of investigation, the investigator may conduct a search of the house or a search of clothing or a search of the body according to the procedures prescribed in this law. When investigators conduct urgent searches without court permission there are matters that are not allowed to be examined or confiscated. These provisions are regulated in article 34 paragraph (2) of the Criminal Procedure Code which states:^{26, 27}

Confiscation is a legal action in the investigation process carried out by the investigator to legally control an item, both movable and immovable goods that are suspected to be closely related to the criminal act that is taking place. The definition of Confiscation is a series of actions of the investigator to take over and or keep under his control movable or immovable, tangible or intangible objects for the purpose of proof in investigation, prosecution and trial.^{28, 29}

The purpose of confiscation for the purposes of "proof" is primarily intended as evidence before a judicial hearing. Most likely without evidence, the case cannot be brought before the court. Therefore, in order for the case to be complete with evidence, the investigator conducts seizures to be used as evidence in investigations, in prosecutions and court trials.³⁰

In Article 38 of the Criminal Procedure Code, confiscation can only be carried out by an investigator with the permission of the Chief Justice of the local District Court. In very necessary and urgent circumstances where the investigator must act immediately and it is impossible to obtain a permit in advance, the investigator may make seizures only of movable objects and therefore must immediately report to the Chief Justice of the local District Court for his approval³¹

The objects subject to confiscation as mentioned in are: 1) Objects or charges of a suspect or defendant that are wholly or partly suspected to have been obtained from a criminal act or as a result of a criminal offence; 2) Objects that have been used directly to commit criminal acts or to prepare for them; 3) Objects used to obstruct criminal investigations; 4) Objects specially made or intended to commit criminal acts; 5) Other objects that have a direct relationship with the criminal act committed; 6) Objects that are confiscated due to civil cases or due to bankruptcy may also be confiscated for the purposes of investigation, prosecution, and trial of criminal cases, as long as they meet the provisions referred to above.³²

Letter Inspection, Mail inspection arrangements in the Criminal Procedure Code are regulated in Article 47 and Article 48 of the Criminal Procedure Code. His authority rests with the investigator with the permission of the Chief Justice of the District Court. The

investigator has the right to open, examine and confiscate other mail sent through post and telecommunications offices, offices or communications companies or appointments if the object is suspected with good reason having any connection with the criminal case under examination, with special permission granted to it from the Chief Justice of the District Court.

The provisions in Article 48 of the Criminal Procedure Code state that if after opening and inspection, it turns out that the letter is related to the case being examined, the letter is attached to the case file. If upon inspection it turns out that the letter has nothing to do with the matter, it is neatly closed and immediately handed back to the post and telecommunications office, office or other communications or transport company after being affixed with a stamp that reads "has been opened by the investigator" with the date, signature and identity of the investigator. Investigators and officials at all levels of examination in judicial proceedings are obliged to keep seriously confidential the strength of the oath of office in the contents of the returned letter.³³

From the foregoing Attempts to force are also all forms of action that can be imposed by criminal law enforcement officials against a person's freedom of movement or to possess and control an item, or against his personal freedom not to be disturbed by anyone. Forced attempts may be imposed on a person or against his property that is necessary to expedite the examination process or to obtain evidentiary materials.³⁴

Deviant actions during the investigation process are not a rare occurrence. In fact, it is a method that is considered reasonable by investigating officials. Acts of violence by investigators against suspects are contrary to the substance of the Criminal Justice System, which prioritizes the equality or balance of position between subsystems of the Criminal Justice System itself. A person accused of being a criminal offender is not an object in the Pidana Justice System, but a subject of the system.^{35, 36}

The Criminal Procedure Code wants a criminal justice process that develops a paradigm, namely, that citizens who become suspects are no longer seen as "objects" but as "subjects" who have rights and obligations. On the basis of the goal of promoting the dignity of human dignity, the Criminal Procedure Code also lays out the basic lines of the purpose of fostering the attitude of law enforcement implementers to implement the provisions of the criminal procedural law in a humane manner and oriented towards the respect and protection of the human rights of suspects.³⁷

Just as in making an arrest, which is one part of a forced attempt, police officers must pay attention to the procedures for arrest according to the Criminal Procedure Code, namely they must show a letter of duty and provide the suspect with an arrest warrant that lists the identity of the suspect and states the reason for the arrest and description of the alleged crime case and the place where he will be examined.³⁸

The provisions of the Criminal Procedure Code want that there is no justification for violent practices in the implementation of arrests. So the mental and behavioral attitudes (law behavior) of Police officers must also truly understand, understand, and obey these regulations for the sake of upholding truth and justice through a series of criminal case

settlement processes, through the criminal justice system. This is to anticipate the violation of the rights of a suspect with prolonged detention, while not necessarily the suspect is the perpetrator of the criminal act he is accused of. Thus the objectives of the criminal justice process can be achieved without necessarily violating the human rights of a human being.³⁹

Likewise, the detention of investigators in carrying out the detention of a suspect must have a clear basis, as well as the phenomenal event that occurred on September 24, 2012 in the case of the shuffle carried out by Fitrah Rahmadani with the initials "FR" alias Doyok. At that time, after school hours, Faruq and his three colleagues were about to pick up a motorcycle that was picked up at the crime scene (behind the M Plaza block) suddenly there were dozens of 70 high school students who immediately attacked them with sharp weapons in the form of celurit.⁴⁰

Rights that must be protected by the government regarding legal protection of human persons or suspects undergoing criminal proceedings include: 1) The Right to Protection, the Right to personal protection, family honor, dignity and property rights, 2) The Right to Security, the Right to a sense of security and peace and protection against the threat of fear to do or not do something. 3) The Right to Be Free from Torture, 4) The right not to be treated Arbitrarily, Everyone should not be arrested, detained, ostracized, exiled, or treated arbitrarily, 5) The right not to be tortured.⁴¹

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Forced effort comes from the Dutch "*Discretionair*" which means discretion in the case of deciding an action based on the provisions of a regulation, law or applicable law but on the basis of discretion, consideration or fairness. Forced judgment concerns decision-making that is not strictly bound by law, where personal judgment also plays a role.

Forced effort is the freedom to choose various measures of action (*Causes of action or inaction*). Forced attempts require an adequate level of intelligence in making decisions. In this case, law enforcement human resources (HR) play an important role rather than the content of the product, or in this case it is legislation alone (*to improve the human resources is more important than its product*)

Notes

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- 7) Regulation of the Chief of Police of the Republic of Indonesia Number 14 of 2012 concerning Management of Criminal Investigations, Article 15
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- 12) M Yahya Harahap, *Op.Cit.* p. 134
- 13) Article 4 of Law No. 2 of 2002 concerning the Indonesian National Police
- 14) Gerry Muhamad Rizki, *Op.cit.*, p 195.
- 15) Maidin Gultom, *Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia* (Bandung: PT. Refika Aditama, 2008). p. 101
- 16) Ratna Sari, *Investigation and prosecution in criminal procedural law of the Law and Society Study Group* (Medan: USU Faculty of Law, 1995). P. 36
- 17) Article 18 Paragraph 2 Khap.
- 18) Article 1 Paragraph 20 of the Criminal Procedure Code
- 19) Article 1 paragraph 21 of the Criminal Procedure Code
- 20) Andi Hamzah, *The potpourri of criminal law and criminal procedure.* (Jakarta: Ghalia Indonesia, 2011). p. 19
- 21) P.A.F Lamintang, *Basic Basis of Indonesian Criminal Law.* (Bandung: Citra Aditya Bakti, 1996). p. 16
- 22) Andi Hamzah, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2010). pp. 132-133
- 23) Mahmud Mulyadi, *Op.cit.* Hal 21-22.
- 24) Gerry Muhamad Rizki, *Op.cit.*, p 205.
- 25) See Article 24-28 of the Criminal Procedure Code

- 26) Imam Sopyan Abbas, Op.cit, p 93.
- 27) Gerry Muhamad Rizki, Op.cit., p 210.
- 28) Hartono, *Criminal Law Investigation and Enforcement through a Progressive Approach* (Rays Grafika, 2010). p. 118
- 29) See Article 1 number 16 of the Criminal Procedure Code
- 30) M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code, Cet-13* (Jakarta: Sinar Grafika, 2010). p. 265
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- 33) Ibid. pp 216-217.
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