

Legal Policy on the Use of Weapons by Law Enforcement Officers from the Perspective of Protecting the Right to Freedom of Expression

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Submitted : 25/02/2025 Reviewed: 28/03/2025 Accepted: 31/05/2025

Abstract: *This study examines the issue of the use of force by law enforcement officers in managing demonstrations, particularly from the perspective of protecting the right to freedom of expression. Although demonstrations are a constitutional right guaranteed by the 1945 Constitution of the Republic of Indonesia and international human rights instruments, in practice, there have been various violations of human rights principles—such as the disproportionate use of force, arrests without clear justification, and limited access to legal assistance for detained protesters. Law enforcement personnel often face a dilemma between maintaining public order and the risk of being accused of human rights violations, while civilians—including those not directly involved—often suffer the consequences of anarchic demonstrations. This research highlights the urgent need for a human rights-based approach in managing public protests, through enhancing the professionalism and capacity of law enforcement, strengthening dialogue among stakeholders, and improving compensation mechanisms for affected parties. A holistic approach is essential to achieving a balance between safeguarding the right to free expression and maintaining public order in Indonesia.*

Keywords: *Human Rights; Freedom of Expression; Demonstration*

DOI: [10.32801/lamlaj.v10i1.224](https://doi.org/10.32801/lamlaj.v10i1.224)

INTRODUCTION

Human Rights are fundamental rights inherently possessed by every individual as part of human dignity and worth. Human rights encompass various dimensions, such as the right to life, freedom of expression, and protection from discriminatory acts. The concept of human rights began to gain

significant global attention following the end of World War II, marked by the adoption of the Universal Declaration of Human Rights in 1948. This declaration serves as the primary foundation for the development of human rights protection at the international level, affirming that every individual is entitled to equal rights regardless of race, gender, or

background. In Indonesia, the principles of human rights are guaranteed in the 1945 Constitution of the Republic of Indonesia and are further detailed through various national legal instruments. Freedom of expression is one of the essential components of Human Rights, as guaranteed by the Universal Declaration of Human Rights. This right ensures that every individual has the ability to express opinions, ideas, and information without interference or restriction from others. Within the framework of national law, freedom of expression is regulated under Article 28E of the 1945 Constitution of the Republic of Indonesia, which affirms that every person has the right to express their opinions. Although this right is constitutionally recognized, its implementation in practice still faces various obstacles, both social and political in nature. These challenges indicate that society must continue to fight for its rights to express opinions freely. One incident that highlights the serious issues in the protection of freedom of expression was the shooting of students from Halu Oleo University in Kendari in 2019, which resulted in the deaths of two students while they were peacefully voicing their aspirations.

The incident raises serious questions regarding the legality of firearm use by law enforcement officers and to what extent such actions can be justified within the framework of law enforcement. As individuals entrusted with the authority to uphold the law and maintain public order, officers are expected to serve as role models in exercising their power

in a professional and proportional manner. However, the incident instead reflects an abuse of authority that contradicts the fundamental principles of law enforcement. Given the strategic role of law enforcement in ensuring public safety, every action they take should be grounded in a respect for human rights. The shooting case illustrates a failure to follow proper procedures, particularly in handling demonstrations that should ideally be resolved through dialogue and non-violent approaches.¹ Unfortunately, in recent years, there has been a growing perception among the public that the state of human rights in Indonesia is experiencing a decline. This regression is indicated by the increasing number of cases involving violations of freedom of expression, as well as law enforcement practices that are perceived to fall short of reflecting the principles of justice. Therefore, education on the importance of freedom of expression is crucial in the effort to build a more open, inclusive, and tolerant social order.² Based on the previously presented discussion, the author is interested in conducting a study that focuses on a legal-political analysis regarding the use of firearms by law enforcement officers in handling public demonstrations. This research will be presented in a scientific work entitled: “The Legal Politics of Firearm Use by Law Enforcement Officers in Relation to the Public’s Freedom of Expression (Case Study of the Student Shooting in Kendari in 2019)”.

Based on the foregoing explanation, the Author is compelled to further examine the normative aspects governing the use of force

¹ Komnas HAM Republik Indonesia, “Komnas HAM: Negara Wajib Lindungi Kebebasan Berpendapat dan Berekspresi Warga Negara,” *Komnas HAM Republik Indonesia*, last modified 2024, <https://www.komnasham.go.id/index.php/news/2024/4/26/2509/komnas-ham-negara-wajib-lindungi-kebebasan-berpendapat-dan-berekspresi-warga-negara.html>.

² Amnesty Internasional Indonesia, “Bebasnya Septia, Langkah Maju Melawan Ancaman Kriminalisasi Kebebasan Berekspresi,” *Amnesty Internasional*, last modified 2025, <https://www.amnesty.id/kabar-terbaru/siaran-pers/bebasnya-septia-langkah-maju-melawan-ancaman-kriminalisasi-kebebasan-berekspresi/01/2025/>.

and firearms by law enforcement officers in the context of managing public demonstrations. The primary focus of this research is to understand how the national legal framework regulates the actions of law enforcement in maintaining public order, without disregarding the fundamental principles of respect for citizens' constitutional rights, particularly the right to freedom of expression and peaceful assembly in public spaces. Furthermore, this study also seeks to assess whether the current normative provisions are in alignment with human rights principles, as stipulated in both national legal instruments and international conventions ratified by Indonesia. The main emphasis is placed on the extent to which these regulations ensure the protection of freedom of expression, while also guaranteeing that the use of force by state authorities remains within the bounds of proportionality, accountability, and necessity, and does not become excessive.

METHOD

The type of research used in this thesis is normative legal research, which combines the study of applicable legal norms with the observation of how those norms are implemented in practice.³ The normative legal approach involves analyzing various legal sources, including legislation, legal doctrines, general legal principles, and international instruments governing the use of force by law enforcement officers and the guarantee of freedom of expression.⁴ This analysis aims to identify the framework of positive law that serves as the legal basis for law enforcement actions in the context of crowd control or

demonstrations. Meanwhile, the empirical approach is employed to describe how these legal norms are applied in reality. This is carried out by examining the social and legal realities in the field through the collection of factual and contextual data, particularly by conducting an in-depth analysis of the 2019 Kendari case. This case study serves as the main object to test the alignment between normative regulations and their practical implementation, and also forms the basis for assessing the urgency of legal reconstruction to strengthen the protection of freedom of expression in Indonesia.

ANYLISIS AND DISCUSSION

The Concept of Human Rights and Freedom of Expression

The term Human Rights began to gain widespread recognition and became part of everyday global discourse following the establishment of the United Nations after the end of World War II. As such, the concept of human rights is considered a relatively new term in the development of law and international relations. Substantively, human rights refer to the entitlements inherently possessed by every individual simply by virtue of being human. In other words, every person is entitled to enjoy fundamental freedoms and a certain standard of living without requiring additional conditions, special qualifications, or specific backgrounds. The sole basis for possessing human rights is one's existence as a human being.⁵ In reality, legal issues are not as simple as they are often portrayed in public discourse. Concepts such as justice and order

³ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

⁴ Diana, Juan Matheus, dan Hizkia Ivan Nugroho, "Quo Vadis the Jakarta Special Regional Bill: Ideal Design Based on Constitutional Law Perspective," *Journal of Constitutional and Governance Studies* 1, no. 1 (Juni

13, 2024): 20–37, <https://journal.uui.ac.id/JCGS/article/view/33514>.

⁵ Azmi Sharom et al., *An Introduction to Human Rights in Southeast Asia*, First Edit. (Nakhon Pathom: A Southeast Asian Human Rights Studies Network, 2015).

may be easy to articulate in theory, but their practical implementation frequently gives rise to complex challenges. It is not uncommon for conflicts to emerge between one legal principle and another. The sense of justice and the aspiration to live in prosperity are inherent to individuals across the world. However, when people feel that the promises made by the government regarding justice and welfare are not fulfilled, one of the most common forms of expressing their discontent is through demonstrations or public protests.

Unfortunately, such demonstrations do not always proceed peacefully. In many cases, mass protests can escalate into acts of anarchy that disrupt public order and violate prevailing social norms. One of the most prominent examples is the 1998 Reform movement, during which thousands of students took to the streets demanding the resignation of President Soeharto. The demonstrations eventually devolved into social unrest involving acts of vandalism, looting, arson, and even resulted in loss of life. In response to these events, the government issued Law Number 9 of 1998 concerning the Freedom to Express Opinions in Public, which serves as the legal basis for regulating the procedures of exercising the right to free expression in public spaces in an orderly and responsible manner.⁶ In carrying out their duties to maintain public security and order, the police often face demonstrators who are fighting for their rights—including the right to express opinions guaranteed by the 1945 Constitution of the Republic of Indonesia. In such situations, the mass media, especially electronic media, are expected to carry out their reporting functions objectively

and balanced. However, in reality, there is often an imbalance in coverage. When the police become victims of anarchic actions by demonstrators, these incidents tend to be overlooked by the media. Conversely, when the police take self-defense actions, the media tend to highlight them extensively, creating the perception that the police are violating human rights. This situation creates a particular dilemma for police officers who are on duty directly in the field.

To minimize conflicts and provide procedural clarity in handling demonstrations, the Indonesian National Police have issued various internal regulations in the form of Chief of Police Regulations. These regulations are intended to ensure the safe and orderly exercise of the right to express opinions publicly, while maintaining a balance between protecting citizens' rights and enforcing the duties of law enforcement officers. Additionally, these Perkap also serve as technical guidelines for officers in the field to ensure legal certainty and legal protection during the process of securing demonstrations.⁷

According to F. Budi Hardiman, the protection of human rights is important because, by nature, humans are weak and vulnerable to arbitrary actions and violence from others. This vulnerability arises from the dual potential humans possess—that is, they can be both victims and perpetrators of cruelty. Therefore, a universal demand emerges from human awareness itself to safeguard and protect this vulnerability through the protection of human rights.⁸ Richard T. Peterson states that the universal

⁶ Riki Saputra dan Hendrawarman Hendrawarman, "PERLINDUNGAN HUKUM TERHADAP APARAT DALAM PENGAMANAN UNJUK RASA YANG MENAKIBATKAN KERUSUHAN," *Jurnal Ilmiah Publika* 11, no. 1 (Januari 27, 2023): 14,

<https://jurnal.ugj.ac.id/index.php/Publika/article/view/8197>.

⁷ Ibid.

⁸ F Budi Hardiman, *Hak-Hak Asasi Manusia: Polemik dengan Agama dan Kebudayaan* (Yogyakarta: Kanisius, 2011).

nature of human rights reflects the recognition individuals have gained through various struggles that occurred within local and historical contexts. These struggles aim to overcome various forms of inequality, domination, and actions that degrade human dignity.⁹

From the perspective of international relations, human rights have become one of the main agendas regulated through various international legal instruments that have been mutually agreed upon. For example, the Universal Declaration of Human Rights by the United Nations, as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights adopted by the UN in 1966, serve as important legal foundations for the protection of human rights at the global level. In addition, the existence of institutions addressing human rights issues has been widely developed both internationally and nationally. At the individual level, every person has a legal status that guarantees protection from all forms of human rights violations.

Human rights can be understood as various rights guaranteed to every individual. These rights include the freedom to engage in certain activities, such as freedom of movement, freedom of expression, and the freedom to practice religion according to one's beliefs. In addition, human rights also guarantee freedom from harmful treatment or conditions, such as torture and slavery. Furthermore, these rights encompass access to essential basic services, including education,

healthcare, a fair justice system, and employment opportunities. Equally important, human rights provide special protection for vulnerable groups in society, such as people with disabilities, children, women, and refugees.¹⁰

Human rights are formed at the intersection of legal, moral, and social dimensions.¹¹ First, human rights must be legally recognized, where various legal rights such as the right to marry or own property are protected by law. This legal basis is crucial not only for the legitimacy of human rights but also for their implementation and enforcement, making it a legal obligation for governments and other parties to respect them. Second, human rights also have a moral aspect, where society generally shares a collective awareness regarding violations of these rights, based on a common understanding of right and wrong. This reflects a universal respect for individual rights worldwide, especially concerning safety and treatment by the government. Third, human rights are social rights that guarantee a safe and harmonious life within society. These social rights include norms of decency, assistance, tolerance, and shared happiness that create a more comfortable living environment. Thus, social rights affirm that every individual should feel secure and have their needs fulfilled by the community or the state.¹²

In a state governed by law, the law functions as the highest guideline in the administration of government, where the execution of state authority is led by the law

⁹ Richard T. Peterson, "9. Human Rights: Historical Learning in the Shadow of Violence," *The American Journal of Economics and Sociology* 68, no. 1 (Januari 18, 2009): 253–272, <https://onlinelibrary.wiley.com/doi/10.1111/j.1536-7150.2008.00623.x>.

¹⁰ Hamid Awaludin, *HAM: Politik, Hukum, dan Kemunafikan Internasional* (Jakarta: Kompas, 2012).

¹¹ Nandang Kusnadi, "Perspektif Penegakan Hak Asasi Manusia Melalui Pengadilan Hak Asasi Manusia," *PALAR (Pakuan Law Review)* 3, no. 1 (2017): 95–96.

¹² Sharom et al., *An Introduction to Human Rights in Southeast Asia*.

itself, in accordance with the principle of the rule of law, not of man. This concept aligns with the idea of nomocracy, which is power exercised based on law (nomos). Within the framework of such a state governed by law, it is necessary to ensure that the law is established and enforced based on democratic principles. This is because the principles of legal supremacy and legal sovereignty essentially originate from the sovereignty of the people. Therefore, the development and advancement of a state governed by law must be grounded on the principles of democracy and popular sovereignty, known as *demokratische rechtstaat*.¹³

The concept of demonstrations in modern democratic systems has undergone a significant shift in meaning alongside societal developments. Etymologically, the word "demonstration" originates from a term meaning to show or openly express protest. In Indonesia, a demonstration is understood as an activity carried out by one or more persons to convey opinions orally, in writing, or by other means openly in public. The legal basis for demonstrations in Indonesia is grounded in several important juridical instruments. Article 28E paragraph (3) of the 1945 Constitution guarantees the freedom of association, assembly, and the right to express opinions firmly. This guarantee is reinforced by Law Number 9 of 1998 concerning the Freedom to Express Opinions in Public, which regulates the procedures and mechanisms for expressing opinions in accordance with legal norms and democratic values. In conducting demonstrations, every

citizen has rights protected by law, including freedom of expression, legal protection, and security guarantees. However, demonstrators also have the obligation to respect the rights of others, maintain public order, and comply with applicable laws and regulations. The legal limits on demonstrations have been comprehensively regulated, including that demonstrations must be held in places open to the public while taking into account public order and community interests. Furthermore, notification to the local police is a mandatory administrative requirement, and the timing of demonstrations is limited to between 6:00 AM and 6:00 PM local time, except for scientific or artistic activities.¹⁴

One way a state protects, respects, and promotes human rights is by incorporating these rights into the national constitution. In Indonesia, the human rights of every citizen are regulated in the 1945 Constitution of the Republic of Indonesia. These rights include the right to life, freedom from torture, the right to security, the right to personal development and survival, freedom of thought and conscience, freedom of religion, and the right to legal recognition. These rights must not be diminished under any circumstances. However, although a person possesses these rights, this does not mean freedom to act arbitrarily without limits, as there are restrictions intended to protect the human rights of others.¹⁵

From the explanation above, it can be concluded that the protection, respect, and promotion of human rights are the shared responsibilities of all parties, including the

¹³ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Konstitusi Press, 2005).

¹⁴ Edward Dzaky Widyananda dan Elza Qorina Pangestika, "Penegakan Hukum Dalam Penanganan Demo Anarkis Perspektif HAM," *Jurnal Review*

Pendidikan dan Pengajaran (JRPP) 7, no. 4 (2024): 16992–16999.

¹⁵ Putu Mira Rosviyana dan Anak Agung Ketut Sukranatha, "Penegakan Hukum Terhadap Tersangka Pengedar Narkoba di Filipina Ditinjau dari Persepektif HAM Internasional," *Kertha Negara: Journal Ilmu Hukum* 7, no. 9 (2019): 1–14.

state, law enforcement officers, and society as individuals. In the context of demonstrations, the state is obligated to protect and respect human rights not only for the demonstrators but also for the general public who are not involved in the action. Additionally, it is important to ensure that the human rights of law enforcement officers, as individuals who also possess rights, are protected. During the course of a demonstration, both law enforcement officers and participants must mutually respect each other's human rights as well as the rights of others outside the demonstration.¹⁶ Furthermore, the Human Rights Committee states that the state is obliged to take all necessary and reasonable measures to protect every individual within its jurisdiction from acts of torture and violence, whether committed by official authorities, unauthorized parties, or private individuals. Additionally, the state must actively inform its population, especially law enforcement officers, about the prohibition of torture and acts of violence.

The Urgency of a Human Rights-Based Approach in Handling Public Protests

In Indonesia, the implementation of rallies or demonstrations is not prohibited; however, the activity of expressing opinions in public spaces is strictly regulated by legislation. This aims to ensure that freedom of expression can proceed in an orderly manner and in accordance with applicable rules, while also safeguarding public interests and social order. Law Number 9 of 1998 concerning the Freedom to Express Opinions in Public serves as the main legal framework regulating the procedures, mechanisms, and

limitations of demonstrations in Indonesia. This law is also in line with Article 19 of the Universal Declaration of Human Rights, which affirms that every individual has the right to freedom of opinion and expression without interference or pressure from any party. Furthermore, this right includes the freedom to seek, receive, and disseminate information and opinions through various means of communication without discrimination or unlawful restriction. Thus, freedom of opinion in the context of demonstrations must be exercised responsibly and within the legal framework established to ensure the rights of all parties are fairly protected.¹⁷

Article 9 of the Chief of the Indonesian National Police Regulation Number 7 of 2012 regulates the procedures for providing services, security, and handling during activities of expressing opinions in public. In carrying out these duties, police officials are obligated to provide professional services, respect and uphold Human Rights, and comply with the principles of legality and the presumption of innocence. Furthermore, police officials are also responsible for implementing security measures aimed at maintaining order during the expression of opinions. However, in practice, especially in cases involving the use of weapons by law enforcement officers during demonstrations, there is tension between the duty to provide security and the protection of the public's freedom of expression. The excessive or disproportionate use of weapons has the potential to violate the principles of respect for human rights and the presumption of

¹⁶ Anak Agung Ngurah Dharma Putra dan Ida Bagus Erwin Ranawijaya, "Use Of Force Dalam Aksi Demonstrasi: Pendekatan Hukum Internasional," *Kertha Desa* 8, no. 9 (2020): 64–81.

¹⁷ Ardian, Dwi Atmoko, dan Lukman Hakim, "PENEGAKAN HUKUM TERHADAP ANGGOTA

POLISI YANG MELAKUKAN PELANGGARAN DALAM PENGAMANAN UNJUK RASA DITINJAU DARI UNDANG-UNDANG NOMOR 2 TAHUN 2002 TENTANG KEPOLISIAN REPUBLIK INDONESIA," *Jurnal Selisik* 9, no. 1 (2023): 37–65.

innocence, while also threatening citizens' freedom to express opinions. Therefore, it is important to evaluate and reconstruct appropriate security mechanisms to ensure that law enforcement can be balanced with the protection of human rights, particularly freedom of expression in the context of demonstrations.¹⁸

Demonstrations in Indonesia have consistently occurred year after year without ever truly stopping. In response to this phenomenon, the government has taken various measures to control and suppress protest actions in order to maintain national stability. One method implemented is state corporatism, which involves efforts to establish control and coordination between the government and various social groups to reduce potential conflicts. Additionally, the government applies depoliticization policies aimed at limiting the political space of groups considered to disrupt public order. However, on the other hand, repressive actions involving the use of military and security forces often become the government's choice in handling demonstrations deemed to potentially threaten public security and order. These approaches demonstrate how the government attempts to balance maintaining order and managing citizens' rights to express opinions in public.¹⁹

Anarchic actions arise due to the low capability of security forces in controlling crowds. There are many situations and conditions that can trigger riots. Because the riot process often occurs very quickly, there is actually a brief stage during which the police can still take early preventive measures by utilizing data related to the demonstration, including the characteristics of the crowd and

the issues raised. Additionally, police officers or security personnel can also be influenced by certain emotions that may trigger tension during the demonstration, thereby increasing the potential for clashes with the protesters.

The majority of demonstrators arrested during anarchic actions reported that they did not receive a clear explanation regarding the reasons for their detention. This condition contradicts the principle of due process of law, which is guaranteed by human rights instruments both at the national and international levels. Furthermore, demonstrators who experience human rights violations during the action often face difficulties accessing legal assistance within the first 24 hours after detention, potentially violating their right to a fair legal defense. Oversight of the use of force in dispersing anarchic demonstrations reveals a concerning pattern. Although standard procedures require the use of force to be gradual, in the field there are practices of excessive and disproportionate use of force, including the use of tear gas without adequate warning, water cannon spraying with excessive pressure, and unnecessary physical violence. The complexity of human rights protection in handling anarchic demonstrations requires a holistic approach that considers the rights of all parties. A balance between law enforcement and human rights protection must be achieved through the development of a more comprehensive and responsive system that addresses the needs of all stakeholders.

CONCLUSION

The use of weapons by law enforcement officers in securing demonstrations is a crucial issue closely related to the protection of the

¹⁸ Ibid.

¹⁹ Arbi Sanit, *Mahasiswa, Kekuasaan dan Bangsa: Refleksi dan Gagasan Alternatif* (Jakarta: Lingkaran Studi Mahasiswa, 1989).

right to freedom of expression. Although the officers have the duty to maintain order and security, the use of force, especially weapons, must be based on the principles of proportionality, legality, and respect for human rights. In practice, violations often occur, such as excessive and disproportionate use of force, lack of transparency in the process of arresting demonstrators, and obstacles to accessing legal assistance, which potentially violate the fundamental rights of demonstration participants. This highlights the need for strict oversight and enforcement of legal standards to ensure that the right to freedom of expression is protected without neglecting security aspects. Handling anarchic demonstrations still faces various challenges in meeting human rights standards, particularly related to the proportionality of force used and fulfillment of the right to a fair judicial process. The general public affected by anarchic demonstrations often experiences violations of their fundamental rights, while compensation for material losses suffered remains far from adequate. On the other hand, security personnel face a dilemma between their duty to maintain order and the risk of human rights violation accusations, as well as significant psychological pressure. These findings underscore the importance of developing a more comprehensive system for handling anarchic demonstrations that not only emphasizes security but also guarantees human rights protection for all involved parties, supported by capacity building for officers, improved compensation mechanisms, and strengthened dialogue among stakeholders.

The handling of anarchic demonstrations still faces various challenges in meeting human rights standards, particularly concerning the proportionality of the use of force and the fulfillment of the right to a fair

judicial process. The general public affected by anarchic demonstrations often experiences violations of their fundamental rights, while compensation for material losses received remains far from adequate. On the other hand, security personnel tasked with maintaining order face a dilemma between their duty to uphold order and the risk of human rights violation accusations, as well as considerable psychological pressure. These findings underscore the importance of developing a more comprehensive system for managing anarchic demonstrations that not only focuses on security aspects but also ensures human rights protection for all parties involved, supported by capacity building for officers, improvements in compensation mechanisms, and strengthened dialogue among stakeholders.

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