
A Juridical Review Of The Shooting On The Spot Conducted By The Police Against The Perpetrator Criminal Act Of Theft

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ABSTRACT

This research presents an overview of how juridical reviews of shooting in the place conducted by the police against perpetrators of criminal theft and the obstacles faced by the police in shooting in the place against criminals. This type of research uses normative research methods with the help of empirical data. In this case, the researcher combines elements of normative law which are then supported by the addition of data or empirical elements.

The results of this study show that the actions taken by the police against the alleged perpetrators of motorcycle theft are not discretionary but pure criminal acts such as serious crimes of persecution that result in death or murder if the police investigators perform actions that are not following operational standards of procedure in the use of power with firearms or have exercised discretionary authority that goes beyond the limit of authority (abuse of power). The factors that are the constraints of the police in shooting in the place of the perpetrators of crime are the level of public crowds, the distance of the shooting with the perpetrator, weather conditions.

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1. Introduction

Article 1 paragraph 3 of the 1945 Constitution (amendment results) explicitly states that the State of Indonesia is a state of law. The notion of a state of law implies that a country adheres to the teachings and principles of the rule of law where the law is upheld as a guide and determinant of policy direction in carrying out the principles of national and state life.¹

F.J. Stahl argues that the concept of the rule of law contains four important pillars, namely: the existence of recognition of human rights, separation of powers, government based on regulations, and state administrative courts.²

In the Indonesian criminal justice system, there are subsystems including the police subsystem, the prosecutor's office, and the judiciary subsystem. Thus, the three subsystems are law enforcement tools that must make the law supreme in the state. The police are one of the law enforcement officers who directly deal with the community. The police are essentially a living law because in the hands of the police the law can be realized, especially in the field of criminal law. The goal is to create order in society, enforce the law with the motto "protect, protect, and serve the community". The work carried out by the police is law enforcement in optima forma, i.e. the police is a living law. Through the police the promises and purposes of the law to secure and protect the public come true.³

So that in this case the police are required to be able to take quick and best action according to their assessment in dealing with suspects who can endanger human lives. The authority possessed by the police is written in Article 18 paragraph {1} of Law Number 2 of 2002 concerning the Indonesian National Police which states "in the public interest, the officers of the Indonesian National Police in carrying out their duties and authorities may act according to their judgment". This authority is also known as discretion. One of the actions that the police can take is shooting on the spot. However, the problem is whether the implementation is following procedures and does not conflict with other applicable laws and regulations, because in Article 8 paragraph {1} of Law Number 48 of 2009 concerning judicial power and general explanations of the Criminal Procedure Code, it is known as the principle of presumption of innocence against the

¹Darmoko Yuti Witanto & Arya Saputra Negara Kutawaringin. 2013. "Diskresi Hakim Sebuah Instrumen Menengakkan Keadilan Substantif Dalam Perkara Pidana". Bandung: Alfabeta. p 1

²Ibid. p 1

³Skripsi zahрати fadhilah taufiq. 2018. "tindak pidana kealpaan atas diskresi aparat kepolisian. UIN syarif hidayatullah. p. 1

suspect. This principle is closely related to shooting on the spot carried out by the police because the police must prioritize this principle in taking action on the spot and must have a strong reason to override this principle. After all, every action by the police is subject to internal and external supervision, and for police officers who commit If you shoot in a place that is not following the procedure, you will get a sanction for your actions. ⁴

The interpretation of the authority to act under article 18 paragraph {1} is sometimes misused by the police in carrying out their duties. While the notion of discretion is defined as the freedom or privilege that is allowed to judge, within the limits of rights and justice, but apart from the rules of positive law which are rigid and narrow, to decide and act by what is fair, appropriate, and beneficial, as determined in the circumstances. a particular case, and as understood by experience and personal wisdom, guided by the spirit, principles, and analogies of law.

With this discretionary principle, a police officer may and can make his own decisions and actions, based on individual considerations. A police officer who is carrying out an operation can decide for himself whether he needs to shoot or not. After he decides to shoot or not, the member of the police concerned will be held accountable for his decision.

As stipulated in Article 8 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 1 of 2009 concerning the use of force in police actions, namely:⁵

1. The use of force with firearms or other means is constrained when:
 - a) The actions of the perpetrators of crimes or suspects can immediately cause serious injury or death to members of the police or the public.
 - b) Members of the National Police do not have other reasonable and reasonable alternatives to stop the actions/actions of the perpetrators of the crime or suspects.
 - c) Members of the National Police are preventing the escape of criminals or suspects who pose an immediate threat to the lives of members of the public.
2. The use of force with firearms or other tools as referred to in clause (1) is the last resort to stop the act of a crime or suspect.

⁴Ibid. p. 2

⁵Article 8 Regulation of the Head of the State Police of the Republic of Indonesia Number 1 of 2009 concerning the Use of Force in Police Actions

3. To stop the actions of the perpetrators of crimes or suspects which constitute an immediate threat to the lives of members of the police or the community as referred to in clause (1), the use of firearm control may be used with or without having to start with a warning or verbal order.

These actions reflect a more prominent military culture than the culture of law enforcement against criminals who try to escape or fight officers. This causes the law enforcement process to override the proper legal process and increase the use of discretion by law enforcement officials so that the law is repressive and selective. In this context, the context of criminal law through criminal justice can be said, that:⁶

1. Criminal justice run by law enforcers appears as a tool of the authorities/government, and deviations or discretion often occur;
2. The purpose of law enforcement is more visible as an effort to maintain order and peace in society as well as being selective and discriminatory;
3. Criminal or punishment is used as the main means in law enforcement.

The Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution, which upholds human rights and guarantees all rights of citizens at the same time as their position in law and government with no exceptions.⁷

The existence of guarantees for Human Rights (HAM), can be interpreted that in every constitution there is always a guarantee for human rights (citizens of the Republic of Indonesia). This is also contained in the 1945 Constitution, in several articles that regulate human rights. One of them is article 27 paragraph (1) which is implemented in the criminal justice process as the principle of the presumption of innocence (APT) which is regulated in article 8 (1) of Law number 48 of 2009 concerning the judiciary, namely that:⁸

“Everyone who is suspected, arrested, detained, prosecuted, or brought before a court must be presumed innocent before a court decision stating his guilt has permanent legal force”.

In article 8 of Law Number 48 of 2009 concerning judicial power and also in the general explanation of point 3c of the Criminal Procedure Code which reads: “Every person suspected of, arrested, detained, prosecuted, and/or brought

⁶Kadri Husin & Budi Rizki Husin. 2016 . “Sistem Peradilan Pidana Di Indonesia”. Jakarta Timur: Sinar Grafika. p. 142

⁷Rangga Sasmita, penerpan asas praduga tak bersalah dalam praktek penanganan tindak pidana pencurian. *Jurnal Law Reform*; april 2011 vol.6, no. 1, p.50.

⁸Ibid. p. 51

before a court hearing must be presumed innocent until a court decision declares his guilt and obtains permanent legal force". Every person who commits a criminal act must first be proven in a court session, by showing evidence related to the criminal act committed. ⁹

In exercising their rights and freedoms, everyone is subject to the limitations stipulated by law for the sole purpose of guaranteeing the recognition and acknowledgment of the rights and freedoms of others to fulfill fair demands following considerations of morals, religious values, security, and public order in a democratic society.

As for the shooting case that occurred in North Gorontalo Regency, there was 1 case of shooting on the spot carried out by one of the police officers, namely where a shooting case occurred on the spot that occurred in North Gorontalo Regency as in the case that occurred in Sapawea Village, Atinggola Subdistrict, North Gorontalo Regency, where there was a shooting to the perpetrator of the alleged theft of a motorbike by one of the police officers so that the life of the perpetrator of the motorbike theft was lost. In this case, the police officers apply police discretion, namely shooting on the spot, but in terms of making the decision, it is suspected that the police exercised excessive authority or abused power, which in this case caused losses on the part of the victim. The actions of these police officers are not following the discretionary mandate regulated in article 8 of the regulation of the head of the state police of the Republic of Indonesia number 1 of 2009 concerning the use of force in police actions, because in this case the perpetrators only fled but did not carry sharp weapons or threaten life. the police and also the community, the police officer should have fired a bullet at the foot of the perpetrator to paralyze him, but the person shot the bullet into the perpetrator's head, resulting in the death of the perpetrator.

The method does not heed the principles of law which are universally recognized by the international community and are contrary to the objectives of criminal justice and the nation's moral philosophy. Is there no other way? Such a contradiction certainly gives us an illustration of how ironic the normative protection of rights as outlined in the legislation is then considered excessive in paying attention to human rights.

⁹Irfan Yobel Halomoan Sinaga. 2017. "Tinjauan Yuridis Tembak Ditempat Oleh Pihak Kepolisian Terhadap Pelaku Tindak Pidana Dikaitkan Dengan Asas Praduga Tak Bersalah". JOM Fakultas Hukum. Vol. IV No. 1. p. 3

Based on this, I am interested in raising this issue to be discussed in my paper with the title "JURIDICAL REVIEW OF SHOOT ON THE SPOT PERFORMED BY THE POLICE AGAINST THE CRIMINAL ACT OF THEFT".

2. Problem Question

- a. How is the Juridical Review of On-Site Shooting Conducted by the Police Against Perpetrators of the Crime of Theft?
- b. What are the Obstacles Faced by the Police in Shooting on the Spot Against Criminals?

3. Method

Based on the research object to be achieved, this research uses normative research methods with the help of empirical data. In this case, the researcher combines elements of normative law which are then supported by the addition of data or empirical elements.

Juridical Overview of On-Site Shooting Conducted by the Police Against Perpetrators of the Crime of Theft

- a. Procedures Regarding On-Site Shooting Against Criminals Under the Police Act

If hard action or the use of violence cannot be taken, then the application of shooting on the spot against the suspect may be used properly and is intended to protect human life, this is by article 8 of the Regulation of the Head of the Indonesian National Police Number 1 of 2009, the application of shooting on the spot against suspects by police officers can be used to:¹⁰

1. In terms of dealing with extraordinary things
2. Defend yourself from the threat of death and/or serious injury
3. Defending others against the threat of death and/or serious injury
4. Preventing serious crimes or threatening people's lives
5. Detain, prevent, or stop someone who is or is about to do something very dangerous to live.
6. Dealing with life-threatening situations, where softer measures are not sufficient.

If it is related to the case that the researcher has discussed previously in the background, namely regarding the disclosure and shooting of Fandli, a resident

¹⁰ Article 8 Regulation of the Head of the State Police of the Republic of Indonesia Number 1 of 2009

of Sapaweia village, Atinggola sub-district, North Gorontalo District. Where in this case, Fandli is suspected of having stolen a motorbike in 2020 and was shot 4 times. Meanwhile, according to information from the victim's family, the actions taken by the police against Fandli are very contrary to applicable regulations. Where in article 8 of the Regulation of the Head of the State Police of the Republic of Indonesia Number 1 of 2009 concerning the Use of Force in Police Actions and Article 47 Paragraph 2 of the Regulation of the Chief of the State Police of the Republic of Indonesia Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Performing the Duties of the Indonesian National Police It has been regulated in the circumstances of how the police can shoot on the spot against someone who commits a crime. According to the family of the victim of the shooting of the alleged perpetrator of the motorcycle theft, Fandli only ran away and did not carry a sharp weapon or threaten the life of the police, the police investigators should have only shot paralyzed, but on the contrary, the police investigators shot the perpetrator in the head of the alleged motorcycle theft.

As for the actions of the police, such as in that case, the shooting case in this place should not be at the discretion of the police but rather a criminal act of severe maltreatment that results in death or murder if the police investigator takes actions that are not following standard operating procedures in the use of force with firearms. Meanwhile, if the policeman shoots that is not following the procedures in the arrest, then he can be held criminally responsible and the police code of ethics.

By not following the procedure, the Indonesian National Police made an arrest that caused the death of a suspect or suspect in the theft of a motorbike where the arrest and shooting of death were carried out arbitrarily, the police could be held accountable because there was an error in carrying out their duties and violated the principle of presumption of innocence.

The necessity to pay attention to the principle of presumption of innocence is closely related to the fulfillment of human rights possessed by suspects in the theft of motorbikes, especially the right to life. As in the case above, the suspect who was shot was an Indonesian citizen whose right to life was guaranteed by the 1945 Constitution: "everyone has the right to defend his life and life".

Therefore, the shooting procedure in place for the suspect in the motorcycle theft in the case above does not prioritize the principle of presumption of innocence so that it has an impact on the right to life of the suspect in the motorcycle theft.

Regardless of the "resistance" that the suspect did when he was arrested, the police investigators should as much as possible arrest the life of the theft suspect. The police investigators don't need to keep arguing that the suspect attacked or resisted so he had to be shot dead. As a trained police officer, the police should be able to "paralyze" not shoot dead the suspect in the motorcycle theft so that the suspect in the theft can be processed and then be able to give information before the court.

b. Accountability for the Crime of Shooting in Place by the National Police of the Republic of Indonesia

Legal certainty will be a barometer of law enforcement in a country, which consists of two things, namely certainty in law (one rule for one action) and certainty because of the law (avoiding society from the arbitrariness of other parties). Legal certainty will be achieved if the law is enforced fairly, regardless of one's position. Likewise, police officers who have been proven to have committed criminal acts must be dealt with under applicable law. Police officers who commit criminal acts of misuse of firearms that are not following procedures must be seen whether their actions are on orders or the initiative of the police officers themselves, superiors are still held accountable.¹¹

c. Discretionary Liability

The responsibility for exercising discretion usually occurs if the discretion is not carried out by what should be done, namely the discretion that is carried out beyond the limits of its authority (abuse of power) does not heed the limits set by law, harms other people or parties, is not following policy, social, criminal, and or discriminatory, abusive, and arbitrary leadership and carried out with the intention of self or group interests and if no reason eliminates the responsibility.¹²

d. Accountability for the Implementation of On-Site Shooting Authority Performed by Indonesian National Police under Applicable Law

1. Accountability by those who ordered shooting on the spot

Accountability by the person who ordered the shooting at this place is divided into two, namely, administrative responsibility and technical responsibility. For administrative accountability, the superior who gave the order was given the obligation to make a police report containing the reasons for lowering the order

¹¹ DPM Sitompul. 1985. "Hukum Kepolisian Di Indonesia (Suatu Bunga Rampai). Bandung: Tarsito. p. 25

¹² Syaefurrahim Al-Banjary. 2005. "Hitam Putih Polisi Dalam Mengungkap Jaringan Narkoba". Jakarta: Restu Agung. p 15

to shoot on the spot and also a report on the exercise of the authority to shoot on the spot which was reported to his superior.¹³

For technical accountability, it is fully responsible for its members who carry out firing orders on the spot as long as the members carry out firing orders on the spot following the commands given, this is under the Republic of Indonesia National Police Regulation No. Pol: 7 of 2006 concerning the code of ethics for the state police profession. the republic of Indonesia article 7 clause 1 states that “Every member of the National Police is obliged to uphold the line of command and comply with the levels of authority and act according to the applicable rules and procedures” so that if in practice there is a violation of the superior who ordered to shoot on the spot, it can be subject to sanctions.¹⁴

2. Accountability by those carrying out firing orders on the spot

Responsibility by those who carry out the firing order in this place is also divided into two namely administrative and technical responsibility. Administratively, the police officer who has carried out the order to shoot at the place is obliged to make a police report/minutes regarding the actions taken (using firearms) which contains a chronology of events that occurred during the exercise of the authority to shoot at the place where it was carried out. And for technical accountability, he is responsible for the implementation of the shooting authority at the place that has been ordered by carrying it out by the authority it has and per the authority, it has and under the provisions contained in the shooting order at the location. Where this is under law number 2 of 2002 concerning the state police of the Republic of Indonesia article 19 paragraph 1 which states: “In carrying out their duties and authorities, Indonesian police officers always act based on legal norms and respect religious norms, decency, morality, and uphold human rights” and also in carrying out the shooting order on the spot apart from adhering to the article, it must adhere to the discretion of the police. So that the consequences arising from the execution of the shooting at that place are his responsibility (must be accounted for before the law).¹⁵

- e. Shooting on the spot against the perpetrators of criminal acts in the perspective of the principle of the presumption of guilt

Recognition of the principle of presumption of innocence in the criminal procedure law applicable in our country has two purposes. First, this provision aims to protect the case examination process so that human rights are still

¹³ Ibid. p. 69

¹⁴ Ibid. p. 69

¹⁵ Ibid. p. 70

respected. Second, the provision provides guidelines for officers to limit their actions in conducting examinations and guarantees against a human being who has been accused of committing a crime because they are human beings who still have the same dignity as those carrying out the examination.¹⁶

Recognition of the principle of presumption of innocence is closely related to human rights that must be respected and upheld. The consequence is that the suspect or defendant (who is considered innocent) has the same position as the police or prosecutor, and therefore the rights of the suspect or defendant must also be respected. To support the principle of presumption of innocence in law enforcement, the Criminal Code has provided a set of rights that must be respected and protected by law enforcers.

Therefore, as in the example of the case experienced by Fandli, it is clear that it cannot be said to be a suspect in a criminal act, because there is no court decision stating that the perpetrator is a defendant in a crime and has permanent legal force. As referred to in the Criminal Procedure Code and Article 8 of Law 48 of 2009 concerning judicial power "Everyone who is suspected, arrested, detained, prosecuted and/or brought before a court hearing must be presumed innocent until a court decision declares his guilt and obtains permanent legal force". Even though in the case experienced by Fandli, the villagers of Sapawea were proven to have committed theft of a motorbike, it is better for the police to always be guided by the rules and regulations that apply in dealing with criminals.

Obstacles Faced by the Police in Shooting on the Spot Against Criminals

Shooting in this place is also often referred to as police discretion. The notion of discretion can be interpreted as freedom to make decisions in every situation faced. Discretion is always associated with decision-making, power, or authority exercised by a person on the problems at hand. Police discretion can be interpreted as a policy based on the power to take any action based on his considerations and beliefs. Discretionary authority is a power or authority exercised by law based on considerations and beliefs.

The discretionary authority must remain within the legal corridor so that the discretion has benefits for law enforcement and of course by not violating the law. The discretionary authority must always have to limit signs.

¹⁶ Abdurrahman. 1979. "aneka masalah hukum dan pembangunan di indonesia". Bandung: alumni. p. 158

The legal basis for discretion for Indonesian National Police officers in carrying out their duties can be seen in Law No. 2 of 2002 concerning the Republic of Indonesia National Police Article 15 clause (2) letter k, Article 16 clause (1) letter l: and Article 18 clause (1) for the public interest, State police officers of the Republic of Indonesia in carrying out their duties and authorities can act.

Based on the researcher's interview with the Atinggola Police investigator, namely Mr. Syang Kalibato, in the interview as the researcher questioned how the procedure was in carrying out shooting actions on the spot, Mr. Dear Kalibato said that:¹⁷

“The procedure for shooting on the spot when making an arrest is to name oneself as an officer or member of the Indonesian National Police on duty, give a clear and firm warning to the target and stop, raise your hand or put down your weapon and give sufficient time for the warning to be obeyed. Before opening fire, the police must also give warning shots into the air or the ground with great caution to demoralize the perpetrator and give a warning before the shot is directed at the perpetrator. The exception is in a very urgent situation where a delay in time is expected to result in death or serious injury to the officer or other people around him, a warning does not need to be given”.

Mr. Dear Kalibato also said that:¹⁸

“The implementation of the provisions of police discretion can only be carried out in very necessary circumstances by taking into account the laws and regulations as well as the professional code of ethics for the state police of the Republic of Indonesia. In the implementation of police discretion, it must be carried out solely for the public interest, namely the interests of the nation and state and or the interests of the wider community”.

Thus, based on the results of interviews conducted by researchers with Investigators of the Atinggola Police, it can be concluded that the application of shooting on the spot must be following standard operating procedures or under the regulations contained in Article 15 of Perkap 1 of 2009 and Article 48 letter c of Perkap of 2009. As for the application of police discretion, it must prioritize the public interest over other interests while still paying attention to the proportion of importance and respecting other interests.

¹⁷ The interview was conducted with Mr. Syang Kalibato, who is an assistant investigator at the Atinggola Police Criminal Investigation Unit. Interview Conducted On October 4, 2021 Hours. 13.00 Indonesia Central Time

¹⁸ The interview was conducted with Mr. Syang Kalibato, who is an assistant investigator at the Atinggola Police Criminal Investigation Unit. Interview Conducted On October 4, 2021 Hours. 13.00 Indonesia Central Time

The work of a state institution does not mean that there are no obstacles, as well as the performance of the police, of course, there are obstacles after obstacles in realizing its vision and mission as a community protection institution. This includes the application of discretionary shooting on the spot against criminals who are always subject to various obstacles.

Therefore, the researchers tried to identify various obstacles for the sake of the obstacles faced by the police in terms of applying the discretionary action of shooting on the spot.

Based on the results of interviews with Mr. Syang Kalibato, who is an investigator at the Atinggola Police, revealed that some of the obstacles faced in the application of the discretion of shooting on the spot against criminals are as follows:¹⁹

“In the application of the discretion of shooting on the spot, there are several factors that become obstacles for the police in applying the discretion of shooting on the spot, namely as follows:

1. *Public crowd level*
2. *The shooting distance is far from the perpetrator*
3. *Weather Condition*

In the results of the interview with Mr. Syang Kalibato, the researcher did further elaboration to clarify related to the issues presented along with some elaborations in the view of the researcher who was based on the investigator's statement.

First, one of the obstacles experienced by investigators is the level of public crowds, the level public crowds referred to here is in the case of a crime that occurs in a place where there are many people gathered and has a high level of crowd, then this is also an obstacle for officers. the police in carrying out shooting actions on the spot against perpetrators of crimes that endanger the lives of people, both the community and the police officers concerned.

Second, the long shooting distance becomes a separate obstacle for police officers who want to shoot on the spot against criminals. The shooting distance is quite far when pursuing criminals who run away is a separate obstacle.

¹⁹ The interview was conducted with Mr. Syang Kalibato, who is an assistant investigator at the Atinggola Police Criminal Investigation Unit. Interview Conducted On October 4, 2021 Hours. 13.00 Indonesia Central Time

Third, weather conditions are also an obstacle faced by police officers in exercising authority to shoot at the place of criminal acts, because if the weather is bad such as drizzle, rain, fog, wind, the application of discretion can result in officers exercising discretion in other extreme weather conditions can also become a problem. an obstacle for the police because if the police continue to insist on taking decisive action in the form of using firearms, then this can also endanger other people who are not and or are not involved at all with the crime in question. So that if it is not possible to shoot in place as much as possible, the police officers only pursue criminals and only carry out the stages of using force that have a deterrent/preventive impact.

Looking at the constraints experienced by the police, the researcher concludes that in the application of discretionary shooting actions in this place the police must maximize their performance so that discretion can be applied properly, of course, in-depth knowledge and understanding of each member of the police regarding the provisions on the limits of the application of discretion is needed. and even regarding the sources of the law on discretion and its philosophical basis. Because this is very necessary so that the actions taken by the police officers are not wrong or can be blamed. Considering that discretionary action is an instant decision (without a plan) and must be carried out immediately by officers in dealing with problems in the field, it takes the understanding and expertise of officers so that the discretionary actions taken do not deviate or can be blamed.

4. Conclusion

Based on the results of the research described above, the researchers can draw the following conclusions:

1. The actions taken by the police against the alleged theft of the motorbike are not discretionary but are pure criminal acts, for example, crimes of severe maltreatment resulting in death or murder if the police investigators take actions that are not under standard operating procedures in the use of force with firearms or firearms. has exercised discretionary authority which has exceeded the limits of its authority (abuse of power).
2. In shooting on the spot against the perpetrators of crime, the police also have factors that can be an obstacle for the police in implementing shooting on the spot against the perpetrators of crime, namely, the level of public crowds, the shooting distance is far from the perpetrators, weather conditions.

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