



Analysis of Regulation of the Chief of the Indonesian National Police No. 7 of 2012 Related to Restrictions of Expressing Opinions in Public

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Abstract

Freedom of speech and expression is evident in today's democracy. Freedom of opinion in general, both orally and in writing, and freedom to organize are every citizen's rights that must be recognized, guaranteed, and fulfilled by the state. The purpose of this research is to find out whether the Head of Police Regulation Number 7 of 2012 regarding restrictions on expressing opinions in public is under the applicable law. This research uses normative juridical research with data in books, journals, research results, and related laws and regulations. The results show that various regulations still need to be considered and need to be re-examined because there are points that are not under the regulation of the head of police number 7 of 2012 regarding restrictions on expressing opinions in public.

Keywords: Human rights. Legal obligation. In public

Abstrak

Kebebasan berbicara dan berekspresi nyata di era demokrasi saat ini. Kebebasan berpendapat di umum baik secara lisan maupun tulisan serta kebebasan untuk berorganisasi adalah hak setiap warga negara yang harus diakui, dijamin, dan dipenuhi oleh negara. Tujuan dari penelitian ini adalah untuk mengetahui apakah dalam Peraturan Kepala Kepolisian Nomor 7 Tahun 2012 terkait pembatasan mengemukakan pendapat di muka umum sudah sesuai dengan hukum yang berlaku. Penelitian ini menggunakan penelitian yuridis normative dengan data-data berupa buku-buku, jurnal serta analisis hasil penelitian dan peraturan perundang-undangan yang terkait. Hasil penelitian menunjukkan bahwa terdapat berbagai peraturan yang masih harus perlu di pertimbangkan dan perlu di uji materiil kembali karena terdapat poin yang tidak sesuai dalam peraturan kepala kepolisian Nomor 7 tahun 2012 terkait pembatasan mengemukakan pendapat di muka umum.

Kata kunci: Hak Asasi Manusia. Kewajiban hukum. Di muka umum.

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I. Introduction

Freedom of opinion in public, both oral and written, and freedom to organize is every citizen's right that must be recognized, guaranteed, and fulfilled by the state.¹ Therefore, the Republic of Indonesia, as a legal and democratic state, has the authority to regulate and protect its implementation. As regulated in Article 28 E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, "freedom of association and assembly, expressing thoughts orally and in writing and so on is stipulated by law."

The notion of freedom to issue opinions is further regulated in Article 1 paragraph (1) of Law Number 9 of 1998 concerning Freedom to Express Opinions in Public, which states that

¹ Harjono, *Transformasi Demokrasi*, (Jakarta: Sekreteriat Jenderal Dan Kepaniteraan, Mahkamah Konstitusi), 2009, hlm. 24.

"freedom to express opinions is the right of every citizen to convey thoughts orally, in writing, etc. free and responsible under the provisions of the applicable laws and regulations. "

Chief of Police Regulation Number 7 of 2012 concerning Restrictions expresses opinions in public, where in the Chief of Police Regulation Number 7 of 2012, there are several rules which are related to time management so that these regulations are not under Article 28 E paragraph (3) of the Basic State Law The Republic of Indonesia of 1945. So that in this case, it is necessary to have a judicial review at the Supreme Court so that these regulations run under the applicable regulations. Therefore the author is interested in writing an article entitled " Analysis of Regulation of the Chief of the Indonesian National Police No. 7 of 2012 Related to Restrictions of Expressing Opinions in Public."

II. RESEARCH PROBLEMS

1. How is the regulation of freedom of expression in public based on Regulation of the Head of the Indonesian National Police Number 7 of 2012?
2. What are the restrictions on expressing opinions in public based on the analysis of the Regulation of the Indonesian National Police Chief Number 7 of 2012?

III. RESEARCH METHODS

The research method used in this research is the Juridical Normative approach carried out through literature studies that examine secondary data in-laws and regulations, court decisions, agreements, contracts, or other legal documents and research results, assessment results, and other references.² This research is supported by literature related to the problem under study.³ Data collection is carried out by library research (Library Research) to obtain data in documents and writings by tracing laws and regulations, documents, scientific literature, and research by experts. This study uses the primary source of secondary data or library materials. Secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. The data type is secondary data in qualitative data, which is then analyzed by the regulations relating to the problem under study.⁴ The research was conducted using a literature study to obtain data in documents and writings by analyzing the 1945 Constitution, Law No. 9 of 1998 and Chief of Police Regulation Number 7 of 2012, documents, scientific literature, and research by experts. Then the data that has been obtained is then analyzed using deduction logic.

IV. RESEARCH RESULTS AND DISCUSSION

1. The regulation on the freedom to express opinions in public is based on the Chief of the Indonesian National Police Regulation Number 7 of 2012

Article 1 of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a constitutional democracy, indicators of a democratic state can be seen by the involvement of the people in making decisions, the existence of equal rights among citizens, the existence of an effective representative system, majority and minority mechanisms. In making a decision based on the principles of human rights. According to Jimly Asshidiqie, the concept of democracy provides a foundation and mechanism of power based on human equality and equality principles. Democracy places humans as the owner of sovereignty, known as the principle of people's sovereignty.

² Badriyah Khaleed, *Legislative Drafting Teori dan Praktik Penyusunan Peraturan Perundang-undangan*, (Yogyakarta : Medpress Digital,2014), 41.

³ Salim HS, *Penerapan Hukum pada Penelitian Tesis dan Desertasi*, (Jakarta : PT Rajagrafindo, 2013), 26.

⁴ Mathew, Miles and Michel Huberman, 2009, *Analisis Data Kualitatif : Buku Sumber tentang Metode-metode Baru*,(Jakarta: UI Pres, 2009), hlm 102.

Opinions are generally defined as ideas or thoughts. Expressing an opinion means expressing ideas or expressing thoughts. In the Indonesian state's life, freedom of opinion is one of the characteristics of the freedom guaranteed by the Republic of Indonesia's Unitary State. Freedom of opinion will encourage people to respect differences of opinion and mutual criticism so that there will be dynamic dialogue towards progress in people's thinking to become more democratic. The notion of freedom expresses an opinion, more precisely if it is examined etymologically (linguistically). Independence means a state of being without pressure or freedom. Understanding, in general, is defined as free ideas or thoughts.⁵

Freedom of expression is the fundamental right of everyone, but everyone should not act as they please because there are limits to other people's rights. The freedom that everyone has is something that must be held accountable legally. Apart from the government's obligations and responsibilities, the duty and honor of protecting and fulfilling human rights also require the community's role and participation. One of the essential characteristics of a democratic country is the guarantee for all people to express their opinions, expressions, and aspirations for the continuity of all aspects of state life.⁶

Legal certainty and justice must always be upheld under the formation of this law. Professionalism means that the activities carried out must be based on ethics and morals. No less critical, the provisions in this law must also provide benefits to all Indonesian citizens. The implementation of this principle can be seen in freedom of speech and expression.⁷

Thus, freedom to express opinions in public must be implemented with full responsibility, under the provisions of applicable laws and regulations and international law principles as stated in Article 29 of the Universal Declaration of Human Rights.⁸ Indonesia recognizes the existence of human rights includes this in Article 28 (e) paragraph (3) of the second Amendment to the 1945 Constitution, which states that "everyone has the right to freedom of association, assembly, and expression." people have the right to freedom of expression, it can be in the form of an expression or statement in public or writing, or it can also be in the form of a demonstration or demonstration.⁹

So that freedom of opinion, freedom of association, and guarantees of protection of human rights. It is stated in the 1945 Constitution in article 1 paragraph (3), which reads, "Indonesia is a state based on law." The rule of law here, all the rulers' actions and the people must be based on the law. This demonstration's activity or action is one of the people's rights that the state has protected. Expression of opinions in public is also described in detail in the Regulation of the Head of the Indonesian National Police (PERKAP) No. 7 of 2012 concerning procedures for providing services, securing, and handling cases of submitting opinions in public.

Through demonstrations, the public can channel their opinions to the intended parties. Freedom of speech is a freedom that refers to the right to speak freely without any action or restriction, but it is not included in spreading hatred. It can be identified with the term freedom of expression, which is sometimes used to indicate freedom of oral speech and the act of seeking, receiving, and part of whatever information or idea is being used.¹⁰

Although the freedom to express opinions is the right of every citizen, including criticizing the government, this must be accounted for under the applicable legal rules. Based on the Constitution, expressing opinions in public is guaranteed by Article 28 E paragraph (3) of

⁵ Dimensi HAM Mengurai Hak Ekonomi, Sosial, dan Budaya , (Jakarta : Rajawali Pers, 2013), 70

⁶ Pigome, M. (2011). Implementasi Prinsip Demokrasi dan Nomokrasi dalam Struktur Ketatanegaraan RI Pasca Amandemen UUD 1945. *Jurnal Dinamika Hukum*, 11 (2), 335-348

⁷ Rahmanto, Tony Yuri. "Kebebasan Berekspresi dalam Perspektif Hak Asasi Manusia: Perlindungan, Permasalahan dan Implementasinya di Provinsi Jawa Barat." *Jurnal HAM* 7, no. 1 (2016): 45-53.

⁸ Muliadi, M. (2019). Pertanggungjawaban Hukum Terhadap Kebebasan Mengeluarkan Pendapat Dimuka Umum. *Maleo Law Journal*, 3 (1), 93-109.

⁹ E. Rosana, Negara Demokrasi dan Hak Asasi Manusia. *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, 12(1), (2016): 37-53.

¹⁰ Peiroll Gerard Notanubun, Tinjauan Yuridis Terhadap Kebebasan Berbicara Dalam Ketentuan Pasal 27 ayat (3) UU Nomor 11 Tahun 2008 Tentang ITE Dalam Hubungan Dengan Pasal 28 UUD 1945 ., *Jurnal Ilmu Hukum*, Alumni Fakultas Hukum Untag Surabaya, Edisi: Mei-Nopember (2014):112,

the 1945 Constitution of the Republic of Indonesia, which reads: "Freedom of association and assembly, expressing thoughts orally and in writing and so on is stipulated by law." The public's definition is in front of a crowd of other people, including a place where everyone can go or see. Expressing opinion in public means expressing an opinion in front of other people or people, including places where everyone can go or see. In MPR Decree No. XVII / MPR / 1998 also regulates it in article 19, namely: "Everyone has the right to freedom of association, assembly, and expression of opinion." Internationally, this is regulated in the Universal Declaration of Human Rights in article 19, which reads, "Everyone has the right to freedom of opinion and expression. This right includes the freedom to hold opinions without interference and seek, receive, and impart information and ideas through any. Media and regardless of frontiers".¹¹

So that in expressing opinions in public, including criticizing the government which is regulated according to the rule of law: a. rallies or demonstrations can carry out forms of Rallies or Demo Forms of expressing opinions in public; b. parade; c. general meeting; and/or d. free pulpit. So, a demonstration is a form of expressing opinions in public. A demonstration or demonstration is an activity carried out by one or more people to express their thoughts orally, in writing, demonstratively in public.

2. Restrictions on expressing opinions in public based on the Chief of the Indonesian National Police Regulation Number 7 of 2012

Expressing opinions publicly in terms of kindness is highly recommended. However, limiting law is required in that practice. It aims to discipline an activity so that it does not cause harm. Indonesia, as a state of *rechstaat* law and not a power state, in carrying out a country and its government, it is necessary to base a policy that is to be applied to a prevailing statutory regulation.¹²

The existence of Law no. 9 of 1998, several regulations support and relate to demonstrations concerning the delivery of opinions in public, which are described in detail, namely, the Regulation of the Chief of the Indonesian National Police (PERKAP) No. 7 of 2012 concerning procedures for providing services, securing, and handling cases of submitting opinions in public. Article 4 explains that the forms of public expression activities include; First, demonstrations or demonstrations; Second, the parade; Third, general meetings; Fourth, free pulpit; Fifth, the delivery of expressions orally, silent action, dramatic action, and gestures; Sixth, the delivery of opinions utilizing props, pictures, pamphlets, posters, brochures, leaflets, petitions, banners; and seventh, other activities aimed at expressing opinions in public. In Article 7 Paragraph (1), it is explained that the expression of opinions in public is limited to a place and time which did not previously exist in Law No. 9 of 1998 as follows; In the letter a, it is stated that the implementation in the open is between 06.00 and 18.00, local time; and in Letter b it is explained that the implementation is in a secure place, namely between 06.00 and 22.00, local time.¹³

As a rule, Law No.9 of 1998 has been regulated in law, Indonesia has regulations that regulate freedom of expression in public, but this is not good enough because individuals can still use this law for individual interests. In practice, violations and restrictions on the right to freedom of expression are still prevalent everywhere. Based on KontraS's monitoring, there have been at least 294 incidents of violations and restrictions on the right to freedom of opinion and expression in Indonesia. A total of 198 incidents occurred in 2013, while 96 incidents occurred from January to September 2014. Of these, violations and restrictions on freedom of

¹¹ Universal Declaration of Human Rights, Article 19

¹² Iwan Satriawan, Siti Khoiriah, Ilmu Negara (Jakarta: Rajawali Pers, 2016) , cet.1, hal. 113.

¹³ Mengutip Tatacara penyelenggaraan pelayanan, pengamanan dan penanganan perkara penyampaian pendapat di muka umum, hal. 7 (On-line), available in: <http://ditjenpp.kemenkumham.go.id/arsip/bn/2012/bn259-2012.pdf>, (24 November 2018, 07:01),), can be justified scientifically..

expression occurred most frequently in the form of forced dispersal of demonstrations or other forms of expression.

In some cases, these incidents were often accompanied by incidents of human rights violations and other violence, such as; torture, arrest, torture, and even shooting, so that it has excesses in protecting the fundamental rights of citizens who are victims. KontraS itself noted that at least 175 incidents of forced dispersal occurred during 2013 to 2014, in which clashes and other violence accompanied 115 incidents.¹⁴ Even the demonstrations carried out by high school students related to the revision of the Criminal Code Bill and several legislative products that the government will pass ended with repressive actions carried out by the police to disperse the demonstrations of the student alliance throughout Indonesia, no a few students in various regions were injured, and some even died as a result of these repressive actions.¹⁵

So based on this, it can be said, although expressing an opinion is the right of every citizen, including criticizing the government, it must be accounted for under the applicable legal rules. Based on the Constitution, expressing opinions in public is guaranteed in Article 28 of the 1945 Constitution ("UUD 1945"). The article's contents are: "Freedom of association and assembly, out of oral and written and so on as stipulated by law." In this case, Article 7 paragraph (1) is setting the time. Whereas in Article 28 of the 1945 Constitution ("UUD 1945") paragraph (3), "everyone has the right to freedom of association, assembly and expression of opinion. So that in Article 28 E of the 1945 Constitution ("UUD 1945"), paragraph (3) thus does not allow place and time, so that in ("PERKAPolri 7/2012") limits related to the arrangement of place and time.

Concerning expressing opinions in public, it is declared valid and valid for Indonesian citizens based on Law no. 9 of 1998. Implementing procedures for providing services, securing, and handling cases for submitting opinions in public are stipulated in PERKAP No. 7 of 2012. In Article (1) Letter a and b PERKAP No. 7 of 2012, apart from the fact that the PERKAP is valid and binding to the internal police, some things are regulated in the law but are limited by the PERKAP. The PERKAP is contrary to Law Number 9 of 1998. So a PERKAP that does not exist in the statutory regulatory structure exceeds the law. In Article 13 paragraph (1) letter b of Law Number 9 of 1998, it is stated that implementation is possible at night provided that prior coordination is carried out between the National Police and the person in charge of the action. Article 7 paragraph (1) PERKAP No. 7 of 2012 limits the timing of the action. Meanwhile, freedom of expression's restrictions must be contained in a law, not a PERKAP. That regulation should have been canceled. Alternatively, a petition for judicial review should be submitted to the Supreme Court because the article is contrary to Law no. 9 of 1998 related to the limitation on the implementation time, which is higher than the police regulation. That is necessary to avoid overlapping assumptions in the implementation of demonstrations concerning freedom of expression in public. So, in this case, there is a rule that contradicts the rules above or called "*lex specialist derogate lex generale*," which means that specific laws override general laws.

Freedom of opinion is the right of every individual since birth, which the constitution has guaranteed. Therefore, Indonesia is a country based on the rule of law. Of course, it has regulations that protect human rights.¹⁶ According to John Locke's hypothesis, the state does not grant human rights, and human rights are individual natural rights owned by every human being since he was born.¹⁷ One of them is the right to speak and express opinions owned by every Indonesian society regardless of ethnicity, race, and religion. It realizes consistent and sustainable legal protection in guaranteeing freedom of expression, creating a climate that is conducive to the development of participation and creativity of every citizen as the embodiment of rights and responsibilities in democratic life, and placing social responsibility in

¹⁴ Laporan Pemantauan Kondisi Hak atas Kebebasan Berekspresi di Indonesia 2013 s/d 2014

¹⁵ Abdul Aziz Bari, Politik Perlembagaan, Suatu Perbincangan Tentang Isu-isu Semasa Dari Sudut Perlembagaan Dan Undang-undang, Kuala Lumpur: Instituti Kajian Dasar (IKD), 2005. Cet 1, hlm. 190

¹⁶ Donny B.U, Internet, Kebebasan Berkespresi dan Hak Asasi Manusia (HAM), Koleksi Pusat Dokumentasi ELSAM

¹⁷ Anis Widyawati, "Kajian Hukum Internasional Terhadap HAM" , *Jurnal Pandecta*, (Semarang : Fakultas Hukum UNNES,2014), 41

the life of the community, nation, and state without neglecting interests individually or in groups.¹⁸

V. Conclusions

- a. Freedom to express opinions in public is a right for every citizen because it is regulated in Article 28 (e) paragraph (3) of the second Amendment to the 1945 Constitution, which states that "everyone has the right to freedom of association, assembly and expression" so every citizen entitled or free to express opinions in public.
- b. The restrictions on expressing opinions in public are regulated in the Chief of Police Regulation Number 7 of 2012. Under Article 28 (e) paragraph (3) of the second Amendment of the 1945 Constitution concerning the implementation of demonstrations concerning freedom of expression in public. Whereas the legislation has provided clear protection regarding freedom to express opinions regarding time restrictions so that there is no arbitrariness, it needs to be reviewed because regulations are not according to higher laws (*lex specialis derogat legi generali*).

VI. Suggestions

- a. Freedom of expression in public, which the Constitution and Laws guarantee, Regulated freedom used to the maximum extent possible by the community and government so that a democratic culture can develop correctly and according to applicable regulations.
- b. In the Chief of Police Regulation Number 7 of 2012 Regarding Restrictions on Expressing Public Opinions, so that in terms of time limits for implementation, consideration should be given to submitting a petition for judicial review to the Supreme Court between Article 28 (e) paragraph (3) Second Amendment of the 1945 Constitution. Furthermore, Regulation of the Chief of Police Number 7 of 2012 is under the applicable regulations regarding time limits for expressing public opinions.

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¹⁸ Michael O'Flaherty, "Freedom of Expression : Article 19 of the Internasional Covenant on Civil and Political Rights and the Human Rights Committees General Comment", *Journal Human Rights*, No. 34, 627

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