

Criminological Translators Are Used By The Law Enforcement Front Member Of The Islamic Foreign Front (Fpi) For Extra Judicial Killings, Which Refer To Murders That Occur Outside Of The Judicial Process (Analysis Of Supreme Court Decision Number 939 K/Pid/2022)

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Abstract

Regarding the use of firearms, Polri has special authority under Kapolri Regulation No. 1 of 2009 on the Use of Force in Police Action. One of the points presented in the Convention is that the use of force should be based on the principles of necessity, proportionality, general obligation, and reason. (reasonable). However, the realities on the ground just showed the number of incalculable uses of firearms over the past year. Several misarrests committed by the Polri, acts of torture, and extrajudicial killings using firearms were frequently carried out by the Polri. This writing uses descriptive legal research, and in this study, the author uses the normative research method of data collection. Library Research Criminal responsibility for the FPI Laskar shooting carried out by law enforcement without going through a legal process or a court ruling is a very serious and unlawful matter. Under Indonesian law, an independent and non-partisan court must ensure that everyone is tried fairly and openly. It can be concluded from this writing that the author's analysis of the sentencing of the gunman of a member of the Islamic Front Defender (FPI) (unlawful killing) in the Supreme Court decision No. 939 K/Pid/2022 is that the acts of the accused, M. Yusmin Ohorella, witness, and Elwira witness (deceased), are not a forced defense (noodweer) or excessive defense because the protection of the defendant is not in a life-threatening state.

Keywords: *Yuridis review, ruling out, Indonesian police officer, Islamic Defense Front (FPI)*

INTRODUCTION

The Indonesian criminal justice system, based on Law No. 8 of 1981 on the Code of Criminal Procedure Law (KUHAP), has ten foundations, one of which is the Presumption of Innocence, referred to in Article 8 of Act No. 4 of 2004 on the Power of the Judiciary and also in the general explanation of Article 3 C of the Constitution, which reads: "Any person who is suspected, arrested, detained, prosecuted, and/or brought before a court of law shall be deemed innocent until a court ruling establishes his guilt and acquires permanent legal force." (Suyanto, 2018).

Therefore, whenever the police act, they have the power to act at their own discretion, and this is sometimes misused by the police. This authority is contained in Article 18, Paragraph 1, of Law No. 2 of 2002 on the State Police of the Republic of Indonesia, which states: "For the general interest of the officials of the National Police in the performance of their duties and authority, they may act at their own discretion." The police can act as an oral warning to the perpetrator or suspect or even shoot him at the place of detention. (Lukman Hakim, 2020).

Kapolri Regulation No. 1 of 2009 on the use of force in police action governs Polri's special authority in the case of its own use of firearms. One of the points presented in the Convention is that the use of force should be based on the principles of necessity, proportionality, general obligation, and reason. (reasonable). However, the realities on the ground just showed the number of incalculable uses of firearms over the past year. Several misarrests committed by the Polri, acts of torture, and extrajudicial killings using firearms were frequently carried out by the Polri.

One example of a discretionary case that has occurred in Indonesia recently is the death of six members of the Islamic Defence Front (FPI), which took place at the Jakarta-Cikampek KM 50 toll on January 8, 2021. And then the Human Rights Commission said that the deaths of six FPI members included human rights violations. The Human Rights Commission recommended that the case be continued with a criminal court mechanism in order to obtain a more complete material truth for the enforcement of justice. The human rights commission also called for the law-enforcing process to be accountable, objective, and transparent in accordance with human rights standards. The accused, Fikri Ramadan, has been legitimately proven and convicted of committing criminal acts and committing murder in violation of the provisions of Article 338 in conjunction with Article 55 (1) of the first paragraph of the KUHP, in accordance with the accusations of the Primary Prosecutor General Prosecution, but the strange or rewarding thing, according to the author, is what happened in the trial process when the Chamber of Judges, both the First Level and the Cassation Level, always passed a final sentence to the perpetrator of the shooting, which resulted in the death of six members of the Islamic Defender Front (FPI) squad that took place in the taxi Jakarta-Cikampek in the 50 KM.

Where to read the judgement of the South Jakarta State Court No. 867/Pid.B/2021/PN.Jkt.Cel dated arch 18, 2022, which is complete as follows:

1. Declaring the accused that the aforementioned Ramadan thought has been proven to have committed criminal acts as the primary accusation of the General Prosecutor;
2. Declining the acts of the accused that Ramadan's thought carried out criminal actions as the primary accusation is in the framework of the Forced Defence (Noodweer) and the forced defence exceeding the limits (noodweer excesses).
3. Declining that the accused cannot be convicted of criminal offences because of the presence of justifiers and excuses for forgiveness;
4. Releasing the accustomed therefore from all legal claims;
5. Restoring the rights of the defendants in capacity, position, discretion and dignity.

Formally, the procedure for the use of firearms has been established. However, whether its implementation has been in accordance with the provisions and is not contrary to other applicable laws. Of course, formal procedures become the operational standard of procedures in the execution of police duties, but the policy on the ground largely determines what a policeman does because, besides formal policies, there are informal policies in the Police Working Unit, especially in certain situations. That is, the use of firearms and executions without proper legal process. For example, the order to shoot at the scene against the perpetrators of crimes of the residivist or sadistic category for committing their crimes. (Reeza Andi Nova, 2015).

Application in the field The police usually carry out on-the-spot shooting against the suspect and basically, the on-site shooting of the suspects is situational, i.e., based on the principle of proportionality in the prevention of violence and firearms must be applied at the time of the circumstances. The police, in dealing with individual cases, require individual action anyway. This incalculable use of firearms is a reflection of Polri's failure to identify the root of the problem of an event that ended in arbitrary and reactive action. In addition to having an impact on the right to life and the right to defence in the case of the accused, Polri often justifies such immeasurable actions in the name of order and security. It is very clear, according to the author of the incident, that the death of six members of the Islamic Defence Front (FPI) who took place at the Jakarta-Cikampek toll at KM 50 was a criminal offence and the perpetrators must also be held accountable in accordance with the laws in force in our beloved Republic of Indonesia in order to create justice for the entire society.

RESEARCH METHODS

This research is normative legal research, research carried out or directed solely on written regulations or other legal material. The collection and collection of data in this study was carried out through a library study by seeking concepts, theories or opinions regarding the enforcement of the law against the shooting of the Laskar Front of Islamic Defenders (FPI) by the police in Tol Jakarta-Cikampek Kilometre 50. In order to be able to give an assessment of the research, it is possible to use the data collected. (Suratman-H.Philips Dillah 2017)

The data is analyzed using methods of qualitative analysis. The data analysed qualitatively will be presented in the form of a systematic description by explaining the relationship between various types of data as appropriate. All data is selected and processed, then analysed descriptively so that some conclusions can be drawn from this discussion. (Tampil Anshari Siregar, 2015).

RESULT AND DISCUSSION

The Islamic Defence Front (FPI) is an organisation focused on the defence and defence of Islam in Indonesia. The FPI has a controversial reputation for frequent acts of violence and intimidation against minority groups, such as LGBT, Christian, and Buddhist communities. The organisation also frequently criticises governments and institutions associated with matters deemed to threaten the honour and dignity of Islam. The FPI was founded in 1998 and currently has members spread throughout Indonesia. One example of a discretionary case that has occurred in Indonesia recently is the death of six members of the Islamic Defence Front (FPI), which took place at the Jakarta-Cikampek KM 50 toll on January 8, 2021. And then the Human Rights Commission said that the deaths of six FPI members, which included human rights violations, recommended that the case be continued with a criminal court mechanism in order to obtain a more complete material truth for the enforcement of justice.

Basically, shooting on the ground is a priority when the position of the officer is desperate and the perpetrator threatens the safety of members of the Republic of Indonesia Police. In the exercise of the authority of shooting on the ground, one must respect the right to life and the right to torture, as both rights are guaranteed by law. Some of the legal rules underlying firing on the ground against terrorists are in Article 48 of the Covenant, which states that anyone who commits an act by force (*overmacht*) is not punishable. In the case of shooting at the scene in the process of arrest by the Police of the Republic of Indonesia, there is a force of emergency as the police shoot at the spot to avoid falling victim to both the police and the public. (Bernard L, 2018).

As regards the written legal basis for the exercise of the authority to shoot at the scene, Law No. 2 of 2002 on the State Police of the Republic of Indonesia Article 16 (1) letter (i) and Pas'1 16 (2) stipulates that "In order to carry out the duties referred to in Articles 13 and 14 in the field of criminal proceedings, the National Police is authorised to take other action under the law responsible. Other actions, as referred to in paragraph (1) letter (i), are investigative, and investigative actions are carried out if qualified as follows:

1. (a) Not contrary to any rule of law;
2. consistent with the legal obligation requiring such action to be carried out;
3. must be appropriate, reasonable, and included in its mandate;
4. due discretion based on circumstances of force; and
5. respect for human rights.

Guidelines on the use of firearms are also laid down in the Standing Procedures of the Police No. PROTAP/01/V/2001 on the Use of Firearms. These regulations regulate the scope and order of the procedure for the use of a firearm, including the procedures of action, conditions, purposes, targets, and other provisions, as well as the administrative settlement of the use. For the use of his own firearms, Polri has special authority, which is governed by Kapolri Regulation No. 1 of 2009 on the use of force in police action. One of the points presented in the Convention is that the use of force should be based on the principles of necessity, proportionality, general obligation, and reason. (reasonable). However, the realities on the ground just showed the number of incalculable uses of firearms over the past year. Several misarrests committed by the Polri, acts of torture, and extrajudicial killings using firearms were frequently carried out by the Polri. (Yasmirah Mandasari Saragih, 2021).

A concrete example of extrajudicial killing is the use of a machine that uses a firearm to disable a suspect or suspects in the process of arresting them. If we hold one of the criminal justice components at the post-interrogation stage in the arrest of a suspect who is suspected of committing a criminal offense, The apparatus is only allowed to be disabled without any action of the nature of extrajudicial killing. That can only be done if there is no other reasonable and sensible alternative to stopping the suspect's or suspect's actions that could endanger and threaten the life of the apparatus or society, for example. In the exercise of the authority of shooting on the ground, one must respect the right to life and the right to torture, as both rights are guaranteed by the law. As well as the need for an understanding of the ethical code and basic principles of the use of firearms by Polri in order not to later violate the law. Therefore, before a police officer performs a violent act of shooting at the scene, in accordance with Article 15 of the Regulation of the Chief of State Police of the Republic of Indonesia No. 1 of 2009 on the use of force in police action, the police must perform a warning shooting first.

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One example of the arbitrary acts of the police system in exercising discretion and thus leading to human rights violations is the shooting of six members of the Islamic Defence Front (FPI) on December 7, 2020, by the police in Tol Jakarta-Cikampek Kilometre 50. Police action in the murder of the FPI member should not take place because the function of the police is to provide protection to the public and to maintain public security and order. The police motivated the shooting because the police officer felt that his life was threatened by feeling attacked first, so he was forced to fire, which resulted in the deaths of six FPI members. This incident continues to be investigated by the Human Rights Command, including Mabes Polri, with the involvement of the Propam Division.

The shooting that took place on December 30, 2020, in KM 50 Tol Jakarta-Cikampek, involving the Laskar Islamic Defender Front (FPI) and the law enforcement agency (APH), cannot be directly linked to forced defense. (Noodweer). Forced defense is a form of self-defense

or another person's conduct in the event of an attack that endangers itself or others. However, the use of force in this situation must be proportionate and not excessive. Forced defense (*noodweer*) is a legal concept that allows a person to commit an action that should be prohibited in a particular situation if such action is considered a reasonable and necessary response to protect himself or others from serious and inevitable danger. However, this concept must remain consistent with the applicable legal and moral limits. In the case of the FPI Laskar shooting in KM 50, there are some parties who argue that the law enforcement agency is defending forced because faced with a life-threatening attack. However, there are also those who oppose this argument and claim that the actions of the law-enforcement apparatus are beyond the limits of the law and unjustified. (Supriadi, 2019).

The author also disagrees with Supreme Court Decision No. 939 K/Pid/2022 granting a release sentence against the perpetrators of the shooting of members of the Islamic Defense Front (FPI), as the acts of the accused are said to be *noodweer* or forced defense that exceeds the limits. (*noodweer exces*). According to the facts on the ground, according to the testimony of witnesses, the safety of the accused is not in danger of his life, nor has he suffered serious injuries. He only obtained scratch wounds in the shape of a red-colored line in the section of the thigh according to the *visa et repertum* of the hospital. The author also judges that the defendant's shooting a firearm at the victim's chest is a deliberate act to take the victim's life. The defendant should be able to shoot his gun at other parts of his body that are not vital if he just wants to disable the attack. The act is in accordance with the jurisprudence of Supreme Court No. 908/K/Pid/2006, which states that by shooting him in a dangerous part of the body, namely the left and right lungs, the act of the accused can be qualified as a deliberate attempt to take another person's life.

Because the attack by shooting with a gun by the perpetrator against the victim is not comparable to the attack of the victims against the performer by using only the hand. The defendant's act of shooting with a gun directed precisely at the chest, which is a vital part of the victim's body, is also wrong. The accused should still have a chance and be able to fire his gun at other parts of the victim's body that are not vital if he only wants to disable the victim's attack. Because the victims who were brought with them had no weapons, they knew that they were already in a weak mood and that their strength would not be comparable to that of the accused and his fellow accused, who were armed with firearms.

Therefore, the author's analysis leads him to the conclusion that the shooting by the law enforcement apparatus (APH) against Laskar FPI must still adhere to the legal principles and standards of established procedures. If there is a violation of the law committed by the law enforcement agency, then they also have to be held legally accountable. Therefore, the law-enforcing agency that carries out the shooting of members of the FPI Laskar without passing through the legal process and judgment of the court can be held criminally responsible for such actions. The law enforcement agency committing such acts may be subject to Article 351 of the Covenant on Persecution, Article 338 of the Crime and Article 170 of the Convention on Assault. In addition, the law enforcement agencies may also be subject to administrative sanctions or disciplinary measures in accordance with the provisions of the applicable laws. Basically, law enforcement agencies are expected to perform their duties professionally and responsibly, and their actions must always be in accordance with applicable laws and regulations. If there is any suspicion that they have broken the law and are irresponsible, then there must be a transparent investigation and legal process to determine their guilt and enforce justice. (Yasmirah Mandasari Saragih, 2021).

In addition, the Indonesian criminal procedure law also applies the presumption of innocence as stated in Article 8 of Law No. 48 of 2009 on the Power of the Judiciary. Also in the general explanation, paragraph 3 (c) of the Constitution states: "Any person who is suspected, arrested, detained, prosecuted, and/or brought before a court of law shall be deemed innocent

until a judgment of the court establishes his guilt and acquires legal force." The provisions that exist explicitly protect the human rights of either a suspect or an accused. Article 33 (1) of Act No. 39 of 1999 on Human Rights states that everyone has the right to be exempt from torture, punishment or cruel, inhuman or degrading treatment. In combating crime, it should be possible to do so by applying the principle of presumption of innocence. The acknowledgement of the presumptive base of innocence in the law of criminal events in force in our country has two meanings. First, to give protection and security to a man who has been accused of committing a crime in the course of an investigation, so that he may not be violated, and secondly, to instruct the officer to restrict his conduct in the investigation because he is a man of the same dignity and dignity as the investigator.

CONCLUSION

Law enforcement against the FPI Laskar shooting incident in connection with acts of abuse and arrogance of power by members of the Polri According to the author of the criminal responsibility for the shooting of FPI laskar carried out by the law-enforcement apparatus without passing the legal process and judgment of the court, this is a very serious and unlawful thing. This is because such an act violates human rights and is contrary to the principle of the rule of law. For example, by reporting such actions to competent law enforcement agencies, such as the National Commission on Human Rights (Human Rights Commission) or the Attorney General's Office.

The decision of the Supreme Court No. 939 K/Pid/2022 granted a release sentence against the perpetrators of the shooting of members of the Islamic Defense Front (FPI), as the acts of the accused were said to be noodweer or forced defense that exceeded the limits. (noodweer exces). According to the facts on the ground, according to the testimony of witnesses, the safety of the accused is not in danger of his life, nor has he suffered serious injuries; he only obtained scratch wounds in the shape of a red-colored line in the section of the thigh according to the visa et repertum of the hospital. The author also judges that the defendant's act of shooting a firearm at the chest of the victim was a deliberate act to kill the victim's life. The defendant should be able to shoot his gun at other parts of the body that are not vital to the victim if he only wants to disable the attack.

REFERENCES

- Anshari Tampil Siregar, 2011, *Metodologi Penelitian Hukum*, Pustaka bangsa Press, Medan.
- Alwan H, Yasmirah Mandasari Saragih, 2021, *Pengantar Teori Kriminologi Dan Teori Dalam Hukum Pidana*, Cv. Cattleya Darmaya Fortuna, Medan
- Akhdhiat Hendra, 2019, *Psikologi Hukum Polisi*, Pustaka Setia, Bandung
- Bernard L. 2018, *Tanya, Penegakan Hukum dalam Terang Etika*, Genta Publishing, Yogyakarta
- Ediwarman, 2014, *Monograf Metode Penelitian Hukum (Panduan Penulisan Tesis Dan Disertasi)*, Gramedia, Medan.
- Faal M., 2017, *Penyaringan Perkara Pidana Oleh Polisi (Diskresi Kepolisian)*, Pradnya Paramita, Jakarta
- Ihromi T., 2022, *Antropologi Hukum, Penerjemahan Sulistyowati*, Yayasan Obor Indonesia, Jakarta
- Lukman Hakim, 2020, *Asas-asas Hukum Pidana*, CV. Budi Utama, Yogyakarta,

- Philips Dillah Suratman-H., 2013, *Metode Penelitian Hukum & Penulisan Karya Ilmiah Bidang hukum*, Alfabeta, Bandung.
- Suyanto, 2018, *Pengantar Hukum Pidana*, CV. Budi Utama, Yogyakarta
- Supriadi, 2019, *Etika & Tanggung Jawab Profesi Hukum di Indonesia*, Sinar Grafika Jakarta
- Saragih Yasmirah Mandasari, 2020, *Delik-delik dalam KUHP.*, CV. HARITSA, Medan
- Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP)
- Undang-Undang Republik Indonesia Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia.
- Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman
- Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia
- Peraturan Kepala Kepolisian Republik Indonesia Nomor 1 Tahun 2009 tentang Penggunaan Kekuatan dalam Tindakan Kepolisian.
- Reeza Andi Nova, *Pertanggungjawaban Dalam Pelaksanaan Kewenangan Tembak Di Tempat Yang Dimiliki Oleh Anggota Polri*, Legalitas Edisi Juni 2015, Vol. VII No.
- Yasmirah Mandasari Saragih, *Pertanggungjawaban Tindak Pidana Pencabulan Terhadap Anak Yang Dilakukan Oleh Anak*, Jurnal Hukumpidana & Kriminologi Volume 2 No 2 Oktober 2021.
- Yasmirah Mandasari Saragih, *Peran Unit Ppa Dalam Menerapkan Teori Restorative Justice Pada Tindak Pidana Pencurian Terhadap Pelaku Anak Di Kota Gorontalo*, JSEH (Jurnal Sosial Ekonomi dan Humaniora) Volume 7 Nomor 2 Desember 2021 (PP. 132-141)
- Kontras, *Lembar Fakta Penggunaan Senjata Api oleh POLRI 2021-2022*, diakses melalui <https://kontras.org/2022/09/04/lembar-fakta-penggunaan-senjata-api-oleh-polri-2021-2022/#:~:text=Dalam%20penggunaan%20senjata%20api%20sendiri,Penggunaan%20Kekuatan%20dalam%20Tindakan%20Kepolisian>, tanggal 22 November 2023 Pukul 21.00 WIB.