



LEGAL ANALYSIS REGARDING ALLEGED VIOLATIONS DURING DEMONSTRATION AGAINST STRATEGIC PROJECT DEVELOPMENT NAGARI AIR BANGIS, WEST SUMATRA

M. Rizki Yudha Prawira ¹, Agil Masyhur Akbar ²

¹*Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta.
Email: rizkiyudha@upnvj.ac.id*

²*Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta.
Email: 2110611227@mahasiswa.upnvj.ac.id*

Abstract: Expressing opinions in public through protest is a fundamental human right that is protected by the 1945 Constitution of the Republic of Indonesia, as well as various international human rights instruments like the UDHR and ICCPR. Additionally, Indonesian laws and regulations, including Law no. 39 of 1999 concerning Human Rights and Law no. 9 of 1998 concerning Freedom to Express Opinions in Public, provide recognition and protection for this right. In the case of alleged violations of this right, such as the violence experienced by residents of Nagari Air Bangis during a protest demonstration. It is very important to have a clear understanding of the background surrounding the demonstration protest organized by the residents of Nagari Air Bangis sparked by agrarian conflict which there is state interference. From that accident, there are various provisions of Indonesian laws and regulations have been breached. These include repressive law enforcement officials, excessive use of force, arbitrary arrests and detention, arrests of legal representatives, and intimidation of journalists. Procedures for controlling crowds and the use of force are regulated by Indonesian Police Regulation No. 1 of 2009 and Indonesian Police Chief Regulation No. 6 of 2006, respectively. Furthermore, protection for journalists reporting on such events is provided for under Law No. 40 of 1999 concerning the Press. Provisions regarding arrest and detention by the police cannot be carried out arbitrarily, it must refer to Law No. 8 of 1981 concerning Criminal Procedure Law.

Keywords: Freedom of Expression; Freedom of Assembly; Nagara Air Bangis Incident; Demonstration Protest.

I. INTRODUCTION

Human rights are a set of essential rights that every person is entitled to, regardless of their background or circumstances. These universal rights are outlined in the General Declaration of Human Rights (UDHR) and cannot be separated from individuals. One of the most important human rights is the right to express opinions

and make declarations, which is emphasized in Article 19 of the UDHR. This right should be protected without interference and the restriction must be in accordance to human rights values.

In Indonesia, expressing opinions through demonstrations is also considered a human right and a crucial part of community decision-making. As a democratic country, Indonesia values the sovereignty of its people and enshrines this principle in Article 1 Paragraph (2) of the 1945 Constitution. This means that the people should be the top priority for prosperity since they play a critical role in determining the fate of the country. Therefore, the success of a country depends on the well-being of society. Public participation is a crucial aspect of democracy in the present era. It involves the number of voters participating, access to decision-making, and the right to exercise control over formal institutions. These pillars are necessary for defining democracy and ensuring that everyone's voice is heard and valued. That situation makes public participation is an important pillar when defining democracy in the current era, characterized by including the number of voters participating, access to decision-making, and even the right to exercise control over the control that formal institutions have exercised.¹

The involvement of the public is crucial in fulfilling the role of control to the government's authority. As the holder of power, the government has the authority to shape public policy, ultimately affecting the general public. Hence, it is imperative to ensure that public citizens fulfill this role to prevent any misuse of power. Governments are responsible for decisions that have both intended and often unforeseen impacts on the community. Because of that, transparent and well managed public participation is essential to fully inform government policies and their translation into effective strategies, programs and projects.²

The involvement of the public is crucial in ensuring that the government carries out its control function effectively. As the governing body with the power to influence public policy, the government must be held accountable to prevent any misuse of authority. There are various methods for the public to monitor and keep an eye on the government, including organizing peaceful demonstrations. In Indonesia, demonstration protests are regulated by specific regulations outlined in Law No. 9 of 1998 on the Freedom of Expressing Opinions in Public. Expressing opinions in a demonstration is upheld as the fundamental right of freedom of expression as recognized in the 1945 Constitution of the Republic of Indonesia, Article 28E paragraph (3). Furthermore, Article 25 of Law No. 39 of 1999 concerning human rights provides additional provisions for public expression of opinions. These laws

¹ Ibrahim. 2017. "Menakar Kedalaman Pengukuran Demokrasi Model Indeks Demokrasi Indonesia (IDI): Beberapa Catatan Substantif Dari Kepulauan Bangka Belitung". *Masyarakat, Kebudayaan Dan Politik* 30 (2):133-49. <https://doi.org/10.20473/mkp.V30I22017>. P.133-149.

² VAGO. "Public Participation in Government Decision-making". (Melbourne: Victorian Auditor-General's Office, 2015). p. 2.

and regulations uphold the same view regarding demonstration protests as a form of human rights and require the state to ensure its protection.

Even though the expression in the form of a demonstration is considered a human right, at the implementation level, it has encountered various violations in several cases. Prohibitions on holding demonstrations, obstructions, acts of violence by law enforcement officers, and the dispersal of mass demonstrations are forms of violations encountered. According to information from the Indonesian Legal Aid Foundation (YLBHI), from 2019 to 2022, no less than 3,200 protesters were arrested by police officers, consisting of various kinds of actions, such as demonstrations in front of the General Election Supervisory Agency office in 2019, the 2019 protest rally titled "Reformasi Dikorupsi", Omnibus Law protest on 2020, National Education Day protest on 2021 and mass protest on three presidency period issue.³

The National Strategic Project Development Plan is a critical initiative undertaken by the government of Indonesia to develop infrastructure and improve the overall economic situation of the country. However, the plan has been met with resistance with residents of Nagari Air Bangis, where the community has rejected the proposed development, West Pasaman, West Sumatra. This incident is a series of community initiatives to respond to community rejection of the National Strategic Project (PSN), which took place from the end of July 2023 to the beginning of August 2023.⁴ One of the cases with strong allegations of violation of the right to freedom of expression in public is the case of the demonstration by residents of Nagari Air Bangis, West Pasaman, West Sumatra. This incident is a series of community efforts to respond to community rejection of the National Strategic Project (Proyek Strategis Nasional - PSN), carried out from the end of July 2023 to the beginning of August 2023. The incident began when thousands of residents came to demonstrate in front of the West Sumatra Governor's office on Monday, July 31st 2023. In this demonstration activity, the community demanded to meet the Governor to hold a direct dialogue to discuss solutions for resolving land disputes and withdrawing the PSN proposal. The protest movement was motivated by the Governor of West Sumatra, who proposed a PSN plan covering an area of 30,000 hectares to the central government. That plan puts affected residents at risk of losing their land.⁵

³ Yayasan Lembaga Bantuan Hukum Indonesia. "Polisi Masa Kini: Brutalitas Minim Akuntabilitas?". <https://ylbhi.or.id/informasi/kegiatan/polisi-masa-kini-brutalitas-minim-akuntabilitas-2/>, Accessed on 10/04/2024.

⁴ Komnas HAM. "Penyidikan Komnas HAM RI atas Peristiwa Penangkapan Warga Air Bangis, Sungai Beremas, Pasaman Barat, Sumatera Barat". [https://www.komnasham.go.id/files/20230807-keterangan-pers-nomor-47-hm-00-\\$RIDZO.pdf](https://www.komnasham.go.id/files/20230807-keterangan-pers-nomor-47-hm-00-$RIDZO.pdf). Accessed on 11/04/2024

⁵ Rahmanda, Sharisya Kusuma. "Kronologi Aksi Unjuk Rasa Warga Air Bangis di Kantor Gubernur Sumbar: Demo Ditangkap, Dipulangkan". <https://nasional.tempo.co/read/1757871/kronologi-aksi-unjuk-rasa-warga-air-bangis-di-kantor-gubernur-sumbar-demo-ditangkap-dipulangkan>. Accessed on 10/04/2024

On August 1 2023, the people of Nagari Air Bangis held another demonstration. In this demonstration, the masses demanded that the West Sumatra Provincial Government stop intimidation of the Nagari Air Bangis community who live in the forest area. They also asked the local police to release two of their detained colleagues. Unfortunately, the Governor did not meet the participants in the mass action at that time. On August 3rd 2023, the community held another demonstration, but the Governor still needed to meet the participants in the action. Then, on Friday, August 4th 2023, the Deputy Regent of West Pasaman and the Padang Police invited the people who held the demonstration to return to Nagari Air Bangis. The community was also provided with a bus to send them home on that occasion. A day later, on August 5th, 2023, one of the citizen and student delegates finally had a dialogue with the West Sumatra Provincial Government. Meanwhile, while waiting for the dialogue results, other people celebrated at the Grand Mosque. However, an unexpected thing happened when suddenly the police came to them and made arrests. Police raided the Grand Mosque area and forcibly arrested 17 people. Then, at around 14.30 the next day, August 6th 2023, the police released 17 people who had been arrested the previous day after being questioned overnight.⁶ Seven of the 17 people arrested were legal aid providers from the Padang Legal Aid Institute, four were students, five were people from the community, and one was a legal aid provider from the Indonesian Legal Aid and Human Rights Association (PBHI).⁷ Not only that, according to the Padang Alliance of Independent Journalists (Aliansi Jurnalis Independen - AJI), four journalists were also subjected to acts of violence, bans attempts on reporting, confiscation of reasons for reporting, and acts of intimidation.⁸

One of the rights the state provides is the ability to express opinion publicly. Not only does implementation guarantee freedom from specific treatments that result in violence. Arrests of members of the Nagari Air Bangis community suspected of violence during demonstrations, if confirmed, would be a violation of human rights. Although the right to free expression is not absolute and can be curtailed, all types of violence that are unfounded and illegal cannot be justified. That occurrence is consistent with the National Human Rights Commission's remark, which suggested that the Indonesian Police needed to prioritize persuasive and dialogical approaches, given the agricultural conflict concerns that constituted the background for it. Apart from that, the Indonesian Police, as one of the Catur Wangsa in enforcing

⁶ *Ibid.*

⁷ Walhi Sumatera Barat. "17 Orang Ditangkap dalam Proses Pembubaran Paksa Masyarakat Nagari Air Bangis Kabupaten Pasaman Barat". <https://www.walhisumbar.org/17-orang-di-tangkap-dalam-proses-pembubaran-paksa-masyarakat-nagari-air-bangis-kabupaten-pasaman-barat/>. Accessed on 11/04/2024

⁸ Amnesty Internasional Indonesia. "Proyek Strategis Nasional Kembali Bermasalah, Aparat Represif Sikapi Aksi Damai Warga Nagari Air Bangis". <https://www.amnesty.id/kabar-terbaru/siaran-pers/proyek-strategis-nasional-kembali-bermasalah-aparat-represif-sikapi-aksi-damai-warga-nagari-air-bangis/08/2023/>. Accessed on 10/04/2024.

criminal law, also needs to respect the authority of advocates or legal aid providers and the right to legal aid for the community.⁹

All violations, such as obstruction, dispersal or violence against any participant in the demonstration, must be regarded as a violation of the law. Even if the police have the power to take coercive measures, they must still comply with procedures and respect human rights. Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia regulates the obligations of the position in the exercise of authority and the obligation to always respect human rights. These provisions can be found in Article 4 and Article 19 Paragraph (1) of the Indonesian Police Law, which contains the following:

Article 4:

"The State Police of the Republic of Indonesia aims to establish national security including the defense of public orderliness and safety, orderliness and law enforcement, protection, safeguard and services to public, and the establishment of peace for the public while holding high human rights."

Article 19 (1):

"Officials of the State Police of the Republic of Indonesia shall always act based on legal norms and respect religious and social norms and hold high human rights in implementing its tasks and authorities."

In addition to the Indonesian Police law, numerous legal provisions prioritize the protection of human rights. These provisions not only ensure that human rights are upheld by the state, but also serve to constrain the actions of law enforcement officials in exercising their authority. Against this backdrop, the author undertook a research project entitled "Legal Analysis of Demonstration Protest Against National Strategic Project in Nagari Air Bangis, West Sumatra."

The research methodology used in this study is the juridical normative legal research method, utilizing a variety of secondary data sources such as primary, secondary, and tertiary legal materials. The data was obtained through a thorough literature review, focusing on international law, national regulations, and laws pertaining to human rights, specifically freedom of speech, expression, and public participation. Additionally, relevant books, journals, and news articles were considered secondary legal materials

II. DISCUSSION

Right to Demonstration Protest: A Fundamental Human Rights

Indonesia is a country that values and recognizes fundamental human rights. This statement can be reflected in various ways: through its constitution, international human rights treaties it has ratified, and national laws and regulations. These legal instruments protect the right to express opinions through peaceful demonstrations.

⁹ Komnas HAM, *Ibid*.

Article 19 of the Universal Declaration of Human Rights (UDHR) guarantees freedom of opinion and expression, including the freedom to seek, receive, and convey information and opinions without interference, regardless of borders. However, it is essential to note that the UDHR serves only as guidance for implementing international human rights and is legally binding once it is incorporated into a covenant. The UDHR has become a document used in political and juridical forums, as well as being used as the main reference in drafting international human rights agreements at the regional level such as the European Convention, the American Convention, and the European Charter. Likewise, the UDHR has become an important reference in the formulation of human rights at the level of a state or national constitution.¹⁰

The International Covenant on Civil and Political Rights (ICCPR) further elaborates on the recognition and protection of freedom of opinion, particularly in Article 19. Paragraph (1) recognizes everyone's right to express opinions without interference. Paragraph (2) emphasizes the protection of individuals to express their opinions freely, including the right to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of their choice. Paragraph (3) explains the legitimate restrictions that can be placed on the freedom of opinion. In summary, the right to peaceful protest is a fundamental human right that is protected by international human rights instruments. Countries like Indonesia are responsible for ensuring this right is upheld and protected while balancing it against legitimate restrictions for the greater good.

The right to peaceful assembly and demonstration is a fundamental human right, as recognized by General Comment No. 37 (2020). Article 21 of this comment explains that this right enables individuals to express themselves collectively and participate in shaping their societies. The ability to peacefully assemble is crucial in protecting individual autonomy and facilitating solidarity among people. Moreover, this right has been used to recognize and realize a wide range of other rights, including economic, social, and cultural ones. It is particularly important for marginalized individuals and groups. Any failure to respect and uphold this right is often a sign of repression. However, it should be noted that restrictions on the recognition and protection of demonstrations typically apply only to non-violent gatherings.

It should be noted that demonstration protests are a form of freedom of expression and opinion, which many parties widely recognize. The jurisprudence of the European Court of Human Rights (ECtHR), especially in cases related to demonstrations, can be seen more specifically in the case of *Yezhov and Others v Russia*. In this decision, one of the Judge's considerations noted that "protests against hunting involving physical disruption of the hunt or a protest against the

¹⁰ Nursamsi, Dedy. 2015. *"Instrumen dan Institusi Internasional Dalam Penegakan HAM"*. Salam: Jurnal Sosial dan Budaya Syar-i 2 (2): 429. <https://doi.org/10.15408/sjsbs.v2i2.2389>. p.424 - 444.

extension of a motorway involving a forcible entry into the construction site and climbing into the trees to be felled and onto machinery in order to impede the construction works were found to constitute expressions of opinion protected by Article 10." The Court also found that shouting of slogans, raising banners and placards, and distributing pamphlets during protests is also covered by the right to freedom of expression". Article 10 refers to the European Convention on Human Rights, which the Judge interpreted.¹¹

Let us take a look at General Comment No. 34 Article 19: Freedoms of Opinion and Expression, which clarifies the protection of everyone's right to expression as outlined in Article 19, paragraph (1) of the ICCPR. This provision ensures that no individual's rights can be infringed upon based on their actual, perceived, or supposed opinions. All types of opinions are safeguarded, including political, scientific, historical, moral, or religious beliefs. Any behavior that harasses, intimidates, or stigmatizes someone, including arrest, detention, trial, or imprisonment due to their opinions, is considered a violation of this provision.

It is important to note that the right to express and assemble peacefully is not absolute and can be subject to limitations. However, these limitations must be imposed in a fair and just manner. The International Covenant on Civil and Political Rights (ICCPR) outlines a "three-part test" that must be met for any restrictions on this right to be permissible. Firstly, the restrictions must be provided by a clearly defined law that complies with international human rights law and cannot be applied arbitrarily. Secondly, authorities must ensure they use the least intrusive means possible, and the restriction must do more good than harm. Lastly, restrictions can only be imposed in the interests of national security or public safety, public order, for the protection of public health or morals, or for the protection of the rights and freedoms of others. The rights to express and assemble peacefully can be reduced and limited. These restrictions also do not mean that the state can be imposed arbitrarily. According to the International Covenant on Civil and Political Rights (ICCPR), any restrictions on this right are only permissible if they meet all elements of the "three-part test": legality, necessity and proportionality, and pursuance of a legitimate aim. Legality means all restrictions imposed must be provided by a clearly defined law that allows people to regulate their conduct accordingly, that must itself comply with international human rights law, and that may not be applied arbitrarily. Then there are necessity and proportionality elements, which authorities must make sure they use the least intrusive means possible, and the restriction must do more good than harm. Last, pursuance of a legitimate aim means that restrictions can only be imposed in the interests of

¹¹ Flores, Ona. "Case Law on Peaceful Protests". (New York : Global Freedom Expression Columbia University, 2023). p. 17.

national security or public safety, public order, for the protection of public health or morals or for the protection of the rights and freedoms of others.¹²

It is worth noting that various Indonesian laws and regulations recognize the right to freedom of opinion and peaceful assembly during protest demonstrations. The Constitution of the Republic of Indonesia of 1945 acknowledges the freedom of thought and peaceful assembly as a state constitution. Article 28E paragraph (2) regulates the freedom to have beliefs and express thoughts and attitudes according to one's conscience. Article 28E paragraph (3) recognizes the freedom of association, assembly and expression of opinion. The Indonesian human rights regulation, Law no. 39 of 1999, regulates the freedom to have, express and disseminate opinions according to one's conscience in Article 23 paragraph (2). Moreover, Article 24 paragraph (1) emphasizes every person's right to assemble, meet, and associate for peaceful purposes. Article 25 also regulates the protection of everyone's right to express opinions in public, including the right to strike in accordance with statutory provisions.

Apart from the provisions protecting the right to freedom of opinion and peaceful assembly as a form of protest demonstration, the freedom to express opinions in public is also specifically regulated by a statutory regulation. Law no. 9 of 1998 concerning the Freedom to Express Opinions in public regulates all matters related to holding demonstrations. The law recognizes that freedom of expression in public is a human right guaranteed by the 1945 Constitution and the UDHR. It is also stated that the liberty of every citizen to express opinions in public is an embodiment of democracy in the order of social, national and state life. Therefore, protest demonstrations are recognized as a human right and an embodiment of democracy, and the state is obliged to guarantee their respect, protection and fulfillment. Article 18 paragraph (1) even regulates the consequences for anyone who obstructs a citizen's right to express an opinion in public in the form of a demonstration, either through threats or violence, that can be subject to a maximum prison sentence of 1 year.

Indonesia's Law No. 9 of 1998 not only recognizes the right to hold protests but also establishes the necessary procedures and obligations to ensure that this right is exercised in a controlled manner, safeguarding the freedom of expression of citizens. Article 10 of the law specifically mandates that any person, leader, or group representative wishing to hold a protest must submit a written notification to the Indonesian Police (Polri). This notification must be received by the National Police at least 3x24 hours before the demonstration begins. The notification should include the planned location, time, and route of the demonstration, as well as the intended purpose and the number of participants expected to attend the event.

¹² Amnesty Internasional. "Protect the Protest: Why We Must Save Our Right to Protest" (London: Amnesty Internasional Ltd, 2022), p. 8.

Furthermore, Article 12 outlines the requirement for a responsible person to oversee the protest activity and ensure that it is conducted safely, orderly, and peacefully. For protests with up to 100 participants, at least five persons in charge are required. These individuals will be responsible for coordinating with the police and other relevant authorities to ensure that the demonstration complies with legal requirements and does not pose a threat to public safety or order. Overall, the provisions of Law No. 9 of 1998 serve to balance the right to freedom of expression with the need to maintain social order and protect the safety of all citizens. By following the necessary procedures and obligations outlined in the law, citizens can exercise their right to protest while minimizing the risk of conflict or unrest situation.

The protest demonstration carried out by the Nagari Air Bangis community regarding the development plan for this national strategic project must be seen above all the obligations as regulated in Law No. 9 of 1998. Furthermore, it needs to be seen that the action was carried out peacefully, and no actions referred to violence or violations of the law. In that case, it is necessary to be able to prove that all obligations in the provisions of Law no. 9 of 1998, such as sending notification letters and so on, demonstration protest activities must be carried out peacefully and do not violate the law or human rights values themselves. Suppose all of these two aspects have been fulfilled. In that case, it is clear that community demonstration protest activities are constitutional and clearly recognized as protection as a human right.

It is very important to have a clear understanding of the background surrounding the demonstration protest organized by the residents of Nagari Air Bangis. As explained by the Director of Walhi West Sumatra, the protest was sparked by an agrarian conflict. Specifically, Wengki Purwanto's unilateral claim to community-managed land remains a pressing issue that requires resolution. This conflict arose in the wake of the government's launch of the National Strategic Project (PSN) to construct an oil and petrochemical refinery in the area where the residents of Nagari Air Bangis and Nagari Batahan reside. The project is set to be carried out by PT Abaco Pasifik Indonesia, which is owned by businessman Emil Abbas. In 2021, the Governor of West Sumatra, Mahyeldi Ansharullah, issued a land use permit for the project, covering an area of 30,000 hectares. Of that, Walhi reports that 10,000 hectares are dedicated to community agricultural cultivation land, and at least 45,000 residents are affected by the project.¹³

¹³ Hamzah, Fachri. "Selain Pulau Rempang, Warga Nagari Air Bangis dan Bidar Alam Juga Tuntut Keadilan". <https://nasional.tempo.co/read/1773598/selain-pulau-rempang-warga-nagari-air-bangis-dan-bidar-alam-juga-tuntut-keadilan>. Accessed on 10/04/2024

Analysis of Alleged Violations at the Air Bangis Community Protest Demonstration

Protest demonstrations are an important part of human rights and involve the freedom of opinion and peaceful assembly. This right is recognized by various international human rights instruments, state constitutions, and statutory regulations. However, during the protest demonstration against the residents of Nagari Air Bangis, several alleged violations occurred. Law No. 9 of 1998 regulates the obligations that must be fulfilled by action participants both before and during the protest demonstration. Article 7 emphasizes the obligations of government officials to protect human rights, respect the principle of legality, the principle of presumption of innocence, and provide security when carrying out protest demonstrations. Therefore, based on the chronology previously explained regarding alleged repressive actions carried out by authorities against participants in the action, if it is proven to be a form of violation as regulated in Article 7, any baseless and repressive actions without reason can be defined as a form of obstruction of citizens' rights to express opinions in public and can result in a maximum prison sentence of 1 year as regulated in Article 18 paragraph (1).

First of all, it needs to be understood that the Police possess various powers, especially when it comes to managing uncontrolled large crowds. However, the use of force and authority must still adhere to various restrictions and obligations as outlined in various statutory regulations. The limitations on the Police's authority and power are enshrined in Law No. 2 of 2002 concerning the Police (Police Law). The Police have the authority to carry out other responsible actions to fulfill their duties, but they must meet the requirements stipulated in Article 16 paragraph (1) of the Police Law, which include: not conflicting with any legal rules, being in accordance with legal obligations that require action to be taken, being appropriate, reasonable, and within the scope of their position, considering compelling circumstances, and respecting human rights.¹⁴

Regulation of the Head of the National Police of the Republic of Indonesia No. 1 of 2009 concerning the Use of Force in Police Actions outlines the steps that must be followed when using force. Article 5 paragraph (1) National Police Chief Regulation No. 1 of 2009 specifies the stages of using force by the Police as a way of carrying out their duties and authority, which include: stage 1: forces that have a deterrent impact; stage 2: verbal command; stage 3: soft empty hand control; stage 4: hard empty hand control; stage 5: control of blunt weapons, chemical weapons including tear gas, chili spray, or other tools according to National Police standards; and stage 6: Control using firearms or other tools that stop the actions or behavior of criminals

¹⁴ Prawaira, M. Rizki Yudha & Rianda Dirkareshza. "Pertanggungjawaban Hukum Para Pihak Terhadap Tragedi Pertandingan Di Stadion Kanjuruhan Indonesia". *Pleno Jure*. 12 (2). 16. <https://doi.org/10.37541/plenojure.v12i1.879>. 1 - 29.

or suspects that can cause serious injury or death to members of the National Police or members of the public.

Moreover, Police Chief Regulation No. 1 of 2009 also specifies the situations that must be met at each stage before determining what actions the Police should take. Article 7 National Police Chief Regulation No. 1 of 2019 outlines Article 7 paragraph (2), which specifies that each level of threat to members of the National Police or the public or the public being faced with the stages of use of force: passive actions are met with soft empty hand control as intended in Article 5 paragraph (1) letter c; active actions are met with hard empty hand control as intended in Article 5 paragraph (1) letter d; aggressive actions are met with the control of blunt weapons, chemical weapons including tear gas or chili spray, or other tools in accordance with National Police standards as intended in Article 5 paragraph (1) letter e; and immediate aggressive action carried out by a criminal or suspect that can cause serious injury or death or endanger the honor and morality of members of the National Police or the public or pose a danger to public safety, such as setting fire to a gas station, blowing up an electricity substation, blowing up a weapons/ammunition warehouse, or destroying vital objects, can be countered by controlling firearms or other means as intended in Article 5 paragraph (1) letter f.

Aside from provisions regarding the use of force, the Police also have regulatory standards when dealing with uncontrolled crowds. Regulation of the Head of the National Police of the Republic of Indonesia No. Pol: 16 of 2006 concerning Guidelines for Crowd Control aims to deal with masses of protesters at a demonstration. These standards are intended to control crowds during protest demonstrations on highways, in important buildings, and in open fields. Article 7 paragraph (1) regulates the prohibitions for the Police when carrying out crowd control, which includes:

- a. Not being arrogant or provoked by the behavior of the masses;
- b. Not committing acts of violence that do not follow procedures;
- c. Only carrying Dalmas equipment;
- d. Not carrying sharp weapons and live ammunition;
- e. Not leaving the Unit/Formation Association and carrying out individual mass pursuits;
- f. Not retreating with their backs to the mass of protesters;
- g. Not uttering dirty words, sexual harassment/immoral acts, cursing at protesters; and h. Not committing any other acts that violate statutory regulations.

Article 7 paragraph (2) regulates the obligations that the Police must carry out when controlling crowds, which includes:

- a. Respecting the human rights of everyone protesting;
- b. Serving and securing protesters according to the provisions;
- c. Making sure that every mass control unit troop movement is always in unit bond and forms a formation according to the provisions;
- d. Protecting life and property;

- e. Continuing to guard and maintain the situation until the demonstration is over; and
- f. Obeying and complying with the orders of the Field Unit Head, who is responsible according to his/her level.

All the elements in the provisions for being caught red-handed must be fulfilled in their entirety, and it needs to be looked at more deeply and clarified based on the facts as to whether the participants in the action really did the things as regulated in the provisions above. If there is none at all, then explain that the elements are not fulfilled, and it can be said to be a form of procedural violation. Furthermore, post-arrest provisions must be carried out immediately, the authorities have 1 x 24 hours to examine and determine the clarity of follow-up actions for further action, this is as regulated in Article 19 of the Criminal Procedure Code. If it has been 1 x 24 hours and there is no clarity on either follow-up actions and status as a suspect, then by law, they must be released.

In the case of an alleged arbitrary arrest, it is important to refer to the provisions of the Criminal Procedure Code. If a police officer performs an arrest, it must be in accordance with the provisions for being caught red-handed, as regulated in Article 1 point 19 of the Criminal Procedure Code and National Police Chief Regulation No. 6 of 2019. The provisions state that an arrest can only be made if a person is caught in the act of committing a crime, or immediately after the crime was committed, or if the public identifies the person or the object used to commit the crime. All the elements of the provisions for being caught red-handed must be met in their entirety. It is necessary to examine the facts deeply and clarify whether the participants in the action have fulfilled the conditions as regulated in the provisions. If not, it can be considered a procedural violation. After the arrest, the authorities have 24 hours to determine the follow-up actions and status as a suspect. If there is no clarity after 24 hours, the detained person must be released by law.

It is important to ensure that the regulations are protected not only for the participants of an event but also for the journalists who are covering it. According to Law no. 40 Regarding the Press, Article 4 paragraph (1), independence is guaranteed as a human right of citizens. In addition, Article 4 paragraph (2) provides protection for the public from being subjected to censorship, banning, or prohibiting reporting. Article 4, paragraph (3) ensures the rights of the national press to guarantee freedom of the press. This means that they have the right to seek, obtain, and disseminate ideas and information. Suppose allegations of obstruction and intimidation directed at journalists covering sharp protests are proven. In that case, they violate the provisions of Article 4, paragraphs (2) and (3) of the Press Law. Anyone who violates the provisions of Article 4 paragraph (2) and paragraph (3) of the Press Law, such as obstructing or using their authority without legal basis to censor, can be subject to a maximum criminal penalty of 2 years in prison or a maximum fine of up to five hundred million rupiahs.

The alleged arbitrary detention of seven legal assistants from the Padang Legal Aid Institute and the Padang Legal Aid and Human Rights Association (PBHI) is subject to specific statutory regulations. According to Article 11 of Law No. 16 of 2011, legal aid providers are protected from civil or criminal prosecution when they act in good faith and take responsible actions while providing legal aid, both inside and outside of judicial proceedings, in compliance with established standards. Furthermore, Law No. 18 of 2003 on Advocates states that advocates are also protected from civil or criminal prosecution when they carry out their professional duties in good faith to defend their clients' interests in court. The alleged arbitrary detention of seven legal assistants from the Padang Legal Aid Institute and the Padang Legal Aid and Human Rights Association (PBHI) is subject to specific statutory regulations. According to Article 11 of Law No. 16 of 2011, providers of legal aid are immune from civil or criminal prosecution when taking responsible and good faith actions in the provision of legal aid, both inside and outside of judicial proceedings, in compliance with established standards. Additionally, Law No. 18 of 2003 on Advocates upholds that advocates are shielded from civil or criminal prosecution when carrying out their professional duties in good faith to defend their clients' interests in court.

III. CONCLUSION

Protest demonstrations are a fundamental right of every individual, as recognized by various international human rights instruments, state constitutions, including the 1945 Constitution of the Republic of Indonesia, and various national laws and regulations. The state is obligated to guarantee respect, protection, and fulfillment of the rights of every person carrying out a protest demonstration, as it is acknowledged as a basic human right. However, despite this recognition, there are still numerous cases of violations against people who carry out protest demonstrations, such as the alleged violations against the residents of Nagari Air Bangis who staged a protest demonstration against the development plan for a national strategic project. Law enforcement officers have been accused of disbanding demonstrations without basis, repressive actions, arrests and detention without justification for protest participants, attempts to arrest legal assistants, and alleged intimidation of journalists who were covering. If these alleged violations are proven, they would clearly conflict with statutory regulations such as Law No. 9 of 1998 concerning the Freedom to Express Opinions in Public, Law No. 39 of 1999 concerning Human Rights, Law No. 2 of 2002 concerning the Republic of Indonesia Police, Law no. 8 of 1981 concerning the Criminal Procedure Code, and various other international human rights instruments like the ICCPR

REFERENCES

a. Books

- Flores, Ona. 2023. *Case Law on Peaceful Protests*. New York: Global Freedom Expression Columbia University.
- Internasional, Amnesty. 2022. *Protect the Protest: Why We Must Save Our Right to Protest*. London: Amnesty Internasional Ltd.
- VAGO. 2015. *Public Participation in Government Decision-making*. Melbourne: Victorian Auditor-General's Office.

b. Regulations

- The 1945 Constitution of the Republic of Indonesia
- The 1981 Law No. 8 Concerning Criminal Procedure Law
- The 1998 Law No. 9 Concerning Freedom to Express Opinions in Public
- The 1999 Law No. 39 Concerning Human Rights.
- The 1999 Law No. 40 Concerning The Press
- The 2002 Law No. 2 Concerning The Indonesian National Police
- Law No. 40 of 1999 Concerning the Press
- The 2006 Regulation of the Head of the National Police of the Republic of Indonesia No. Pol: 16 on concerning Guidelines for Crowd Control.
- The 2009 Regulation of the Head of the National Police of the Republic of Indonesia No. 1 on the Use of Force in Police Actions

c. Other Sources

- Ibrahim, Ibrahim. 2017. "Menakar Kedalaman Pengukuran Demokrasi Model Indeks Demokrasi Indonesia (IDI): Beberapa Catatan Substantif Dari Kepulauan Bangka Belitung". *Masyarakat, Kebudayaan Dan Politik* 30 (2).
- Nursamsi, Dedy. 2015. "Instrumen dan Institusi Internasional Dalam Penegakan HAM". *Salam: Jurnal Sosial dan Budaya Syar-i* 2 (2).
- Prawaira, M. Rizki Yudha & Rianda Dirkareshza. 2023. "Pertanggungjawaban Hukum Para Pihak Terhadap Tragedi Pertandingan Di Stadion Kanjuruhan Indonesia". *Pleno Jure*. 12 (2).
- Hamzah, Fachri. 2023. *Selain Pulau Rempang, Warga Nagari Air Bangis dan Bidar Alam Juga Tuntut Keadilan*. Available from: <https://nasional.tempo.co/read/1773598/selain-pulau-rempang-warga-nagari-air-bangis-dan-bidar-alam-juga-tuntut-keadilan>. [Retrieved: April 10, 2024].
- Indonesia, Amnesty Internasional. *Proyek Strategis Nasional Kembali Bermasalah, Aparat Represif Sikapi Aksi Damai Warga Nagari Air Bangis*. Available from:

<https://www.amnesty.id/kabar-terbaru/siaran-pers/proyek-strategis-nasional-kembali-bermasalah-aparat-represif-sikapi-aksi-damai-warga-nagari-air-bangis/08/2023/>. [Retrieved: April 10, 2024].

Indonesia, Yayasan Lembaga Bantuan Hukum 2022. *Polisi Masa Kini: Brutalitas Minim Akuntabilitas?*. Available from: <https://ylbhi.or.id/informasi/kegiatan/polisi-masa-kini-brutalitas-minim-akuntabilitas-2/>. [Retrieved: April 10, 2024].

Komnas HAM. 2023. *Penyikapan Komnas HAM RI atas Peristiwa Penangkapan Warga Air Bangis, Sungai Beremas, Pasaman Barat, Sumatera Barat*. Available from: [https://www.komnasham.go.id/files/20230807-keterangan-pers-nomor-47-hm-00-\\$R\[DZO\].pdf](https://www.komnasham.go.id/files/20230807-keterangan-pers-nomor-47-hm-00-$R[DZO].pdf). [Retrieved: April 11, 2024].

Kurniawan, Romafi Wahyu. 2023. *Kronologi Demo Warga Air Bangis yang Berakhir pada Penangkapan 24 Orang Oleh Polda Sumbar*. Available from: <https://www.jawapos.com/kasuistika/012432591/kronologi-demo-warga-air-bangis-yang-berakhir-pada-penangkapan-14-orang-oleh-polda-sumbar>. [Retrieved: April 10, 2024].

Rahmanda, Sharisya Kusuma. 2023. *Kronologi Aksi Unjuk Rasa Warga Air Bangis di Kantor Gubernur Sumbar: Demo Ditangkap, Dipulangkan*. Available from: <https://nasional.tempo.co/read/1757871/kronologi-aksi-unjuk-rasa-warga-air-bangis-di-kantor-gubernur-sumbar-demo-ditangkap-dipulangkan>. [Retrieved: April 10, 2024].

Walhi Sumatera Barat. *17 Orang Ditangkap dalam Proses Pembubaran Paksa Masyarakat Nagari Air Bangis Kabupaten Pasaman Barat*. Available from: <https://www.walhisumbar.org/17-orang-di-tangkap-dalam-proses-pembubaran-paksa-masyarakat-nagari-air-bangis-kabupaten-pasaman-barat/>. [Retrieved: April 11, 2024]