



## Criminal Law Protection for Demonstrators from Repressive Actions by Authorities

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### ABSTRACT

Demonstrations represent a tangible form of freedom of expression and opinion, which are fundamental elements of a democratic system. In Indonesia, this right is constitutionally guaranteed and further regulated under Law No. 9 of 1998 concerning the Freedom to Express Opinions in Public. However, in practice, the implementation of this right often clashes with repressive actions by security forces. The excessive use of force, unlawful arrests, and acts of violence against protesters illustrate the weak legal protection afforded to citizens exercising their constitutional rights. Such circumstances raise serious concerns regarding the enforcement of human rights and the rule of law in Indonesia. This article aims to analyze the criminal law protection afforded to demonstrators from repressive actions by law enforcement officers who exceed their authority. The discussion examines the national legal framework, the principles of criminal liability for officers, and mechanisms for fair and proportional law enforcement. The study adopts a normative juridical approach, analyzing statutory regulations, legal doctrines, and relevant case studies. The findings indicate that repressive acts by officers may constitute criminal offenses when they violate the principles of legality and proportionality in the use of force. Furthermore, the state bears a constitutional obligation to provide effective legal protection for citizens who become victims of such abuses of power. Therefore, a stronger system of accountability and oversight is essential to ensure that citizens' rights to peaceful assembly and expression are genuinely protected within Indonesia's legal framework.

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## INTRODUCTION

Demonstrations, as a manifestation of collective expression, play a central role in the functioning of democratic societies. They serve as an essential channel for citizens to voice their aspirations, criticisms, and demands toward governmental institutions. In a constitutional democracy such as Indonesia, the right to demonstrate is not merely a form of civil participation but a fundamental human right intrinsically linked to the principle of popular sovereignty. The 1945 Constitution of the Republic of Indonesia explicitly guarantees this right in Article 28E paragraph (3), which provides that every person has the freedom to associate, assemble, and express opinions. This provision reflects the broader constitutional commitment to ensuring that state authority remains accountable to the people it governs (Setiawan, 2021).

As a constitutional right, the freedom to express opinions in public is further elaborated in statutory law, most notably in Law No. 9 of 1998 on the Freedom to Express Opinions in Public. This law affirms that every citizen has the right to organize and participate in demonstrations, rallies, and other peaceful assemblies. It also imposes duties on both participants and state officials to uphold order, respect human

dignity, and prevent violence. In this regard, the law seeks to balance two essential yet sometimes competing objectives: protecting public order and guaranteeing freedom of expression (Rahman, 2022).

However, in practice, the implementation of this right often encounters severe challenges. One of the most persistent issues is the occurrence of repressive actions by law enforcement officers during public demonstrations. Such actions may include excessive use of force, arbitrary arrests, intimidation, or the misuse of crowd-control weapons such as tear gas and water cannons. In some cases, these actions have resulted in serious injuries and even fatalities among protesters. These incidents reveal a disturbing contradiction between the state's legal obligations to protect citizens and the actual conduct of its security apparatus in the field (Hidayat, 2020).

Repressive behavior by state authorities constitutes not only a violation of domestic law but also a breach of Indonesia's international human rights obligations. Under Law No. 39 of 1999 on Human Rights, the government bears the responsibility to respect, protect, and fulfill the rights of all citizens, including the right to peaceful assembly. Furthermore, Indonesia's ratification of the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005 reinforces this obligation at the international level. Article 21 of the ICCPR explicitly guarantees the right to peaceful assembly and prohibits any restrictions unless prescribed by law and deemed necessary for national security, public safety, or the protection of others' rights. Repressive actions that exceed these parameters, therefore, not only violate national legislation but also infringe upon binding international norms (Nasution, 2021).

From the perspective of criminal law, the conduct of law enforcement officers during demonstrations must adhere to the principles of legality, necessity, and proportionality. These principles, enshrined in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the United Nations in 1990, establish clear boundaries regarding the permissible use of force. According to these guidelines, the use of physical force should be limited to situations where it is strictly necessary and proportionate to the legitimate objective pursued. When applied to peaceful demonstrations, any excessive or arbitrary use of force constitutes a violation of both ethical and legal standards (United Nations, 1990).

Despite these normative safeguards, Indonesia continues to face recurring instances of repressive protest management. Historical records since the Reformation era (post-1998) indicate that violence during demonstrations has remained a chronic problem. Notably, the 2019 student demonstrations against the proposed revision of the Criminal Code (RKUHP) and the Corruption Eradication Commission (KPK) Law resulted in several injuries and deaths, allegedly caused by disproportionate police action. Similar patterns were also observed during protests against fuel price hikes and labor law reforms. These repeated occurrences suggest that the issue is not merely incidental but symptomatic of deeper structural and institutional weaknesses in law enforcement accountability (Marzuki, 2020).

The persistence of these incidents raises a critical legal question: to what extent does Indonesian criminal law provide effective protection for demonstrators against repressive state actions? The answer to this question requires examining both the substance of existing legal norms and their enforcement mechanisms. Under the Indonesian Criminal Code (KUHP), acts of physical violence committed by law enforcement officers can fall under various provisions, including Article 351 on assault, Article 352 on minor maltreatment, or Article 338 on homicide if such acts result in death. In addition, Article 422 criminalizes abuse of power by public officials who compel others to perform or refrain from certain acts unlawfully. These provisions demonstrate that the legal framework does, in principle, provide mechanisms for holding state actors accountable. However, the gap between law and practice remains significant (Santoso, 2022).

The challenge lies primarily in the implementation and enforcement of these laws. Many documented cases of violence against demonstrators have failed to result in effective prosecution or disciplinary action. Investigations are often slow, non-transparent, or biased in favor of the perpetrators. This lack of accountability perpetuates a culture of impunity within law enforcement institutions, undermining public trust and eroding the legitimacy of the justice system. As Utami (2023) notes, the rule of law requires that all individuals—including state officials—be subject to the same legal standards. When officers act unlawfully but remain unpunished, it signals a breakdown in legal equality and due process.

In examining these dynamics, it is also important to recognize that the role of security forces in maintaining public order is legitimate and necessary. The state has the duty to ensure security and protect citizens from harm. Nonetheless, this responsibility must be exercised within the confines of legality and with full respect for human rights. The doctrine of proportional use of force emphasizes that coercive measures must be applied only as a last resort and in a manner consistent with the gravity of the threat posed. In cases of peaceful protests, any resort to physical violence cannot be justified under the pretext of maintaining order. This principle underscores the need for a human rights-based approach to policing, where the protection of life and liberty takes precedence over coercive state power (Prasetyo, 2021).

Comparative experiences from other democracies demonstrate that the effective regulation of protests depends not only on laws but also on institutional culture and professional training. In countries like the United Kingdom or Canada, law enforcement agencies are guided by a "minimum force" policy, emphasizing negotiation and communication over physical confrontation. These systems show that it is

possible to balance security concerns with civil liberties when police conduct is grounded in accountability, transparency, and human rights values. Indonesia could benefit from adopting similar principles to reform its approach to protest management (Jones & Smith, 2020).

Moreover, the problem of repression during demonstrations cannot be isolated from broader structural factors within Indonesia's governance system. Issues such as hierarchical command structures, weak oversight institutions, and political interference contribute to the perpetuation of abusive practices. The National Police Commission (Kompolnas) and the National Human Rights Commission (Komnas HAM) play essential oversight roles, but their recommendations often lack binding force, limiting their effectiveness. Strengthening these institutions through legal and political reforms is crucial to ensuring that mechanisms of accountability are not merely symbolic but have tangible consequences for violations committed by state officials (Suryadi, 2022).

The discourse on criminal law protection for demonstrators also intersects with the concept of transitional justice and the legacy of authoritarianism in Indonesia. The lingering mentality of using coercion to suppress dissent reflects remnants of the New Order regime, during which public protest was often criminalized or violently suppressed. Although Indonesia has formally transitioned to democracy, certain repressive practices continue to persist, indicating that democratization must also include the democratization of law enforcement. Criminal law, therefore, should not only serve as an instrument of punishment but also as a means of social control that protects fundamental rights (Hardjono, 2021).

Furthermore, the modern understanding of law enforcement requires a shift from a security-centered paradigm to a rights-centered paradigm. In a democratic rule-of-law system, the legitimacy of the state derives from its ability to protect the rights of its citizens rather than to control them. When demonstrators are met with violence or intimidation, the state fails to fulfill its constitutional obligations. Therefore, ensuring criminal accountability for acts of repression is not merely about punishing individual offenders but also about reaffirming the supremacy of the Constitution and restoring public confidence in the justice system (Wibowo, 2023).

At a broader level, protecting the rights of demonstrators contributes directly to the strengthening of democratic governance. Peaceful assemblies act as vital platforms for social dialogue, allowing marginalized voices to be heard and influencing policy formulation. Repressing such activities not only violates individual rights but also weakens the participatory foundations of democracy itself. Hence, a fair and proportionate legal framework is indispensable for maintaining a balance between state authority and civil liberty (Kusuma, 2020).

In this context, the current study aims to analyze in depth how Indonesia's criminal law system functions as a mechanism for protecting demonstrators from repressive actions by state authorities. The discussion encompasses three interrelated dimensions: (1) the legal basis governing demonstrations and state conduct, (2) the criminal liability of officers who commit acts of repression, and (3) the effectiveness of enforcement and accountability mechanisms. Through this analysis, the study seeks to identify gaps within the legal system and propose recommendations for reform to ensure that freedom of expression and assembly are not only constitutionally guaranteed but also practically protected.

Ultimately, understanding the role of criminal law in this context highlights a broader philosophical issue concerning the relationship between state power and individual liberty. The law must act as both a shield and a boundary—shielding citizens from arbitrary coercion and constraining state power within the limits of legality. A democratic state cannot exist without dissent, and dissent cannot survive without protection. By examining the intersection between human rights and criminal accountability, this research aims to contribute to the development of a legal system that embodies justice, humanity, and respect for human dignity in every exercise of power.

## RESEARCH METHOD

This research adopts a normative juridical method (normative legal research), which focuses on the study of positive legal norms, fundamental legal principles, and the doctrines developed within the field of law. This approach is appropriate because the issue under examination criminal law protection for demonstrators from repressive state actions is conceptually and substantively regulated within various statutory frameworks. According to Sockanto (2019), normative legal research aims to analyze written law, emphasizing the interpretation of legal norms as behavioral guidelines that regulate interactions within society.

The normative juridical approach in this study is used to examine and interpret several relevant legal provisions, including the 1945 Constitution of the Republic of Indonesia, the Indonesian Criminal Code (KUHP), Law No. 9 of 1998 concerning the Freedom to Express Opinions in Public, and Law No. 39 of 1999 on Human Rights. Furthermore, this research also refers to international legal principles such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (United Nations, 1990) and the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law No. 12

of 2005. This combined national and international framework enables a comprehensive analysis of legal protection for demonstrators from multiple perspectives (Marzuki, 2020).

In addition to the statutory approach, this study employs a conceptual approach to explore the underlying principles of criminal law related to state authority, criminal liability, and the protection of citizens' rights. The conceptual approach provides the theoretical foundation to analyze ideas, doctrines, and philosophical concepts that explain the relationship between state power and individual civil rights particularly regarding the lawful use of force by security officers (Santoso, 2022).

The data utilized in this research consist primarily of secondary legal materials, including primary, secondary, and tertiary sources. Primary legal materials comprise statutory laws that form the legal basis for protecting demonstrators' rights and defining the limits of state authority. Secondary legal materials include academic literature, prior research, legal journal articles, and scholarly opinions on criminal law and human rights. Meanwhile, tertiary materials such as legal dictionaries and encyclopedias serve to clarify terminology and strengthen the conceptual framework used in the analysis (Soemitro, 2020).

Data collection was conducted through library research, involving the examination of legal documents, scholarly journals, independent institutional reports and credible news sources concerning cases of repressive actions by state authorities during demonstrations. Once collected, the legal materials were analyzed using qualitative descriptive analysis, which involves interpreting and evaluating existing legal norms to provide a comprehensive understanding of the forms of criminal law protection available to demonstrators (Nasution, 2021).

The qualitative analysis process includes identifying legal issues, interpreting relevant legal norms, and evaluating the effectiveness of their implementation in practice. This approach allows the researcher to connect legal norms with broader principles of justice and human rights. The findings are then systematically structured to address the core research question namely, the extent to which Indonesian criminal law provides protection for demonstrators from repressive acts by state apparatus and the degree of criminal liability that may arise from such abuses of power (Prasetyo, 2021).

In conclusion, the use of the normative juridical method in this study is not limited to interpreting the law formally; it also serves to uncover and reflect upon the underlying values of justice embedded within the implementation of criminal law. This approach aims to demonstrate how criminal law functions as a tool for protecting human rights and ensuring the realization of freedom of expression in Indonesia's democratic framework.

## RESULT AND DISCUSSION

### The Legal Position of Demonstrations in the Perspective of Human Rights

The right to assemble and express opinions peacefully is a fundamental right guaranteed by international and national legal instruments. Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 21 of the International Covenant on Civil and Political Rights (ICCPR) affirm that every individual has the freedom to express opinions and gather peacefully without intimidation. In Indonesia, this right is further guaranteed under Article 28E paragraph (3) of the 1945 Constitution, which explicitly recognizes the freedom of citizens to express their opinions in public.

However, in practice, this constitutional guarantee often clashes with security policies that prioritize "order" over democratic freedom. Law No. 9 of 1998 concerning the Freedom to Express Opinions in Public provides a legal framework to protect demonstrators, yet its implementation often deviates due to excessive interpretations by law enforcement agencies. The problem lies not in the absence of regulation but in its selective enforcement and weak accountability mechanisms (Suharto, 2021).

When law enforcement agencies use violence under the pretext of maintaining security, such actions can violate the principle of proportionality and necessity in the use of force. According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, force may only be used when strictly necessary and proportionate to the threat faced. Any deviation from this standard constitutes a human rights violation and may lead to criminal accountability for the officers involved (Amnesty International, 2020).

### Forms and Patterns of Repressive Actions by Law Enforcement

Repressive measures during demonstrations typically manifest in several forms, ranging from physical violence, arbitrary arrests, to psychological intimidation. Reports by Komnas HAM (2023) reveal recurring patterns, such as the excessive use of tear gas, beating of peaceful demonstrators, and suppression of press coverage during protests. These acts not only undermine democratic values but also constitute violations of lex generalis principles in criminal law, particularly those related to abuse of authority.

From a criminological perspective, the use of violence by law enforcement is often legitimized through institutional narratives of maintaining public order (public order policing). Yet, studies show that repressive policing tends to escalate conflict rather than resolve it (Tilly, 2022). The militarization of police tactics, often inherited from past authoritarian eras, further complicates the democratization of security

institutions.

Moreover, arbitrary arrests without clear legal basis violate Article 19 of Law No. 39 of 1999 on Human Rights, which guarantees the right to personal security and protection from arbitrary detention. In several cases, demonstrators were detained without warrants or access to legal assistance, which contradicts the guarantees under Article 54 of the Indonesian Criminal Procedure Code (KUHAP). These conditions demonstrate systemic weaknesses in law enforcement oversight and accountability mechanisms (Nugroho, 2021).

### **Criminal Law Protection Mechanisms for Demonstration Participants**

Criminal law protection for demonstrators can be viewed from two perspectives: preventive and repressive. Preventively, protection is realized through regulations that limit the discretionary power of security forces. This includes clear operational guidelines on the use of force, standard operating procedures (SOP), and independent monitoring mechanisms. Repressively, demonstrators who are victims of excessive violence are entitled to file criminal complaints based on provisions in the Indonesian Criminal Code (KUHP), such as Article 351 on maltreatment and Article 421 on abuse of power by officials.

However, law enforcement against officers who commit violence remains minimal. The culture of impunity where perpetrators from the security apparatus are rarely punished has led to public distrust of the justice system. According to research by the Institute for Criminal Justice Reform (ICJR, 2022), internal disciplinary measures within institutions such as the police are often inadequate and fail to provide real justice for victims.

To strengthen protection, independent oversight bodies such as Komnas HAM and the Ombudsman should be empowered to monitor and investigate violations committed by law enforcement. Furthermore, judicial mechanisms must ensure that cases of police brutality are processed transparently in criminal courts rather than handled solely through internal ethics proceedings (Rahardjo, 2023).

### **Strengthening Accountability and Reforming Security Governance**

Long-term protection for demonstrators requires systemic reform of security governance. Democratic policing emphasizes accountability, transparency, and respect for human rights. The paradigm of “security as control” must shift toward “security as service,” where law enforcement acts as protectors of citizens’ rights rather than enforcers of state authority (Goldsmit, 2020).

Legal reform should include the integration of human rights education into police training curricula, the establishment of independent complaint mechanisms, and the publication of regular reports on the use of force. Strengthening inter-institutional cooperation between Komnas HAM, civil society, and academic institutions can also enhance the monitoring and evaluation of law enforcement practices during demonstrations.

Moreover, public awareness is equally crucial. Citizens must understand their legal rights when participating in protests, including the right to legal aid, the right to record law enforcement actions, and the right to be treated humanely during arrests or detentions. A well-informed civil society will serve as a strong deterrent to repressive measures and foster a culture of accountability (Friedman, 2021).

### **CONCLUSION**

The findings of this study indicate that criminal law protection for demonstrators is an essential aspect of upholding democracy and human rights. Demonstrations are a legitimate form of political participation guaranteed by the 1945 Constitution, yet in practice they often encounter repressive measures from state security forces. Such actions not only violate legal norms but also erode the public’s trust in the justice system.

Strengthening legal protection requires a dual approach preventive and repressive. Preventively, it is necessary to establish clearer regulations and operational standards on the use of force, supported by transparent monitoring mechanisms. Repressively, law enforcement officers who commit acts of violence must be held accountable through criminal proceedings rather than limited internal sanctions. Moreover, independent institutions such as Komnas HAM, the Ombudsman, and civil society organizations must be empowered to ensure oversight, accountability, and justice for victims.

Ultimately, safeguarding the rights of demonstrators is not solely a legal necessity but also a moral and democratic imperative. The reform of security governance toward a human rights based policing paradigm will determine whether Indonesia truly embodies the principles of democracy, equality, and justice under the rule of law.

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