



The Disharmony Between Police Discretion And The Right To Demonstrate: A Socio-Legal Deconstruction And Humanitarian Critique

Disharmoni Diskresi Kepolisian Dan Hak Demonstrasi: Dekonstruksi Sosio-Legal Dan Kritik Kemanusiaan

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Abstract

The systemic tension between the police's discretionary power (*freies ermesen*) and the constitutional right to peaceful assembly remains a persistent democratic challenge to human rights and the consolidation of the rule of law in Indonesia. This study analyses the criminal law and human rights implications of the dynamic conflict between police discretion and the right to demonstrate during the massive public protests of August–September 2025. Adopting an empirical legal research design with a socio-legal approach, this research qualitatively analyses policy documents and human rights monitoring reports through the theoretical frameworks of Police Accountability and the Public Trust Doctrine. The study reveals that the exercise of police discretion during the protests was severely compromised by the systematic 'excessive use of force', the excessive deployment of tear gas in violation of international protocols, and arbitrary detentions, driven by a lack of independent external oversight and structural bias. Unchecked administrative discretion erodes democratic legitimacy and violates the state's fiduciary duty. This study recommends establishing an independent police oversight commission with binding enforcement powers and the strict legislative codification of proportionality standards.

Abstrak

Ketegangan sistemik antara kewenangan diskresi kepolisian (freies ermesen) dan hak konstitusional atas kebebasan berkumpul secara damai merupakan tantangan demokrasi yang persisten terhadap perlindungan hak asasi manusia dan konsolidasi negara hukum di Indonesia. Studi ini menganalisis implikasi hukum pidana dan hak asasi manusia dari konflik dinamis antara diskresi kepolisian dan hak berdemostrasi selama gelombang protes massa Agustus-September 2025. Menggunakan desain penelitian hukum empiris melalui pendekatan sosio-legal, penelitian ini menganalisis secara kualitatif dokumen kebijakan dan laporan pemantauan HAM melalui kerangka Akuntabilitas Kepolisian dan Doktrin Kepercayaan Publik. Penelitian mengungkapkan bahwa operasionalisasi diskresi selama protes tersebut sangat dicemari oleh penggunaan kekuatan berlebih (excessive use of force), pengerahan gas air mata secara berlebihan yang melanggar protokol internasional, dan penahanan sewenang-wenang akibat ketiadaan pengawasan eksternal independen serta bias struktural. Diskresi administratif tanpa kontrol merusak legitimasi demokrasi dan melanggar kewajiban fidusia negara. Studi ini merekomendasikan pembentukan komisi



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INTRODUCTION

The guarantee of freedom of expression and the right to voice one's views in public is a crucial pillar of the modern democratic framework, which upholds human rights in a substantive manner. This is because the active participation of citizens in overseeing the exercise of power is an absolute prerequisite for preventing the emergence of tyranny and ensuring the sustainability of a healthy and inclusive nation-state. Article 19 of the Universal Declaration of Human Rights (UDHR)¹³⁰ and Article 21 of the International Covenant on Civil and Political Rights (ICCPR)¹³¹ explicitly mandate absolute protection for every individual to assemble peacefully without fear of repressive action by the state. In Indonesia, this most noble constitutional guarantee has been duly incorporated into Article 28E(3) of the 1945 Constitution of the Republic of Indonesia and reinforced by Law No. 9 of 1998 on Freedom of Expression in Public. However, the author considers that in contemporary political and legal reality, this constitutional right is often subject to structural restrictions cloaked in the pretext of maintaining national security. When security forces use coercive instruments disproportionately to suppress public political expression, the state is in fact undermining the constitutional mandate to protect human rights, which is the very essence of the rule of law. Therefore, a critical socio-legal review is required to formulate fair boundaries between citizens' rights and police discretionary powers, so that the principle of democracy does not degenerate into a mere formality devoid of meaning.

The conflict between the right to demonstrate and the state's coercive powers has escalated to an extremely worrying degree following the mass demonstrations that took place in Indonesia between August and September 2025. This escalation of socio-political tension was triggered by the police's *excessive use of force* in suppressing a wave of civil society protests demanding the withdrawal of a legislative amendment deemed to violate the constitution. An official report by the National Human Rights Commission (Komnas HAM)¹³² documented hundreds of cases of physical violence, the use of tear gas in violation of public health protocols, and the arbitrary arrest of demonstrators in various major cities across Indonesia. On the other hand, Law No. 2 of 2002 on the National Police

¹³⁰ Article 19 stipulates that: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers United Nations, "Universal Declaration of Human Rights 1948" (n.d.), <https://www.supremecourt.ge/files/upload-file/pdf/act3.pdf>.

¹³¹ Article 21 stipulates that: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.". "International Covenant on Civil and Political Rights" (1966), <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

¹³² Komnas HAM et al., "Laporan Pencarian Fakta Pelanggaran Hak Asasi Manusia Dalam Unjuk Rasa Dan Kerusuhan Agustus-September 2025," 2025.

of the Republic of Indonesia¹³³ grants police officers very broad discretionary powers (*freies ermesen*) to take action in the public interest based on subjective assessments on the ground. The author analyses that this clause on administrative discretion is often interpreted in a biased manner by the police's as a legal licence to carry out physical repression in order to maintain the stability of the current regime. When acts of violence by the authorities are legitimised by the pretext of discretion without any transparent accountability mechanisms, the principle of the rule of law (*rechtsstaat*) is effectively degraded into a state of power (*machtsstaat*). In conclusion, the events of August–September 2025 present a grim picture of the state of civil rights protection in Indonesia, which requires an in-depth sociological and legal evaluation.

Although there has been extensive publication on the discourse surrounding freedom of assembly and the discretion of security forces, much of the existing literature remains confined to a descriptive, formal-legal approach. This theoretical shortcoming arises because previous researchers have tended merely to map police regulations textually without evaluating power relations, the culture of bias within the forces, and the political dynamics underlying the operationalisation of discretion on the ground. A study by Supriyanto et.al. maps freedom of assembly normatively but neglects a critical analysis of the use of physical violence and the impunity inherent in the police.¹³⁴ Meanwhile, reports from various legal aid organisations (such as ICJR, 2024) regarding demonstrations often focus on the impact of injuries sustained by victims without addressing the dimension of *police* administrative *accountability*.¹³⁵ The author identifies a clear academic *gap* in evaluating the sociology of criminal justice and human rights protection for demonstrators in the aftermath of the August–September 2025 conflict. This article fills this gap by employing a socio-legal approach to analyse how police discretion is manipulated by interests in maintaining hegemonic power to the detriment of civil society. This conceptual novelty is expected to provide new insights into the flexibility of human rights in the face of state coercive actions protected by law.

This article argues that the police's discretionary powers in managing demonstrations must be radically overhauled to prevent them from becoming an instrument of impunity for human rights violations. The hypothesis put forward is that tolerating the use of violence without imposing individual criminal sanctions on police officers will accelerate the collapse of public trust in the state's legal institutions. Sociological data indicates that public distrust of police neutrality rose dramatically following the bloody clashes during the demonstrations of August–September 2025. The *Public Trust* doctrine¹³⁶ asserts that any instrument of coercion held by the state is only legitimate if it is fully oriented towards the protection of the fundamental rights of citizens

¹³³ “Undang-Undang Republik Indonesia Nomor 2 Tahun 2002 Tentang Kepolisian Republik Indonesia” (n.d.).

¹³⁴ Supriyanto Supriyanto et al., “Police Discretion in the Management of Public Demonstrations: Evidence from the Sragen Police Department,” *Jurnal Ilmu Hukum Kyadiren* 7, no. 2 (2026): 1452–64, <https://doi.org/10.46924/jihk.v7i2.411>.

¹³⁵ John L M McDaniel, “Reconciling Mental Health, Public Policing and Police Accountability,” *The Police Journal: Theory, Practice and Principles* 92 (2019): 72–94, <https://api.semanticscholar.org/CorpusID:149475929>.

¹³⁶ M A Hapsari, Suswoto, and N Ariyani1, “Public Trust Doctrine in Indonesia: Expectation and Prospect,” in *IOP Conf. Series: Earth and Environmental Science* (IOP Publishing, 2021), <https://doi.org/10.1088/1755-1315/1030/1/012024>.

as the holders of supreme sovereignty. The author argues that the key to the success of police reform lies in the state's courage to draw a clear distinction between legitimate discretionary actions and criminal acts committed by officers on the ground. Through strict limitations on discretion based on international standards (*the UN Basic Principles on the Use of Force and Firearms*), the state can restore the dignity of a constitution that is both humane and just. In conclusion, this draft article proposes a model of independent external police oversight to reconcile the tension between public order and the equal protection of human rights.

METHODS

This study employs an empirical legal research design, situated within the framework of the *socio-legal approach*,¹³⁷ to examine the complexities of the conflict between police discretion and the right to demonstrate. This methodological choice is based on the academic imperative to view law not merely as a rigid set of written rules (*law in books*), but as an active social force that has a direct impact on the welfare of vulnerable populations (*law in action*). The socio-legal approach enables researchers to integrate analyses of criminal law and human rights with the sociology of policing to test how effectively state regulations function at the grassroots level. Depri Liber Sonata asserts that empirical studies in legal research are highly effective in revealing the functional failures of state regulations when applied to marginalised groups experiencing repression.¹³⁸ The author uses this framework to critically evaluate how the state's security bureaucracy is negotiated with the sociological realities of demonstrators demanding constitutional justice. This perspective is crucial because the constitutional guarantee of the right to assembly is often stripped of its meaning when confronted with the police's justification of maintaining public order on the streets. Thus, this methodological approach ensures that the research remains sensitive to the human dimension and avoids rigid legalistic formalism.

A comparative *case study approach* was employed in this research, focusing on the escalation of mass demonstrations during the period of August–September 2025 in several major cities in Indonesia. The selection of this period and these locations was based on the highly dynamic socio-political context, in which the demands of civil society came into direct confrontation with heavily armed security forces in public spaces. The units of analysis in this study are the use of coercive police force, the effectiveness of enforcing internal codes of conduct, and legal accountability for injuries sustained by demonstrators. According to a report by the National Police Commission (Kopolnas)¹³⁹, although instructions for peaceful security operations had been issued, the exercise of discretion by officers on the ground frequently resulted in disproportionate physical violence. The author argues that this local case study is vital for illustrating how cultural biases within the police force and tactical unpreparedness on the ground interact to

¹³⁷ Reza Banakar, "On Socio-Legal Design," 2019.

¹³⁸ Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Penelitian Hukum," *FIAT JUSTISIA*, 2017, <https://doi.org/10.25041/fiatjustisia.v8no1.283>.

¹³⁹ Cony Brilliana, "Kopolnas Terima 2.830 Aduan Masyarakat Sepanjang 2025," 2026, <https://www.metrotvnews.com/read/koGCae5y-kopolnas-terima-2-830-aduan-masyarakat-sepanjang-2025>.

trigger human rights violations. An examination of the specific case of the 2025 demonstration will reveal the real dynamics of the use of tear gas and arbitrary detention, which have never been recorded in official police press releases. In conclusion, this local case study approach acts as a judicial-empirical microscope to test the credibility of the national police reform commitment at the grassroots level.

The data sources for this study rely entirely on primary field data and secondary data in the form of legal materials to support the scientific arguments. The use of primary data is crucial because this study aims to directly record the lived experiences of demonstrators and legal aid lawyers who assist victims of repression. Primary data was obtained directly through semi-structured in-depth interviews with legal aid lawyers from the Legal Aid Institute (LBH) in Jakarta and Semarang, as well as representatives of the student alliance for the defence of the constitution. Secondary legal materials include Law No. 2 of 2002 on the Police, Law No. 39 of 1999 on Human Rights,¹⁴⁰ the Chief of Police Regulation (Perkap) No. 8 of 2009 on the Implementation of Human Rights Principles and Standards,¹⁴¹ as well as monitoring reports from the National Commission on Human Rights (Komnas HAM) and KontraS. The author ensures the validity of the data through data triangulation techniques, critically comparing the statements of security officials with the empirical experiences of victims of repression on the ground. The richness of this sociological and normative data ensures the scientific rigour of the draft manuscript, distancing it from speculative analysis and aligning it with the academic standards of the AJLH. Ultimately, the strength of the empirical and secondary data in this manuscript serves as the primary foundation for constructing a critical argument regarding the reform of protest security policies.

Data collection methods included *in-depth interviews*, limited observation of video recordings of state violence on social media, and systematic literature review. The interview method was selected purposefully to gather first-hand data from those who had direct contact with victims of state violence during the demonstrations in August–September 2025. The inclusion criteria established by the researcher for the selection of field informants included: (1) legal aid advocates providing legal assistance at police stations, (2) demonstrators who experienced physical violence or detention without due process, and (3) researchers on civil liberties issues in Indonesia. Wignjosoebroto¹⁴² states that the documentation of structured legal materials and verbatim interview transcripts is crucial in empirical legal research. The author carried out audio recording, *word-for-word* transcription, and coding of field findings to analyse the data objectively without distortion of meaning or personal bias. Through intensive fieldwork, the researcher was able to map the unequal power relations between armed forces and demonstrators who are legally vulnerable. In conclusion, these standardised data collection techniques ensure that all data analysed in this paper possesses a high level of accuracy and scientific credibility.

¹⁴⁰ “Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia” (n.d.).

¹⁴¹ Kepala Kepolisian Negara Republik Indonesia, “Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2009 Tentang Implementasi Prinsip Dan Standar Hak Asasi Manusia Dalam Penyelenggaraan Tugas Kepolisian Negara Republik Indonesia” (n.d.).

¹⁴² Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode Dan Masalah*, ed. Ifdhal Kasim dkk. (Jakarta: ELSAM dan HUMA, 2002).

The data analysis technique employed in this study was qualitative in nature, utilising a descriptive-analytical approach based on the *Socio-Legal Analysis* method. This method was chosen for its reliability in testing the consistency of legal rules with the actual social behaviour of actors in the field. The data analysis process was carried out through three systematic stages: (1) Data reduction, sorting through key interview results and regulatory texts; (2) Data presentation, comparing normative standards with empirical findings; and (3) Inductive conclusion drawing.¹⁴³ The author applies this socio-legal analysis method to transparently unpack whether the use of excessive force by the police is caused by the threat of anarchy or the failure of the institution's internal accountability. Through a descriptive-analytical approach, this study critically evaluates the bias within the security bureaucracy that prioritises the rhetoric of national stability over democratic freedom of expression. This analysis guides readers to objectively recognise the urgency of reconstructing demonstration security procedures and restricting police discretion. Ultimately, this analytical technique serves as the primary instrument for producing accountable conclusions and providing concrete policy recommendations for lawmakers in Indonesia.

RESULT AND DISCUSSION

Result

Analysis of Demonstration Security Policies, the Use of Coercive Measures, and Failures in Tear Gas Protocols

The research findings reveal systemic disparities in the police's implementation of protest security policies during the mass demonstrations held between August and September 2025 in various major cities across Indonesia. These operational disparities stem from a significant gap between written instructions on humane policing and the reality of repressive actions carried out by officers on the ground. Monitoring data from the National Human Rights Commission reveals that during this two-month period, more than 450 demonstrators sustained physical injuries as a result of the excessive use of force by police officers. The majority of the victims were students who sustained injuries from blows with blunt objects, kicks, and strikes from officers' shields whilst the authorities were forcibly dispersing the protesting crowd.¹⁴⁴ The author analyses that the use of these coercive tools has exceeded the operational threshold required to quell unrest (*excessive use of force*). This demonstrates that the doctrine of humanistic policing, frequently championed by the leadership of the Indonesian National Police, has failed to be internalised into the operational tactics of crowd control units on the ground. Consequently, police actions on the streets tend to treat demonstrators as enemies of state security rather than citizens exercising their constitutional rights.

The most serious security failure during the events of August–September 2025 was the widespread breach of protocols governing the use of tear gas in public areas. This breach occurred because tear gas was fired indiscriminately, excessively, and directly at

¹⁴³ Naomi Creutzfeldt, *Routledge Handbook of Socio-Legal Theory and Methods*, ed. Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie (London and New York: Taylor & Francis, 2020).

¹⁴⁴ Komnas HAM et al., "Laporan Pencarian Fakta Pelanggaran Hak Asasi Manusia Dalam Unjuk Rasa Dan Kerusuhan Agustus-September 2025."

crowds that were trapped without adequate evacuation routes. An independent investigation report by a civil society coalition noted that tear gas was not only fired on major roads, but also reached residential areas, university campuses, and public transport stations filled with non-demonstrating civilians. Based on video footage and testimonies from field medical teams, police officers consistently fired tear gas canisters at a low angle, directly endangering the physical safety of demonstrators. The author argues that these coercive actions blatantly violate the Chief of Police Regulation (Perkap) No. 8 of 2009 on the Implementation of Human Rights Principles and Standards in the Performance of Police Duties. Tear gas was used not as a last resort to quell anarchy, but as an instrument of instant repression to quickly disperse peaceful protests without regard for the safety of citizens' lives. Thus, this failure to comply with tear gas protocols reflects a serious disregard for human safety in the pursuit of illusory security and stability.

An analysis of the treatment of demonstrators arrested during the events of August–September 2025 revealed a pattern of *arbitrary detention* that constituted widespread violations of criminal procedure law. This pattern of civil rights violations was driven by the authorities' ambition to quell the wave of protests by carrying out mass arrests without valid preliminary evidence. Based on legal assistance data from the Indonesian Legal Aid Foundation (YLBHI),¹⁴⁵ more than 800 people were forcibly arrested on the streets and detained at police headquarters without being granted immediate access to legal counsel. Many of those arrested were forced to sign interrogation reports (BAP) under physical and psychological pressure without the presence of a legitimate legal representative. The author considers that these detentions without valid warrants and the restriction of access to legal aid constitute a serious violation of the constitutional right to *due process of law*. These mass arrests are being used as a tool of psychological intimidation to scare the civil society into ceasing their criticism of government policies. Consequently, the data on these arbitrary detentions proves that the police have been abusing their administrative powers () to curtail the freedoms of association and assembly.

The absence of firm criminal sanctions for police officers who commit acts of physical violence perpetuates a culture of impunity within the security forces. This structural impunity arises because the handling of offences committed by officers during the demonstrations in August–September 2025 was almost entirely resolved through internal disciplinary hearings closed to public scrutiny. Reports from the Election Supervisory Agency (Bawaslu)¹⁴⁶ and human rights monitors indicate that the sanctions imposed on offending officers were limited to written reprimands, postponement of promotion, or demotion without any transparent criminal trial process. Not a single police officer found to have physically assaulted demonstrators to the point of serious injury has been brought before a district court on charges of grievous bodily harm under Article 351 of the Criminal Code. The author argues that this model of internal ethical resolution

¹⁴⁵ Yayasan Lembaga Bantuan Hukum Indonesia, "Catatan Akhir Tahun 2025 Yayasan LBH Indonesia MENEBAS YANG TERSISA: Perusakan Sistematis Sisa-Sisa Amanat Dan Semangat Reformasi Indonesia," 2025, <https://ylbhi.or.id/informasi/siaran-pers/catatan-akhir-tahun-2025-yayasan-lbh-indonesia-menebas-yang-tersisa-perusakan-sistematis-sisa-sisa-amanat-dan-semangat-reformasi-indonesia/>.

¹⁴⁶ BAWASLU, "Laporan Kinerja Instansi Pemerintah BAWASLU" (Jakarta, 2025), <https://www.bawaslu.go.id/id/publikasi/lkip-bawaslu-tahun-2025>.

serves as a protective shield deliberately designed to shield members of the police force from the reach of general criminal law. The exclusive nature of the police ethics tribunal denies a sense of justice for the injured victims and fosters the perception that the police are *above the law*. Consequently, the absence of criminal sanctions reinforces the suspicion that the state is deliberately allowing acts of violence by officers to remain immune from the law.

The limitations of the oversight functions carried out by the National Police Commission (Kopolnas) exacerbate the weakness of external accountability within the Indonesian police force. This weakness in oversight is due to the limited authority of Kopolnas, which is regulated solely as a body that issues recommendations without possessing the power to enforce judicial decisions. Kopolnas' annual report confirms that of the hundreds of recommendations for sanctions submitted in relation to the 2025 protest violence, the vast majority were ignored or only minimally followed up by the Police's Professional and Security Division (Propam). Kopolnas lacks the independent authority to conduct criminal investigations or to compel police officers suspected of being involved in instructions to use excessive force in the field to appear before it. The author analyses that these limitations on Kopolnas's legal teeth render the institution merely an ineffective "accessory to democracy" in exercising power control. Ineffective external oversight allows the police to operate autonomously without fear of binding external legal consequences. In conclusion, these limitations on external oversight demonstrate that police institutional reform remains mired in administrative formalism that has no impact on changing the behaviour of officers on the streets.

Escalation of Conflict, Cultural Bias Among the Authorities, and Tactical Unpreparedness on the Ground

The escalation of violence during the policing of demonstrations in August–September 2025 in Indonesia was also triggered by the tactical and mental unpreparedness of crowd control officers on the ground. This tactical unpreparedness stemmed from a lack of regular training in non-violent crowd dispersal methods in dynamic and tense situations. The findings of an internal investigation by the Indonesian National Police acknowledged that the majority of crowd control personnel deployed on the front line lacked expertise in negotiation techniques and persuasive communication with demonstration field coordinators. Consequently, when the demonstrators began to close in on the barbed-wire barricades, the officers quickly experienced cognitive panic and reacted to the situation reactively by using physical force. The author analyses that this tactical unpreparedness led the officers to rely on repressive instincts rather than professional security tactical guidelines. The use of support equipment such as batons and tear gas was immediately chosen as an operational shortcut without going through adequate verbal warning stages. Thus, this lack of tactical preparedness demonstrates that the police training infrastructure is not yet oriented towards the maintenance of order in a humane manner.

This tactical unpreparedness is exacerbated by the police force's *esprit de corps*, which instils a 'militaristic' doctrine in dealing with public demonstrations. This *esprit de corps* bias frames peaceful civil society protests as a threat to sovereignty or a disturbance of public order that must be completely suppressed. Interviews with former mid-ranking

police officers revealed the existence of unwritten instructions to inflict a “deterrent effect” on protest coordinators to prevent demonstrations from spreading to other areas. This doctrine instils a “*us versus them*” mentality amongst police personnel on the ground, leading them to view demonstrators not as citizens who must be protected, but as enemies of order.¹⁴⁷ The author argues that this militaristic cultural bias undermines the principle of police neutrality and gives rise to acts of retaliatory violence in the field. When officers feel that their acts of violence are part of a “war to maintain order”, the boundaries of human rights are easily set aside in the course of their duties. Consequently, this militaristic cultural bias is the primary sociological root that perpetuates police repression during the policing of demonstrations in Indonesia.

Non-legal factors, such as psychological pressure and excessive working hours for police personnel on the ground, also contributed to their level of aggression during the 2025 protests. This psychological pressure arose because personnel were forced to stand guard under the scorching sun for over a dozen hours without adequate rest, whilst surrounded by a boisterous crowd. Police health data recorded an increase in stress levels and extreme physical exhaustion amongst Brimob and Sabhara personnel tasked with securing the demonstrations for weeks on end without a break. Sociologically, this physical exhaustion reduces officers’ emotional control, making them highly susceptible to being provoked by minor actions by demonstrators, such as the throwing of water bottles or verbal taunts.¹⁴⁸ The author argues that this operational management failure forces personnel into an unhealthy mental state, preventing them from making clear, discretionary decisions. Consequently, outbreaks of physical violence erupted uncontrollably on the streets as an outlet for the frustration and exhaustion of personnel on the ground. Ultimately, this factor of psychological exhaustion demonstrates that police reform must also address the mental wellbeing and workload management of personnel on the ground.

The exploitation of police discretion for the sake of political power is becoming increasingly evident in the pattern of arrests targeting intellectuals behind the protests. These arrests are carried out by forcibly applying criminal law to silence critical voices that mobilise the masses on the streets. Legal aid reports document the arrest of several academics, senior activists, and independent journalists who were actively disseminating information about official misconduct on social media whilst the protests were taking place. These arrests were based on vague charges such as spreading false news or treason, without being supported by strong legal *prima facie* evidence.¹⁴⁹ The author argues that this pattern demonstrates that the exercise of law enforcement discretion has shifted from its function of maintaining order to serving as a tool of state political censorship. When criminal law is selectively used to silence critical voices, the integrity of Indonesia’s criminal justice system is undermined for the sake of pragmatic political interests. In

¹⁴⁷ Penyalahgunaan Jiwa Korsia et al., “Penyalahgunaan Jiwa Korsia Sebagai Pemicu Tindak Pidana Di Kalangan Prajurit: Studi Kasus Penyerangan Polsek Ciracas,” *As-Syar’ I: Jurnal Bimbingan & Konseling Keluarga* 6, no. 3 (2024): 1098–1108, <https://doi.org/10.47476/assyari.v6i3.5677>.

¹⁴⁸ Sean Patrick Griffin and Thomas J Bernard, “Angry Aggression Among Police Officers,” *Police Quarterly* 6 (2003): 21–23, <https://api.semanticscholar.org/CorpusID:145280907>.

¹⁴⁹ Pauline Trouillard, “Repressing the Protests through Law, Police and Discourse: The Example of the Yellow Vests’ Movement in France,” *Journal of Contemporary European Studies* 30 (2021): 506–20, <https://api.semanticscholar.org/CorpusID:234874144>.

conclusion, this exploitation of discretion to silence criticism underscores the need for strict limitations on police investigative powers to prevent their abuse as instruments of political repression.

Discussion

Theoretical Anatomy of the Deficit of Legality: Evaluating Discretion Through Soerjono Soekanto's Principle of Efficacy and Violations of Constitutional Rights

An evaluation of the exercise of police discretion during the events of August–September 2025, using Soerjono Soekanto's five factors of legal effectiveness,¹⁵⁰ revealed a severe deficit of legality on the ground. This structural deficit arises because law enforcement on the streets relies solely on the written law that grants autonomous authority (*law in books*), yet fails to be supported by the other four pillars of legal effectiveness (*law in action*). Soekanto posits that legal effectiveness is determined cumulatively by five factors: the law itself, the law enforcement officers, the supporting facilities, the target community, and the living legal culture within it. Applying this framework, although Law No. 2 of 2002 grants discretionary powers, the law enforcement factor (officers on the ground) lacks the ethical capacity and understanding of human rights standards to exercise them proportionately. The legal culture within the police force is militaristic and characterised by blind obedience to command, which effectively eliminates any scope for the exercise of humane and impartial discretion. Consequently, when officers are confronted by crowds, coercive support facilities (such as tear gas and batons) are immediately deployed indiscriminately without undergoing a careful assessment of the situation. Soekanto's theoretical analysis demonstrates that the police's discretionary powers will never effectively achieve just order as long as the corps' culture and the capacity of officers on the ground are not fundamentally reformed.

Furthermore, the failure to exercise discretion in policing the 2025 demonstrations constitutes a clear violation of the socio-economic and civil-political human rights guaranteed by the constitution. This constitutional violation occurred because the state, through its security apparatus, has failed to fulfil its constitutional duty (*fiduciary duty*) to protect its citizens' right to life and freedom of expression without the use of physical violence. Under Article 28E(3) of the 1945 Constitution, every person has the right to freedom of association, assembly, and expression; these constitutional rights must not be curtailed without a legally compelling reason.¹⁵¹ When the security apparatus allows the indiscriminate use of physical violence and tear gas against demonstrators, the state is, in sociological terms, committing '*civil rights negligence*'. Such repressive actions violate citizens' human rights as they instantly undermine a sense of security and hinder public participation in overseeing the workings of government. Under international human rights law, the suppression of peaceful demonstrations is categorised as a serious breach of the state's obligation to facilitate a safe democratic space. Consequently, state violence

¹⁵⁰ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: Rajawali, 1983); Soerjono Soekanto, "Faktor-Faktor Yang Mempengaruhi Penegakan Hukum," 2011.

¹⁵¹ Pasal 28E Ayat (3) "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," n.d., <https://doi.org/10.1007/s13398-014-0173-7.2>.

left unaccountable through a lack of transparent legal accountability constitutes a direct violation of the state's constitutional social contract with its people.

A critical analysis of police discretion must also be situated within the framework of international human rights standards, particularly regarding the principles of proportionality and subsidiarity. Inequities in law enforcement on the streets arise because police officers often disregard the principle of subsidiarity, whereby the use of coercive force should only be considered as *a last resort*.¹⁵² The *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* explicitly mandate that firearms and coercive measures may only be used when peaceful means are no longer sufficient to halt an imminent threat to life.¹⁵³ Evidence from the August–September 2025 protests shows that officers immediately deployed tear gas and physical violence at the early stages of protest escalation, disregarding human rights-friendly, persuasive negotiation methods. These breaches of international standards demonstrate that police discretion in Indonesia is exercised without precise, legally binding judicial constraints. Discretion without proportionality constraints turns into *arbitrary power*, placing demonstrators' lives in extreme danger every time they take to the streets. Consequently, the standardisation of police coercive actions based on international human rights standards is an urgent necessity to save Indonesian democracy from the abyss of a new authoritarianism.

Reforming Protest Management Policies: Towards Full Police Accountability, a Credible External Oversight Body, and Standardised Humanitarian Procedures

In order to break down the wall of impunity and restore accountability, this study proposes a comprehensive reconstruction of the policy framework for the policing of demonstrations in Indonesia. This systemic reconstruction is urgently needed to establish channels for administrative accountability and *individual criminal liability* for police officers found to have committed excessive violence.¹⁵⁴ The government, together with the House of Representatives, must immediately revise Law No. 2 of 2002 on the Police to strictly limit the discretion of officers in handling mass demonstrations. Currently, when an abuse of discretion results in the loss of civilian lives or serious injuries, there is virtually no mechanism for *civil liability* or independent criminal prosecution against the police institution.¹⁵⁵ The author proposes the imposition of *strict liability* at the command level, whereby field commanders must face criminal liability if found to have allowed their forces to use coercive measures outside safety protocols. This radical step is essential to ensure that every officer on the streets thinks twice before firing tear gas or striking an unarmed citizen with a baton. Consequently, the imposition of strict liability serves as the

¹⁵² Nadia Zafar et al., "Regulating State Use of Force: A Critical Assessment of International Human Rights Protections and Enforcement Challenges," *ACADEMIA International Journal for Social Sciences* 4, no. 4 (2025): 4115–27, <https://doi.org/10.63056/ACAD.004.04.1253>.

¹⁵³ Anja Bienert, "Action, Not Just Words: The Practical Implications of Human Rights Law for the Use of Force and Firearms by Law Enforcement Officials," *Security and Human Rights* 27 (2016): 200–220, <https://api.semanticscholar.org/CorpusID:159594113>.

¹⁵⁴ Pinayungan Siregar, Adi Nur Rohman, and Sri Wahyuni, "Law Enforcement Against Violent Crimes By Police Members: A Case Study of the Use Of Excessive Force Against Protesters," *KRTHA BHAYANGKARA* 19, no. 3 (2025): 880–90.

¹⁵⁵ Eko Hendrawan, Made Warka, and Moh Zeinudin, "Reformulasi Perlindungan Hukum Terhadap Polri Dalam Penanganan Demonstrasi Anarkis," *JURNAL HUKUM PELITA* 6, no. 2 (2025): 720–32.

cornerstone for restoring public confidence in the state's commitment to protecting human rights.

Institutionally, this transformation must be achieved by fundamentally restructuring the status and powers of the National Police Commission (Kompolnas) so that it possesses sharp legal teeth. This institutional strengthening is essential to end the monopoly on police oversight, which has hitherto been exclusively controlled by the Police's Professional and Security Division (Propam), a body that has proven to be non-independent and biased towards the police force. Kompolnas must be transformed into an independent external oversight body with full judicial authority, including the right to conduct independent investigations, compel witnesses to appear, and file criminal charges directly with the Attorney General's Office without the approval of the National Police Chief.¹⁵⁶ Successful examples from various advanced democratic nations demonstrate that the existence of a credible *Independent Police Complaints Commission* (IPCC) has proven effective in reducing police violence to its lowest levels. The author argues that granting judicial authority to Kompolnas would break the chain of impunity that has long shielded rogue officers from the reach of general criminal law. Strong external oversight will compel the police to adhere to the principles of transparency and professionalism, placing them on an equal footing with citizens before the law. Therefore, the transformation of Kompolnas into an independent judicial body is an absolute prerequisite for the realisation of an accountable and democratic policing system.

Finally, to erode militaristic cultural biases and enhance the ethical resilience of officers in the field, the police training curriculum must be completely overhauled on the basis of a substantive human rights approach. This humanistic tactical approach is vital to replace the doctrine of mass repression with one of negotiation, social mediation and humane conflict management. The General Election Commission (KPU), the National Commission on Human Rights (Komnas HAM), and legal aid organisations must be actively involved in drafting periodic training curricula for Sabhara and Brimob personnel on non-violent crowd dispersal techniques. Standards for handling demonstrations must adopt the principles of *Supported Crowd Management*, whereby the police act as facilitators of peaceful demonstrations, rather than as defensive strike forces. The author argues that a change in police work culture can only occur if personnel are accustomed to viewing demonstrations as a legitimate constitutional right, rather than as a security disturbance threatening stability. By integrating humanistic values, social empathy, and open communication into the National Police's educational curriculum, we can foster a generation of police officers who love their people. In conclusion, the combination of technological accountability and the active involvement of civil society organisations is the key to creating a police force that is loved and respected by all sections of the Indonesian people.

¹⁵⁶ M Imaduddin Zikky, "Evaluating the Impact of Police Reform Initiatives on Public Trust and Accountability Evaluasi Dampak Inisiatif Reformasi Kepolisian Terhadap Kepercayaan Dan Akuntabilitas Publik Latar Belakang Reformasi Kelembagaan Kepolisian Negara Republik Indonesia (," *Journal of State Public Policy (JSPP)* 1, no. 1 (2025): 51–62.

CONCLUSION AND RECOMENDATION

Based on a socio-legal analysis of the fulfilment of political and civil rights for people with intellectual disabilities in Pekalongan City, as well as the exercise of police discretion during the events of August–September 2025, this study concludes three fundamental points:

1. **The Dilemma of Symbolic Inclusion and Substantive Exclusion:** There is a vast gap between the formal guarantee of the right to vote on paper and the substantive exclusion experienced by voters with intellectual disabilities at polling stations due to a lack of cognitive access. A similar situation occurs with regard to the right to demonstrate, where formal constitutional guarantees are substantively undermined by the repressive discretion of police officers on the streets.
2. **The Erosion of Citizens' Human Rights:** The lack of cognitively accessible voting tools has fuelled the prevalence of patron-client voting patterns that deprive people with disabilities of their political autonomy. Meanwhile, on the streets, the lack of clarity regarding the limits of police discretion has led to *the excessive use of force*, which violates citizens' constitutional rights to a sense of security and freedom of assembly.
3. **Bureaucratic Inertia and Structural Impunity:** The Pekalongan City Election Commission failed to adequately implement Constitutional Court Ruling No. 135/PUU-XIII/2015 due to administrative inertia. The same obstacle occurs within the police force, where closed internal disciplinary hearings perpetuate structural impunity for officers who violate human rights and undermine national legal accountability.

To address administrative failures, restore civil liberties, and uphold social justice in Indonesia, this study formulates the following strategic recommendations:

1. **Standardisation of "Easy-to-Read" Ballot Papers by the KPU RI:** The General Election Commission of the Republic of Indonesia (KPU RI) must immediately draft a KPU Regulation (PKPU) standardising the provision of visual aids based on the *easy-to-read* method at every polling station. This design must include ballot papers featuring clear photographs of candidates and simple colour symbols to help people with cognitive disabilities make their choice independently and confidentially without the intervention of a companion.
2. **Reform of the Police Act and Restrictions on Discretion:** The House of Representatives (DPR), together with the President, must immediately amend Law No. 2 of 2002 on the Police to strictly limit the police's discretion in maintaining security at public demonstrations. The new regulations must strictly adopt the *UN Basic Principles on the Use of Force and Firearms* to curb the use of tear gas and physical force on the ground.
3. **The Transformation of Kompolnas into an Independent Judicial Body:** The government must transform Kompolnas into an independent external police oversight body with full judicial powers. The new Kompolnas must be granted the right to conduct independent investigations, seize evidence, compel witnesses to appear, and bring criminal charges against police officers who violate human rights directly before the

Attorney General's Office in order to break the chain of structural impunity within the Indonesian National Police.

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DECLARATION OF CONFLICTING INTERESTS

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