

Legal Protection for Search and Rescue (SAR) Volunteers in Indonesia

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Abstract

Everyone has the right for the protection of their wellbeing, which includes protection from accidents, disasters, and conditions which may endanger humans, where on eof them are realized through search and rescue in a fast, precise, safe, integrated and coordinated manner in case of an accidents, disasters and other dangerous conditions, as stated in the preamble of Law Number 29 of 2014 concerning Search and Rescue. Accidents, disasters and other dangerous conditions to humans can happen anywhere, anytime and can happen to anyone. As a result, of course it will have an impact both physically and psychologically on both the victim and their family, and to the SAR volunteers who carry out the operation, not to mention other impact like the depletion of natural resources, human capital and social capital, and even institutional capital in an effort to provide protection for victims, families of victims, and also to SAR volunteers. Based on this, the author concludes that the SAR volunteers is in need for legal protection in the form of more concrete legal policies through the issuance of government regulations on duties, powers, responsibilities, and legal protection for SAR Volunteer and/ or reformulating the Act of Search and Rescue to help SAR volunteers who injured the victim due to the rescue process by SAR volunteers so that such action that are often tied to the Article 50 of the Criminal Code is not an act of negligence.

Keywords: SAR Volunteers, Legal Protection, Accident SAR.

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INTRODUCTION

The Service of search and rescue is one of the human rights that each person must observe and obtain equally, without any exceptions. In the preamble to Law Number 29 of 2014 concerning Search and Rescue, in letter a it is emphasized that the Unitary State of the Republic of Indonesia is responsible for protecting all Indonesian people and all Indonesian blood spills to provide protection for their lives and lives including protection from accidents, disasters, and endanger human condition based on Pancasila, as mandated in the Constitution of the Republic of Indonesia Year 1945, on paragraph b, that states that the state's responsibility is to protect the entire Indonesian nation and the entire Indonesian homeland of accidents, disasters, and a dangerous condition human beings are carried out through search and assistance in a fast, precise, safe, integrated, and coordinated manner by all components of the nation.

Mandate of the Act are in line with international regulations on search and rescue, which is

where every country should provide SAR services, the provision contained in the International Civil Aviation Organization (International Civil Aviation Organization / ICAO) in the Chicago Convention of 1944 under Article VI of the International Standard and Recommended Practices Annex 12 "Search and Rescue" and the provisions of the International Maritime Organization (IMO) in accordance with the Safety of Live at Sea (SOLAS) Convention of 1974, member countries of the organization are required to establish and have a SAR (Search and Rescue) organization. Search and assistance capable of handling aviation accidents and shipping accidents. Suppose it is unable to provide services in the field of Search and Rescue. In that case, the country is subject to a black area status which will negatively affect economic, socio-political, defense, security and other aspects. It may even be subject to sanctions in the form of prohibiting flying and sailing across the region.

One of the follow-ups to this provision is that the Unitary State of the Republic of Indonesia has

established a government agency in charge of search and rescue / SAR services under the name of the National Search and Relief Agency or Basarnas.

In the course of its journey, the National Search and Relief Agency has undergone a change in orientation, not only in values (norms), but also regarding thoughts, especially regarding efforts to solve problems in the field of search and aid which are influenced by various factors, including political, economic, social factors, culture, defense and security, as well as science and technology. This change in orientation has implications not only for the maturation process of the National Search and Rescue Agency itself, but also for the law enforcement process in society in the field of search and rescue.

The search and rescue is not merely just from the aspect of the officers rescuer and victim, but also be aware of the implications of an action in order to provide relief and rescue of victims, where the rescue action that do can result in losses in the form to defects early physical victims, even the most tragic of which is the loss of life from the actions of the rescuers that were done either deliberately or negligently. In this case the action that the rescuer has taken is an action based on authority because of duty.

The development of search and rescue is indeed quite rapid, not only concerning various types of disasters, accidents and life-threatening conditions, but technology for handling these conditions and its supporting facilities have begun to lead to the use of sophisticated equipment. Similarly, the number of potential SAR (SAR organizations / SAR Volunteer) in Indonesia are relatively quite large as that recorded in nature databases Basarnas amounted to 3443 people [1], the writer considers the number is still very much smaller than the actual conditions in the field, we take an example in 2016 Basarnas Semarang City's SAR Office held a potential SAR Jambore throughout Solo Raya at the Surakarta SAR Post, which was attended by 5 districts and 1 city. ta with the number of peers and 1560 people [2].

Seeing this condition, The SAR Volunteer in Indonesia. Of the many organizations SAR is of course no organization SAR which has been incorporated and which have not incorporated the law, it does not include public Indonesia who actually have to participate and take part in helping the community without asking for wages or rewards already can be said as a SAR Volunteer. This is part of the national identity, namely mutual cooperation, the Indonesian people have shown the world that the Indonesian people have a high human spirit towards the surrounding environment. However, we need to realize together is the large number of volunteers is still inversely related to the government's attention to the SAR Volunteer are still lacking resulting in less maximal SAR Volunteer do its job in

helping countries in efforts and tasks of search and rescue.

According to the author rightly government needs to pay attention, that attention is not in material form but the attention of the pad side protection laws are enough to SAR Volunteer, so that if you later SAR Volunteer got problems that intersect with the law in the implementation of search and rescue operations can be resolved with a sense of justice.

This problem is what urges the author to study it further in a research with the main problem as follows:

1. How is the legal protection for SAR Volunteer in Indonesia currently?
2. What is the legal liability for the rescue actions carried out by SAR Volunteers in Indonesia?

METHOD OF RESEARCH

This type of research is a kind of empirical juridical, or referred by field research that examines the provisions of applicable law and what happens in reality in society [3]. Juridical empirical research is legal research on the enactment or implementation of normative legal provisions in action at any particular legal event that occurs in society [4]. Or in other words, a research conducted on the actual situation or real conditions that occur in the community with the intention of knowing and finding the facts and data needed, after the required data has been collected then leads to the identification of the problem which in turn leads to problem solving [5].

RESEARCH RESULT AND DISCUSSION

1. Legal Protection for SAR Volunteers in Indonesia

In carrying out search and rescue, the Government through the National Search and Rescue Agency (Basarnas) will not work alone but will require coordination, cooperation and support as well as an active role from the community through potential SAR organizations that have human resources.

Several factors can causes someone to be intereste to join as a SAR Volunteer. For example, because the person/ family/ relatives ever experienced events are the same so as to encourage him to help, or because of the teachings of the religion which teaches to do goodness that encourages people are to become volunteers who simultaneously attempt to create a life that is harmonious and helping each other.

SAR volunteers have participated actively in helping the community so far, of course this has all had a very positive impact on the people of Indonesia. However, the existence of these volunteers is still considered to have received less attention from the Government in terms of legal protection, the absence of regulations regarding clear and concrete legal protection for SAR volunteers in the implementation of

search and rescue in Indonesia is a separate concern for volunteers. On the other hand, voluntary organizations SAR in Indonesia are already many who are legal entities, but it is inevitable that more SAR volunteer organizations have not been incorporated, so that the results of the discussion with the author of the volunteers SAR perlu no legal breakthrough in terms of the protection of the law were sufficient. Besides that, legal protection for SAR volunteers is part of the appreciation for the social spirit of the volunteers who have helped the community sincerely and unconditionally and without coercion from others and they do so voluntarily. Potential protective laws against SAR Volunteer also works so that later these volunteers can carry out its activities in accordance procedure and no longer need to be afraid of the activities that they do, especially rescue activities. Therefore, it is appropriate that the volunteers are getting attention specifically on the government, because their activity as a SAR Volunteer may come into conflict with the law.

It is indeed the SAR Volunteer has been the practice of the values contained in Pancasila. Referring to the 2nd Pancasila Principle value, in this case SAR volunteers can manifest in the form of concern for the right of everyone to obtain search and rescue services for fair and civilized human values. Example we see SAR Volunteer carry out the evacuation of victims of natural disasters, distributing food aid to regions terisolasi the disaster that caused the access to the place/ area affected by the disaster are not easy to achieve and can not be passed using vehicle due to the lack of road. If we look at the 5th precept of Pancasila, it contains the values of justice. In this case, there are some things that must be observed, realize, grow, develop and increase awareness will be the rights and responsibilities responsible for the community in disaster response, as well as the nature of mutual assistance with no distinction of race, ethnicity, religion, and culture. Soul Pancasila like this is that there is in the self- SAR Volunteer are actually worth appreciation. In this case provides an umbrella law that is enough to SAR Volunteer is something that is very relevant.

Law Number 29 year 2014 on Search and rescue has been explained about the position of potential SAR participated in the organization of search and rescue operations, but the legislation is not yet in the set is clearly the protection of law against the SAR Volunteer, just in explain understanding and space scope of potential SAR. With the regulations are clear about the SAR Volunteer is expected to become a legal umbrella if it will encounter problems that led to the conflict. In addition to that, the absence of legal protection against SAR Volunteer in concrete will give effect positive for the volunteers when it falls directly into the field.

Importance umbrella law that must be owned by the SAR Volunteer are becoming more and many of its members in the form of communities that most members are young people from various regions, with the protection of the law to avoid inhibition of services to SAR Volunteer itself. Therefore SAR Volunteer in the past are now still using the law of Search and Rescue, namely Law number 29 of the year 2014 in Article 15, namely the "Implementation Operation Search and Rescue conducted through Standby Search and Rescue, Search and Rescue Operations and Involving Search and Rescue Potentials". So the SAR Volunteer need to Regulation specifically that discuss about the competence of the performance of SAR Volunteer as an effort in order to be considered support facilities performance. As for some of the considerations on this matter that the performance of SAR volunteers is very commendable and helps the community, especially in times of disaster such as accidents, disasters and life-threatening conditions, as well as in carrying out their activities they are not hampered by supporting facilities or will even become victims. We convey the victims here as what happened in Yogyakarta Previously. So that a similar incident will not happen again.

The Destination of the protection law for SAR Volunteer is to streamline the work of the SAR Volunteer and more important to protect volunteers in order to not become a victim when doing their duty for humanity in the field. For example, the incident in Yogyakarta, where a volunteer from SAR Yogyakarta had to be detained because of the alleged case of carrying sharp weapons. The importance of the umbrella law that must be owned by the SAR Volunteer possible with this can be done reformulation of the law of search and rescue, or to develop regulations on the participation, responsibility and legal protection against SAR volunteer as an attempt to protect the SAR Volunteer itself.

2. Legal Liability for Rescue Action by SAR Volunteers Obligation to Provide Assistance

Talking about people who need help, it cannot be separated from that person's condition, in other words there are situations and conditions where that person really needs someone else to get out of that condition. This condition is a condition where if there is no help, that person can die. In article 531 of the Criminal Code, the condition of a person who needs help is someone who needs immediate help, if not helped, it will result in death, as in the example of the incident above. Where article 531 of the Criminal Code reads:

" Anyone who witnesses a person in grave danger, does not provide any help which may be given to him without proper danger to himself or others, is threatened, if later that person dies, by a maximum imprisonment of three months or a fine of four thousand and five hundred rupiahs " [6].

According to R. Susilo in his book entitled *The Book of Law - Penal (Penal Code)* As well as the comments-comments are Complete Article by Article says that is "in danger of death" of Article 531 of the Criminal Code are being killed there immediately [7].

R. Sugandhi, SH in the KUHP book of the Criminal Code and the following explanation provides an explanation for article 531, if someone sees another person in danger of death, such as someone drowning, while the person who sees it is good at swimming so that when he provides help does not endanger himself, then the person can be threatened with this article if he does not provide help and the victim dies [8].

Meanwhile, from the point of view of positive law in Indonesia, the meaning of search and self- help is contained in Government Regulation Number 22 of 2017 concerning Search and Rescue Operations Article 1, which reads:

" Search and rescue are all efforts and activities to find, help, rescue, and evacuate people who are facing emergencies and / or dangers in accidents, disasters, or conditions that endanger humans".

Based on the description above, we can see that someone, in this case search and rescue officers / SAR volunteers, also has the obligation to provide assistance to the above conditions as ordered and mandated by the Law.

Each search and rescue organization has its own story, from easy to difficult handling. What if the actions of SAR volunteers because of their deliberate intent or negligence cause more serious injury to the victim or even cause the loss of the victim's life.

Whereas according to the teachings of error (schuld) in criminal law, it consists of an element of intent (dolus) or negligence (culpa). As in Article 359, 360 of the Criminal Code whether it is done intentionally or negligently can be punished.

However, in criminal law there are several reasons that can be used as a basis for judges not to impose sentences / crimes against the perpetrators or defendants who have been brought to court for having committed a criminal act. These reasons are called exclusion reasons. The reason for the annulment of punishment is a regulation that is primarily aimed at judges. This regulation stipulates under what circumstances a perpetrator, who has fulfilled the formulation of an offense that should be convicted, is not sentenced. The judge places the authority of the legislators to determine whether there has been a special situation as formulated in the reason for the annulment of crimes [9].

The meaning of reason that can erase criminal reasons are: The reasons that allow people who do the

actual deed has fulfilled the formulation of the offense, but not convicted. Unlike the case with reasons that can abolish prosecution, the reason for the abolition of crimes is decided by the judge by stating that the nature of the violation of the act is to erase or the mistake of the eraser is due to the existence of statutory and legal provisions that justify the act or that forgive the author. The Criminal Code does not explain what is meant by excuse for criminal offense and the difference between justification and excuse. The Criminal Code only states things that can abolish crimes [10].

The science of criminal law also makes another distinction to the reasons for the remission of crimes in line with the distinction between the conviction of the act and the conviction of the maker. Abolition of a crime can be related to the act and its maker, then there are 2 (two) types of reasons for the elimination of punishment, namely:[11]

1. The justification
2. Forgiving reasons

The reason for justifying as described above is to eliminate the unlawful nature of an act, even though this act has fulfilled the formulation of the offense in the law. If the act is not against the law, then there will be no punishment, in the Criminal Code it is stated in Article 51 paragraph 1.

Meanwhile, the reasons for forgiveness in the Criminal Code are contained in Article 44, that the reasons for erasing mistakes are related to the personal of the maker, in the sense that a person cannot be criticized or he is innocent or cannot be accounted for, even though it eliminates the mistakes of the maker, so that he cannot be convicted.

The reasons for the annulment of crimes other than those in Article 44, are also regulated in Articles 48 to 51 of the Criminal Code, namely:

1. Forcing power (overmacht)

Article 48: "Whoever commits an act due to the influence of force, is not punished". In other words, if a person commits a crime under compulsion, he is not punished. What is meant in Article 48 of the Criminal Code is coercion that is psychological (*vis comulsiva*), not physical (*vis absolute*).

2. Forced defense (noodweer)

Article 49 paragraph 1: " Not sentenced, whoever commits an act of forced defense for himself or for others, moral honor or property of himself or others, because there is an attack or threat of attack that is very close at that time which is against the law"

Article 49 paragraph 2: "Forced defense which exceeds the limit, which is directly caused by severe mental shock due to the attack or threat of attack, shall not be punished".

3. Implementing laws

Article 50: "Whoever commits an act to implement the provisions of the law, is not punished".

4. Carry out office orders

Article 51 paragraph 1: "Whoever commits an act cannot be punished to carry out an office order that has been given by a power that has the authority to give said order"

In the theory of criminal law, the reasons for the elimination of crime in addition to justification and forgiveness, there are reasons for abolishing prosecution, the reason for abolishing prosecution is the role of government authority, the government considers that on the basis of utility or benefit to the community, prosecution should not be held in the public interest.

Apart from what is written normatively in the law, there are reasons for the elimination of crimes outside the law, for example:[12]

1. The right of parents, teachers to discipline children or their students (*tuchtrecht*);
2. Rights arising from the work (*beroepsrecht*) of a doctor, nurse, pharmacist, midwife and scientific investigator (*vivisectie*);
3. Permission or approval from the injured person to another person regarding an act that can be punished, if it is done without consent or consent (consent of the victim);
4. represents the affairs of others (*zaunjukarneming*);
5. Absence of material elements of unlawful nature;
6. There is no error at all.

Based on the description regarding the reasons for the eradication of crimes in criminal law, if it is related to the times such as the present era, it makes it easier for people to demand rights, one of which is in the field of search and aid. And this does not rule out the possibility of having an impact on the actions of search and rescue officers, which can be used as an excuse to give accountability for the losses incurred, of course this cannot be separated from negligence or considered malpractice.

Before the losses were incurred, then queued for review before on actions that do a volunteer rescue them. SAR Volunteer as a man who in carrying out its duties have the possibility of casualties suffered disability and even death world after the action rescue, things that can happen, although SAR Volunteer has been carrying out their duties in accordance with professional standards were good. Such circumstances it is referred to the risk of duty, but understood by the parties to the other as negligence.

SAR volunteers who take rescue actions that cause injury or loss of life due to implementing the law, and are proven not to fulfill the element of responsibility, then the SAR volunteers cannot be held responsible for the crime.

Judging from the element of deliberate error or negligence, the actions of SAR volunteers can be categorized as deliberate mistakes if it is proven that the SAR volunteers want and realize that their actions in carrying out the rescue resulted in losses, of course this is difficult to prove, or without realizing the actions carried out are negligent mistakes that result in losses on the victim.

Based on the element of criminal responsibility, not all actions of SAR volunteers can be held accountable, this can happen if one element of criminal responsibility is not fulfilled. Judging from the concept of reasons for eradicating crimes, the actions of SAR volunteers in carrying out rescue actions by providing assistance in accordance with their authority, the SAR volunteers have carried out their duties as referred to in Article 50 of the Criminal Code. In addition, the act of SAR Volunteer in giving aid are the rights arising from the assignment, it is a reason for criminal eraser located at the outside of the Criminal Code.

Article 50 of the Criminal Code stipulates that in principle it is carried out for the public interest not for the personal interest of the perpetrator. In this case, what is meant by laws and regulations are those that apply which give the authority / power to SAR volunteers to carry out search and rescue tasks. SAR Volunteer perform an act although included in a criminal act, because it was done based on the command of the law, therefore it should not be punished. This means there is a greater interest that must take precedence, this greater interest is a justification for SAR volunteers who carry out their duties in accordance with the laws and regulations. Likewise, in carrying out statutory orders, SAR volunteers must do something in a balanced / proportionate manner.

Based from the case that was decided by the Sleman District Court (Case number 05 / PID.SUS / 2011 / PN.SLMN) regarding the possession of sharp weapons, with the defendant Arief Johar Cahyadi Permana (volunteer for SAR Yogyakarta). The brief description of the incident regarding the possession of sharp weapons is as follows that on November 24, 2010 at around 00.10 at Solo Street, precisely in Maguwoharjo, Depok, Sleman, witness Mg.Sutrisno and witness Suprihono Hadi (both members of the Sleman Police) along with members from various functions, including from one drug, one Samapta, one sat Then was carrying out an Ops raid task. Kilat Progo 2010. The target of the raid operation is to eradicate thuggery, including the possession of sharp weapons without a permit. At that time, cars and motorbikes that were passing on Solo Raya were stopped and checked one by one, including the motorbike ridden by the defendant. Then witness Mg. Sutrisno and witness

Suprihono Hadi asked the defendant about the completeness of the motor vehicle documents belonging to the defendant. After the witness Mg.Sutrisno suspicious bag the little black brought by the defendant and immediately check the contents of the bag that were witnessed also by the witness Suprihono Hadi turns in the bag belonged to the defendant found to be 1 (one) folding knife blade types and recognized by the the defendant stated that the penknife belonged to the defendant himself. Then witness Mg. Sutrisno asked the defendant about the completeness of the possession permit of the sharp weapon carried and controlled by the defendant and admitted that he did not have permission from the competent authorities to carry the sharp weapon. Furthermore, the defendant was brought to the Sleman Police for investigation, and the defendant was charged by the Public Prosecutor of committing the Crime of Sharp Weapons. And the process of the case concluded with the judge's decision to release the accused from all charges, which with one consideration of judge is accused is a volunteer member of the SAR, where only certain people, namely those who have a concern and a sense of humanity to the public and without strings attached because it becomes Merapi volunteers are full of various risks and one of the considerations is that the defendant in committing his act was found to have a criminal offense, namely the justification reason outside of the Criminal Code, the panel of judges is of the opinion that the defendant has been proven to have committed an act as the accused but is not a criminal act / onslag van recht vervolging [13].

The judge's decision above can be used as jurisprudence and learning for all search and rescue volunteers, even if there is a similar incident or there is a lawsuit for the actions of volunteer search and aid that are deemed to have caused harm to the victim, or caused the loss of the victim's life , restorative justice can be carried out .

CONCLUSIONS

1. SAR volunteers who have registered as potential SAR Basarnas have participated in search and rescue education and training organized by Basarnas or have been organized by the SAR potential itself with instructors from Basarnas, where Basarnas is the parent or can be called the home of SAR volunteers. That the purpose of SAR training is to increase competence in the field of search and rescue, so that in time, SAR volunteers will participate in search and rescue tasks to minimize the occurrence of victim injuries.
2. SAR Volunteer who participated in the task of search and rescue in accidents, disasters, and/ or condition endangering human need legal protection

through the issuance of government regulations on duties, powers, responsibilities and legal protection SAR Volunteer and / or me reformulation Act Search and Rescue , and for SAR volunteers who injure the victim due to the rescue process by SAR volunteers , such action based on Article 50 of the Criminal Code is a legitimate act because carrying out the order of the law can be considered as not negligence.

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