

## **APPLYING THE PRESUMPTION OF INNOCENCE PRINCIPLE AGAINST SHOOTING ON-SIGHT BY THE POLICE IN POSO REGENCY**

<sup>1</sup>Kaharuddin Syah, <sup>2</sup>Samsuria

<sup>1</sup>*Faculty Of Law University Muhammadiyah of Palu, Indonesia. Email [kaharuddinsyah1969@gmail.com](mailto:kaharuddinsyah1969@gmail.com)*

<sup>2</sup>*Faculty Of Law University Muhammadiyah of Palu, Indonesia. Email [riasamsuria906@gmail.com](mailto:riasamsuria906@gmail.com)*

**Abstract :** The Presumption of innocent principle is one of the principles regulated in criminal procedural law which in general explanation number 3 letter c the Presumption of innocent principle in its implementation is often clashed with a policy of shooting on sight as happened in the case of shooting at the victim's place named Qidam Alfariski Mofance, a resident of the village, Tambarana, Poso Regency, Central Sulawesi Province. The problem that will be discussed in this paper is how to apply this principle to the act of shooting on sight by the Police in the perspective of law enforcement and accountability. The method in this research is empirical normative juridical. Sources and types of data used are primary, secondary and tertiary data. Based on the results of the author's research, it can be seen that the application of the Persumption of innocence principle against the shooting on sight to Qidam Alfariski Mofance is an act of violation of law and human rights if the intent of the crime is not known.

**Keywords:** Presumption of Innocent, Shooting On-Sight,

### **1. Introduction**

Misfortune befell the victim Qidam Alfariski Mofance (20) who had become a corpse as a result of Shooting On Sight carried out by police officers in Poso Regency. The execution of the victim's self-shooting without fault and without a court decision is truly an authoritarian act, violating human rights and a form of arbitrariness. The police are the protectors and protectors of the community. This case stems from the death of Qidam Alfariski Mofance (20), bearing an ID card from Hamlet III, Atoga Village, Motongkao District, Boltim Regency. A gas station employee in Tambarana village, Poso Regency, Thursday April 9, 2020. At that time the deceased was still helping the victim's uncle Asman in his somel, from morning to evening. After helping Asman, Qidam returned to his grandmother's house. Arriving at his grandmother's house, Qidam was forbidden to go out again, due to the outbreak of the coronavirus. However, when reprimanded, the victim still went out and played at his friend's house which was not far from his grandmother's house. Carrying a small bag, after receiving news that the victim had left the house, Asman looked for the victim, at around 19.30 WIT, knowing that the victim was at another family's house, in Tobe Village, he finally decided to pick up the victim at around 22.00. "But he (the victim) was no longer there, because I was afraid that I would pick him up," he explained. The victim still had time to eat at his family's house. Asman said, the victim ran away,

that's where he met the community and was detained. The victim was asked where the victim came from, the victim answered from Tambarana. "Residents called the local Polmas, but those who came from the police at the Poso Pesisir Police, and none from Polmas, there the victim was immediately chased and shot. According to the victim's uncle, the incident occurred at 23:00, he confirmed that the victim had been tortured, because he had been shot, and had lacerations caused by the bayonet, then the victim was dragged for 100 meters. "There are traces of being dragged for more than 100 meters, and there are victims who witnessed the incident, there were many residents around the incident," He asked that this case be investigated legally, because it is clear that this case is purely persecution by officers. "Still, the family wants to investigate who did the abuse," concluded Asman. Meanwhile, the representative of the family, Irsad Amir, also regretted the statement from the Head of Public Relations of the Central Sulawesi Regional Police, who was considered too quick to conclude that the deceased was a member of the MIT group led by Ali Kalora. "Our brother has nothing to do with terrorists or the Ali Kalora group," he said. He also stated that the family strongly objected if the deceased was linked with terrorists or armed civilian groups. Irsad requested that the case of Qidam's death be processed legally. The Head of Public Relations of the Central Sulawesi Police, Kombes Pol Didik Supranoto, confirmed the incident, in which the incident occurred in the Poso Coastal section, when there was information from residents that an unknown person had joined the Poso terrorism group who was still being chased down to a resident's house, so that's where the gunfire took place. "During the pursuit, there was a gunfight and finally the target was shot. It is clear that there was resistance, there was a shootout," he said, Friday (10/4) night. The spokesman for the Central Sulawesi Police Chief, also said that the family must have received or known what happened, because the body was already in the family. "What is clear is that he (OTK) is included in the armed civilian group above, but has not been included in the DPO list," he said.<sup>1</sup>

From this incident, it was confirmed that the police were suspected of committing an irregularity, a violation of humanity or a violation of the principle of criminal law, namely the principle of Presumption of innocence, without prosecuting someone immediately taking action by shooting dead. The decision to shoot on the spot against the Qidam victim has coherently violated the basic principles of law enforcement, namely the principle of Legality, Necessity and the Principle of Proportionality. The principle of legality means that all actions taken by the police must comply with applicable law. The principle of necessity means a situation that requires police officers to take an action, or face an unavoidable or unavoidable event so that they are forced to take actions that limit the suspect's freedom. In the use of violence and firearms, this principle is applied when circumstances cannot be avoided, there is no other way to solve the problem in achieving the expected goals. Furthermore, the principle of proportionality that when

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<sup>1</sup> <https://radarsulteng.id/keluarga-almarhum-qidam-bukan-teroris-dia-ditembak-dan-dianiaya/>

the use of firearms is really in a situation and condition that is very much needed, the principle of proportionality in the use of violence and firearms must be applied when dealing with the circumstances of the suspect's actions and the use of targets/equipment (firearms, knives, etc.). others), Urgent circumstances pose a risk of death (community residents, police officers and suspects), Conditions that are full of danger, threats to life or situations when danger or threats are very close to being implemented, officers must be able to determine the level of use of force to be used. In the Criminal Procedure Code and Law no. 48 of 2009 concerning Judicial Power. Elucidation of KUHAP point 3 letter c: "Every person who is suspected, arrested, detained, prosecuted and or brought before a court hearing, must be considered innocent until a court decision declares his guilt and obtains permanent legal force." Whereas in the Law on Justice, regulated in Article 8 paragraph (1), it states: "Everyone who is suspected, arrested, detained, prosecuted, or brought before a court must be presumed innocent before a court decision declares his guilt and has permanent legal force."

The consequence of adopting the Presumption of innocence principle in the criminal justice process is as a norm or rule that must be obeyed by law enforcement officials. Suspects or accused perpetrators of criminal acts are still human beings who have their rights as human beings and have the same position before the law whose rights must be respected and fulfilled before the law.<sup>2</sup> The Presumption of innocence principle in the criminal justice process is very important as a form of respect for human rights as well as concerning the right to one's life as stated in Article 28 A of the 1945 Constitution.<sup>3</sup>

## **2. Methods**

The type of research used in this paper is normative empirical legal research, namely research conducted by searching various laws and regulations and various literatures related to problems and combined with the results of interviews from practitioners in the field of criminal law. The legal materials used in this research are secondary, primary and tertiary materials. Secondary legal materials include official documents, books, research results of scientific articles published in online mass media. While the primary legal material is a legal material sourced from the results of interviews with relevant sources. The data obtained were then analyzed descriptively qualitatively to answer all the problems in this paper, so that the authors can make the right conclusions.

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<sup>2</sup> Kadri Husin dan budi Rizki Husin, *Sistem Peradilan Pidana di Indonesia*, Bandar Lampung, Lembaga Penelitian Universitas Lampung, 2012, Hal. 82

<sup>3</sup> Sunarto, *Keterpaduan Dalam Penanggulangan kejahatan*, Bandar Lampung, Aura, 2016, Hal.81

### **3. Results And Discussion**

#### **a. Reconceptualization of the Presumption Of Innocence Principles And Shooting On-Sight Actions.**

The legal principle of presumption of innocence, since the 11th century is known in the common law legal system, especially in England, in the Bill of Rights (1648). This legal principle is motivated by individualistic-liberalism thinking that has developed since the mid-19th century. In the criminal justice system (CJS)<sup>4</sup> based on the Common Law legal system (adversarial system/contest system), this legal principle is the main prerequisite for establishing that a process has been conducted honestly, fairly and impartially (due process of law). The Persumption of innocence principle is an inseparable part of the principle of due process of law. Friedman (1994) asserts the principle of "due process" which has been institutionalized in the judicial process since two hundred years ago.<sup>5</sup> In the health and labor sector, if the distribution of the rights of the people or workers is not carried out in accordance with their obligations, it will be referred to as violating the principle of "due process". of law". In fact, this principle has become part of the "American culture (society)", which has undergone rapid changes in accordance with changes in society and international developments that have occurred since the mid-19th century. The logical consequence of the Persumption of innocence principle for a suspect or defendant is given rights by law. not to provide information that would incriminate/harm him in front of the trial (the right of non-self incrimination), and not to provide answers both in the investigation process and in the trial process (the right to remain silent).<sup>6</sup> In the Dutch criminal procedural law (1996), such rights are guaranteed and protected for suspects/defendants in such a way that if the investigator forces a statement from the suspect/defendant, the suspect/defendant is given the right to submit a "review" to the "examining judges" to examine the truth of the "review" of the suspect/defendant.

The formulation of the sentence in Article 8 of the Law on Judicial Power (2004) and the General Elucidation of the Criminal Procedure Code: "Every person who is suspected, arrested, detained, prosecuted, and/or brought before a court must be presumed innocent before a court decision declares his guilt, and has obtained permanent legal force". The formulation of the sentence above has a significantly different meaning from the formulation

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<sup>4</sup> Crime Control", dan "Due Process" yang merupakan model antinomy normative. Selain itu, diakui, model rehabilitatif (Rehabilitative model), dari Griffith(1970); model birokratik (bureaucratic model) dari Reine (1993), dan model resotratif (restorative justice) dari Wright(1996),Fenwick(1997) [dikutip dari Clive Walker dan Keir Steimer, "Miscarriage of Justice; Blackstone Press Ltd, 1999; Hal.40].

<sup>5</sup> Lawrence M.Friedman, "Total Justice"; Russel-Sage Foundation; 1994: Hal. .80-81

<sup>6</sup> <https://www.hukumonline.com/berita/baca/lt4b25f96c2ed41/logika-hukum-asas-praduga-tak-bersalah-reaksi-atas-paradigma-individualistik-br-oleh-romli-atmasasmita-?page=7>

of the Presumption of innocence principle in Article 14 paragraph 2 of the International Covenant on Civil and Political Rights (1966), which is briefly formulated: "Everyone charged with criminal offense shall have the right to be presumed innocent until proved guilty according to law". The Covenant not only asserts, must be presumed innocent until proven by law; In fact, it does not even emphasize the issue of decisions that have permanent legal force, as a tolerance limit a person can be found guilty. To prevent the different legal interpretations above, it seems that a realistic solution has been given by the Covenant, namely by detailing the broad scope of the legal interpretation of "the right to be presumed innocent", which includes eight rights, namely the right to be informed of the type of crime charged, the right to be provided with sufficient time in preparing his defense and communicating with legal counsel; the right to be tried without delay; the right to be tried in the presence of the person concerned; the right to be accompanied by legal counsel if the person concerned is unable; the right to be examined and examine witnesses who contradict the person concerned; the right to obtain an interpreter if necessary; the right not to provide information that is detrimental to himself or the right not to be forced to admit his actions. In line with the Covenant, the Presumption of innocence principle must be interpreted, as long as a suspect/defendant is fully granted legal rights as detailed in the covenant, during that time the protection of the Presumption of innocence principle has been completed.

In responding to the Presumption of innocence principle and the principle of "due process of law", the paradigm that animates the preparation of the French Criminal Procedure Code (Law 2000, dated 31 May) turned out to be more progressive than the Dutch Criminal Procedure Code (Law 1996, dated October 7), and the Indonesian Criminal Procedure Code. (Law Number 8 of 1981). HAP France has strengthened the rights of the suspect/defendant and the rights of the victim at the same time. Article 1. point II of the French HAP confirms as follows: "The judicial authorities watch over the investigation and guarantee of the victim's rights during the whole of the criminal procedure".<sup>7</sup>

Even in Point III, HAP France asserts: "Any person suspected or prosecuted is presumed innocent as long as their guilt has not been established." However, in the next formulation of the French Criminal Procedure Code, it affirms several limitations on the legal principle, as stated: "Measures of constraint that this person can be subjected to are taken by a decision, or under the effective control, of the judicial authority. They must be strictly limited to the needs of the procedure, proportionate to the gravity of the offense reproached and not attack the dignity of the person". Even though they differ gradually, they have the same meaning in substance, especially for someone who has the status of a suspect/defendant. Especially with the emergence of public reactions that are full of stigmatization processes (Braithwaite,

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<sup>7</sup> Catherine Elliot, "The French Criminal Law.; 2001;p.11-12

1989).<sup>8</sup> In connection with this meaning, discourse often arises about the extent to which the concept of the presumption of innocence can be limited so that it can meet the expectations of justice both by the suspect/defendant and by the public without having one party feel that they have been treated unfairly.

The act of shooting On-sight by the police is a repressive task, namely taking action against lawbreakers. The shooting procedure on the spot is clearly regulated in Article 48 of the National Police Chief Number 8 of 2009 explaining the on-sight shooting procedure, in using firearms it is mandatory to:

- a. Officers understand the principles of law enforcement of legality, necessity, and proportionality.
- b. Before using a firearm, the officer must give a clear warning by: :
  1. Identify himself as an officer or member of the Police on duty.
  2. Give a clear and unequivocal verbal warning to the target to stop, raise their hand, or put down their weapon.
  3. Allow sufficient time for warnings to be obeyed.
- c. In a very urgent situation where the delay in time is estimated to result in death or serious injury to the officer or other people around him, the warning as referred to in letter b does not need to be carried out.

Before police officers carry out acts of police violence in the form of shooting on-sight, in line with Article 15 of the National Police Chief Number 1 of 2009 must take warning shots first. The contents of these provisions :

1. In the event that the actions of the perpetrators of crimes or suspects can pose a threat of serious injury or death to members of the Police or the public or can endanger public safety and are not immediate, warning shots can be fired.
2. The warning shots as referred to in paragraph (1) are carried out with safe, reasoned and reasonable considerations to stop the actions of the perpetrators of crimes or suspects, and do not pose a threat or danger to the people around them.
3. Warning shots are only fired into the air or into the ground with extreme caution if other alternatives have been unsuccessful with the following objectives:
  - a. To lower the morale of criminals or suspects who will attack members of the police or the public.
  - b. To give a warning before shooting is directed at the perpetrator or suspect.

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<sup>8</sup> John Braithwaite, di dalam karyanya, "Crime, Shame and Reintegration" (1989) menyebutkan antara lain: "stigmatization is disintegrative shaming in which no effort is made to reconcile the offender with the community. The offender is outcast, her deviance is allowed to become a master status, degradation ceremonies are not followed by ceremonies to decertify deviance"(page 101).

4. Warning shots are not required when dealing with threats that could result in serious injury or imminent death, so warning shots are not possible.

Each member of the National Police must choose the stages of using force in carrying out an action against the danger of threats from criminals or suspects. This stage is also regulated in Article 5 paragraph (1) of the National Police Chief Number 1 of 2009 consisting of:

- a. Stage 1: forces that have a preventive impact.
- b. Stage 2: verbal orders.
- c. Stage 3: soft bare hand control.
- d. Stage 4 : hard bare hand control.
- e. Stage 5 :control of blunt weapons, chemical weapons, including tear gas, chili spray or other tools according to Polri standards.
- f. Stage 6: control by using a firearm or other means to stop the action or behavior of a criminal or suspect that can cause serious injury or death to members of the National Police, or members of the public.

The use of force with the control of a firearm or other means can be carried out if the suspect flees, and the use of a firearm is a last resort to stop the actions of the perpetrator or the suspect. However, in the event that the life of the community or the life of the police apparatus is threatened when dealing with a suspect, the police apparatus may use firearm control with or without an oral warning to stop the actions of the perpetrator or suspect.<sup>9</sup>

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- a. Non-violent measures and means must be sought first;
- b. Violent measures are only applied when absolutely necessary;
- c. Violence is only applied to lawful law enforcement;
- d. No exceptions or excuses are allowed for the use of unlawful force;
- e. The use of force and the application of harsh measures must be carried out in proportion to the objectives in accordance with the law;

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<sup>9</sup> Anton Tabah, Menatap Dengan Mata hati Polisi Indonesia, Jakarta. Gramedia Pustaka. Hal 94

- f. The use of force, weapons or means of application in crackdown must be balanced with the threats faced;
- g. There should be restrictions on the use of weapons or tools in the implementation of the crackdown;
- h. Damage and injuries from use/hard action should be kept to a minimum.

The use of firearms by the police is very strict and the use of firearms should not be carried out by the police, because everything has been regulated by law and the police must be able to account for their actions in accordance with article 47 paragraph of the National Police Chief Number 8 of 2009. Furthermore, Article 47 paragraph (2) of the application of shooting on-sight against a suspect by a Police officer can be used to:

- a. In case of facing extraordinary circumstances;
- b. Defend oneself from the threat of death and/or serious injury;
- c. Defending others against the threat of death and/or serious injury;
- d. Prevent the occurrence of serious crimes or threaten people's lives;
- e. Detain, prevent or stop a person who is or is about to perform an act that is very dangerous to life.
- f. Deal with life-threatening situations, where more lenient measures are not sufficient.

The most important thing in the implementation of the shooting order on the spot must be in accordance with the mechanism for implementing the shooting on-sight and the fixed procedures for the use of firearms by the police, therefore after the implementation of the shooting authority in place, the police officers involved in the exercise of authority must make a report or official report as a form of accountability. institutions and must also be held accountable for their actions before the law. The police are obliged to enforce the law and respect human rights, because if they violate they can be prosecuted through a general court or through a human rights court in accordance with the violations that occurred.

### **b. Shooting On-Sight Action against Qidam Alfariski Mofance is a violation of the Presumption of innocent Principle**

Shooting on-sight against a suspect that is not based on the provisions of the implementation procedure is a form of human rights violation as well as a violation of the legal presumption of innocence principle. Orders from police superiors against members on duty in the field to arrest suspects are generally applied to recidivists and to suspects who endanger human life during their arrest by the police.

The shooting of Qidam was not carried out in a fixed procedure regulated in the regulations of the National Police Chief. From the chronology of the incident, the Qidam victim was never investigated or examined by the Poso Police, let alone became a DPO in a particular case. From the statement from the Central Sulawesi Police, it was stated that the Qidam victim was once a member of the Ali Kalora terrorist group, but Qidam was not made a DPO. On the basis of the police conducting on-the-spot guesses, they must identify themselves as officers on duty, give clear and firm warnings to the target to stop, raise their hands, or put down their weapons and allow sufficient time for warnings to be obeyed.<sup>10</sup> Before a police officer takes a shooting action on the spot against a Qidam victim, the Police must take a warning shot beforehand, in the event that the action of a criminal or suspect can pose a threat of serious injury or death to a member of the Police or the community or can endanger public safety and is not immediate, can made a warning shot.<sup>11</sup> Warning shots are carried out with security considerations, reasoned and reasonable to stop the actions of the perpetrators of crimes or suspects, and do not pose a threat or danger to the people around them. Furthermore, warning shots are only fired into the air or into the ground with extreme caution if other alternatives have been unsuccessful with the aim of lowering the morale of criminals or suspects who are about to attack officers. From a series of procedures that have been established, it appears that the shooting was carried out by the district police. Poso to victims of Qidam From interviews conducted by the author with practitioners of the Study of Consultation and Legal Aid of Unismuh Palu Brother ABDUL MANAN stated

“That the shooting of the victim Qidam Alfariski Mofance is a violation of the presumption of innocence principle. The Qidam victim was immediately shot on the spot without knowing what his mistake was. The position of the victim at that time did not fight against the officers who would arrest him....the victim was also in a position not carrying anything or carrying dangerous goods, be it weapons or weapons. So that under these conditions there is actually no need for any shooting action taken by the officers.<sup>12</sup>

Shooting on-sight is a part of police discretion carried out by the police, especially the detective unit that functions as an investigator. Police officers who carry out this function are more likely to deal directly with criminal suspects in the field than other police functions.<sup>13</sup> When dealing directly with the suspect, it does not rule out the possibility of sudden resistance from the suspect. In a situation like this, the police are required to take immediate action to prevent the suspect from escaping or injuring civilians at the scene or endangering the lives of the police officers concerned. A police officer who is carrying out his duties is required to have a lot of

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<sup>10</sup> Lihat Pasal 48 Perkapolri Nomor 8 Tahun 2009 Tentang Implementasi Prinsip Dan Standar Hak Asasi Manusia Dalam Penyelenggaraan Tugas kepolisian.

<sup>11</sup> Lihat Pasal 15 Perkapolri Nomo.1 Tahun 2009 tentang Tentang Penggunaan Kekuatan Dalam Tindakan Kepolisian

<sup>12</sup> Wawancara Penulis Dengan Advokad Abdul manan, Tanggal 23 juli 2021, Jam. 16.00

<sup>13</sup> DPM. Sitompul. 1985. *Hukum Kepolisian di Indonesia (Suatu Bunga Rampai)*. Bandung: Tarsito, hal. 103

knowledge and experience so that there are no police officers who commit wrong actions.<sup>14</sup> Based on this, it can be seen that the police detective unit is more vulnerable to using the shooting authority on the spot against suspects.

Every time they carry out their duties and functions, the police detective unit is required to act in accordance with applicable principles and uphold human values. These principles include:<sup>15</sup>

1. Presumption of innocent principle  
This means that every person who is suspected, arrested, detained, prosecuted and/or brought before a court hearing must be presumed innocent until a court decision declares his guilt and obtains permanent legal force.
2. The Principle of Equality in Public (Equality before the law)  
This principle guarantees that everyone is treated equally before the law without distinction of race, religion, moral position, and gender. The Police in protecting, protecting and serving the community must not provide different services.
3. The Principle of the Right to Provide Legal Aid/Assistance

This means that every person who is involved in a criminal act must be given the opportunity to obtain legal assistance which is solely given to carry out the interests of defending himself, from the moment of arrest and/or detention.

For certain situations when dealing with a suspect in a crime, the police are allowed to shoot on the spot with reference to UN resolution No. 34/168 concerning the principle of the use of weapons for law enforcement officers, namely:

- a. The principle of legality means that all actions must be in accordance with applicable law,
- b. The principle of necessity is a condition that requires one to take an action or face an unavoidable or unavoidable event so that one is forced to take an action that limits one's freedom, and
- c. The principle of proportionality is the use of firearms in accordance with, and based on the objectives achieved and not exceeding the limit. As for the technical procedure where there must be 3 warning shots directed upwards then if the suspect fights or runs away then he is shot with the aim of immobilizing, not to kill him.

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<sup>14</sup> Ibid, Hal. 108

<sup>15</sup> Ibid, Hal. 135

If these principles and procedures are not carried out, it will fall into the category of abuse of authority and excessive use of force, thus including human rights violations.

**c. Accountability to the Police Who Take Actions Shooting On-Sight Which Is Not In Accordance with Procedures.**

Police officers who shoot at places not in accordance with indirect procedures can be punished. The police officers must first be examined by the competent authorities according to the applicable regulations, to find out the location of the police officers' faults so that the sentence imposed on the police officers is the fairest decision. Article 17 Government Regulation Number 2 Year 2003 Paragraph (1) :

"Before imposing a disciplinary sentence, Ankum must first examine the members of the Police who are suspected of committing a disciplinary violation." paragraph (2) :

The officials authorized to examine disciplinary violations are:

- a. The superior who has the right to punish (Ankum),
- b. Direct supervisor,
- c. indirect supervisor,
- d. Provost Police of the Republic of Indonesia, or
- e. Other officials appointed by Ankum.

The Police disciplinary process gives rise to a serious administrative action that has a significant impact on the security and career of an officer. If the police make a mistake in imposing disciplinary action against the police officers, the trust of civil society in the police agency will decrease and they will no longer have confidence in the law in upholding justice. Therefore, it is important for Police agencies to have a well-designed, objective, fair and well-designed disciplinary system that is carefully structured and clearly stated in formal policies and procedures.<sup>16</sup>

Disciplinary sanctions usually depend on the seriousness of the situation and the circumstances surrounding the violation of these rules, sanctions that may be imposed include dismissal, demotion, suspension from duty, placement on probation, transfer of duties, training, warning, or mentoring and supervision.<sup>17</sup>

**1. Dismissal**

Dismissal is a total severance from the Police service including salary, benefits and mutual responsibilities between the officer and the Police. This is the toughest decision in the administrative examination process and in subsequent examinations.

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<sup>16</sup> Ibid, Hal. 523

<sup>17</sup> Ibid, Hal 542

## 2. Demotion

Demotion is a reduction from a formally recognized organizational position that determines authority over other members of the organization. As a punishment, demotion is a serious sanction, because it results in reduced income, reduced status, and accountability in career development.

## 3. Suspension Penalty

Suspension is a punishment if a police officer is released from duty without pay for a certain period of time which is usually not more than four weeks. During the suspension period the officer does not have the authority of a police officer and in many jurisdictions cannot even work in an “off-duty” job that may require police authority.

## 4. Trial Penalty

Probation is a punishment in which the officer remains on duty, receives salary and benefits, but his status changes due to alleged misconduct which is later accepted, may result in a suspension or dismissal.

## 5. Work transfer

Usually a transfer of duty sanction is imposed in cases where a police officer is involved in abuses related to his current control. The transfer of duties can be in the form of withdrawing a police officer from his position from the function he carries out to another function, or moving the location of the task from one city to another.

## 6. Additional Training

If the violation of rules or procedures by a police officer is the result of abuse of office, additional training sanctions are imposed on the subject matter related to the abuse.

## 7. Warning

A warning is a punishment when an officer is officially warned for his behavior. The warning is in written form, usually from a commander (head of the unit), and a copy is included in the personnel file of the police officer who received the warning.

## 8. Guidance and Supervision

Sanctions are in the form of dialogue with the police regarding issues that are usually related to appearance and procedural factors. However, this sanction is a disciplinary sanction that is often used.

Police officers who shoot at places not in accordance with procedures may be given criminal sanctions as a form of accountability for the tasks they carry out. Criminal articles that can be imposed on police officers who shoot in places that are not in accordance with procedures are articles that regulate crimes against life, including:<sup>18</sup>

1. Article 338 of the Criminal Code

"Whoever deliberately takes the life of another, is threatened with murder with a maximum imprisonment of fifteen years"

2. Article 359 of the Criminal Code

"Whoever because of his mistake (negligence) causes another person to die, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year."

3. Article 360 of the Criminal Code

Paragraph (1): "Whoever because of his mistake (negligence) causes another person to be seriously injured, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year."

Paragraph (2): "Whoever because of his mistake (negligence) causes another person to be injured in such a way as to cause illness or an obstacle to carrying out work or work for a certain period of time, is threatened with a maximum imprisonment of six years."

Based on the provisions contained in Article 52 of the Criminal Code, for a civil servant who violates his obligations in his position because he has committed an act that may be punished, the sentence is increased by one third of the main punishment. This provision certainly applies to a police officer because the police are part of the civil service as regulated in Article 92 of the Criminal Code.

#### **4. Conclusion**

That the shooting on-sight by the police in Poso district which caused a victim named Qidam Alfariski Mofance was a violation of the presumption of innocent principle. The victim was immediately shot on the spot without knowing what his mistake was and violating Article 48 of the National Police Chief Number 8 of 2009 concerning the basic principles regarding the Use of Violence and Firearms by Law Enforcement. Every police officer who shoots in a place that is not in accordance with the procedure may be subject to administrative sanctions and disciplinary action from the Police institution, but the police officer may also be subject to criminal sanctions.

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<sup>18</sup> DPM. Sitompul *Op.Cit.*, hal.135

## 5. Suggestions

The need for a law that strictly regulates the shooting procedure at a place that is considered too easy to make a decision to shoot on the spot. Efforts are needed to minimize shooting on-sight, starting with awareness of the tasks of authority given to police officers. The police must understand and understand the impact of shooting victims in that place, comprehensive guidance can support every prospective member of the police to have good human resources.

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