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Criminal Liability Against Police Negligence for the Shooting of Tear Gas in Kanjuruhan Causing Victims

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Abstract. Based on Roscoe Pound's opinion, the notion of criminal responsibility is a person's obligation to pay retribution that will be received by the perpetrator from someone who has been harmed (the victim). Criminal liability is a person's responsibility for the crimes he commits. The purpose of criminal liability is to determine whether a person who has committed a crime can be held accountable or not. This article will discuss criminal liability for police negligence for the act of shooting tear gas at the Kanjuruhan stadium, where the negligence of the police was due to a lack of caution and carelessness in acting using force in police actions. Namely not being careful and acting without considering the risks in using chemical weapons in the form of tear gas. The use of tear gas should be guided by the principles stipulated in the Police Chief Regulation No. 1 of 2009 concerning the Use of Force in Police Actions. However, in practice the police were negligent and ignored the risks of using tear gas at the Kanjuruhan stadium. The form of the mistake is acting without considering the dangers and threats, and not predicting the possible consequences that will occur. Because his negligence in using tear gas at the Kanjuruhan Stadium had a detrimental impact on other people and on the Indonesian National Police, namely causing deaths and injuries. Due to the Kanjuruhan incident, many of the victims' families have asked for justice for the police's actions in the tear gas shooting at the Kanjuruhan stadium, so that the police actions in the tear gas shooting are considered to be the triggers for the deaths and injuries that need to be held criminally accountable.

1 Introduction

In a life, it is normal if humans are not free from mistakes and every mistake can be held accountable. A mistake in committing a criminal act can be criminally responsible. The principle of criminal responsibility is based on the principle of guilt (geen straf zonder schuld) which explicitly states, that "there is no crime without fault", meaning that a person can only be held criminally responsible if he has committed an act that violates the law. If there is no mistake in that person, then that person cannot be held criminally responsible.[1]

In legal theory, there are two types of mistakes in committing a crime, namely intention (dolus) and negligence or negligence (culpa). One form of error that arises from human actions is negligence (culpa). Negligence is a form of error that arises as a result of an actor's actions that do not meet the standards of behavior regulated by law.[2] Negligence or negligence itself means a lack of caution in looking ahead which causes errors or the consequences of such negligence.

According to D. Schaffmeister, N Keijze and E.PH. Sutorius, the scheme of negligence or culpa namely:

1. 1. Culpa lata that is conscious (culpa conscious), namely conscious negligence, for example reckless, negligent, indifferent. Where the perpetrator is considered aware of the risk, but hopes that bad consequences will not occur.
2. 2. Unconscious culpa lata (culpa unconscious), namely unconscious negligence, for example the perpetrator lacks thought, and is unaware of the situation and conditions at hand. Where the perpetrator should be aware of the risk, but is not (ignoring the risk that will occur).[2]

There are two types of culpa, namely gross errors (culpa lata) and mild errors (culpa levissima). The benchmarks for gross guilt or culpa lata are: contrary to law; the consequences can be imagined; consequences can be avoided; and his actions can be blamed. It is said to be culpa lata if there is serious carelessness and great carelessness.

Associated with negligence, the author raises legal issues related to the shooting of tear gas at the Kanjuruhan Stadium, namely after the football

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match between Arema FC and Persebaya which took place on October 1, 2022 at the Kanjuruhan stadium in Malang. Where the information resulted in 135 people died as a result of the riots at the Kanjuruhan Stadium.[3] And what caught the public's attention even more was that the shooting of tear gas was carried out by the police, and the shooting of tear gas was considered to be the trigger for the riots in the stadium, which in the end resulted in many victims who were injured and died during the Kanjuruhan tragedy. The position of the police in Indonesian law is one of the law enforcement officers, where their behavior and actions are used as an example and reflection for the public not to do what has been prohibited by law or other laws and regulations.

The police, who are essentially expected to be able to protect public order and peace, with the shooting of tear gas at the Kanjuruhan stadium tarnished the good image of the Indonesian police because of police negligence which resulted in the deaths and injuries of many supporters. This of course has an impact on the loss of public confidence in the credibility of the police in providing guarantees of legal certainty or providing legal protection to the community.

With the Kanjuruhan tragedy that has killed hundreds of victims, many people have expressed their aspirations to ask for justice for the shooting of tear gas by the police. Because the Kanjuruhan tragedy is an event that has attracted public attention, many media and legal observers have discussed the debate about the use of tear gas by the police being prohibited or permitted. In this case there are two regulations governing the use of tear gas, namely FIFA regulation article 19 (b) which states that the use of tear gas is prohibited from being used in stadiums. Meanwhile, Article 5 number (1) letter (e) of the Chief of Police Regulation No. 1 of 2009 concerning the use of force in police action that the use of tear gas is permitted by the police.

Due to accountability for the negligence of the police who fired tear gas in Kanjuruhan which caused injuries and deaths, and there are two regulations governing the permissibility of using tear gas. Where the use of tear gas refers to two regulations, namely Perkapolri No. 1 of 2009 and PSSI Safety and Security Regulations Edition 202, which are specific to the use of police force during football matches.

The confusion over which regulation is used as a guideline for using force in police actions at the stadium has sparked debate among legal observers. In its responsibility to apply the law of the game or use the rule of the law. Because the use of tear gas was allegedly carried out by mistake so that it had an impact that was prohibited by law, in the form of injuries and deaths, so that his actions should be held accountable.

Even though the police as a law enforcement apparatus has the right of discretion, if the actions they take can be proven to be the cause of the loss of a person's life due to the negligence of the police, then criminal sanctions can still be applied. Thus in this research the author will discuss whether the actions of the police who fired tear gas can be punished, and how the criminal responsibility is. Therefore, the writer is interested in researching this thesis entitled "Criminal Responsibility Against Police Negligence for the Shooting of Tear Gas in Kanjuruhan that Caused Victims".

Starting from the background of the problems described above, two formulations of the problem can be put forward, namely: first, is the shooting of tear gas by the police which causes casualties a crime? Second, what about criminal responsibility for police negligence for the action of shooting tear gas in Kanjuruhan which caused victims?

This article uses normative legal research which examines the application of rules or norms in positive law. The normative legal research method is a scientific research procedure to find the truth based on the scientific logic of law from a normative perspective. Normative legal research essentially examines laws that are conceptualized as norms or rules that apply in society, and become a reference for everyone's behavior.[4]

The approach used in this article is the statute approach. The sources of legal materials used are primary and secondary legal materials. Where the primary legal material consists of the Criminal Code; Police Chief No. 1 of 2009; Police Chief No. 8 of 2010; UU no. 2 of 2002 concerning the Indonesian Police; and other related laws. Meanwhile, secondary legal materials come from legal books, legal journals, doctrines, legal research results, and legal dictionaries. The legal material analysis method used in this study is an analytical method that is qualitative in nature.

2 Discussion

Use of Tear Gas by the Police Causing Victims

The formulation of not a crime means the opposite is a crime. According to Prof Moeljatno, what is meant by a crime is an act that is prohibited by law or prohibited by law and is accompanied by certain criminal sanctions, which apply to anyone who violates these rules.[5] Conversely, what is meant by not a crime is an act that is not prohibited by law or law, and is not subject to criminal penalties for anyone who commits the act. Or in other words, non-criminal acts are actions that do not violate the law, or carry out actions in accordance with statutory orders, so that the maker is not subject to criminal sanctions.

It is said to be a crime if it fulfills the elements as stated by expert Simons [6] regarding the elements of a crime:

- a. There is a criminal act;
- b. Threatened with a crime;
- c. Is unlawful;
- d. Done by mistake;
- e. Done by a person who can be responsible.

Based on the elements of a crime as safe as Simons' opinion, it can be determined otherwise that it is not a crime if it does not fulfill the elements of a crime as mentioned above, namely: Tidak adanya perbuatan pidana;

- a. Not threatened with criminal sanctions;
- b. Not against the law;
- c. The act was not committed with fault;
- d. The perpetrator does not have the ability to be responsible.

In connection with the police's mistake in using tear gas in the Kanjuruhan incident, the act referred to in this case is that the use of tear gas by the police is not a crime. Thus there are three possible answers that the act of using open tear gas is a crime if:

- 1) The use of tear gas is not a crime if the use is not excessive and is carried out in accordance with the standards set out in Perkapolri Number 1 of 2009.
- 2) The use of tear gas is not a crime if its use has been carried out in accordance with the standards as stated in Perkapolri Number 1 of 2009. However, if it ends up causing harm to other people, then it does not rule out the possibility that the perpetrator may be prosecuted in a civil manner or receive a code of ethics sanction, or can also be subject to administrative sanctions for causing harm to others.
- 3) The use of tear gas that violates procedures but does not cause harm to other people or does not cause any victims, is not a crime. Because this action only violates the Police Chief Law Number 1 of 2009, and there is no threat of criminal sanctions. So that the imposition of sanctions is not criminal sanctions but in the form of disciplinary punishment for violating police disciplinary regulations, as stated in Article 4 letter d and f of Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Police Members, which essentially means that if the implementation of police duties is not carried out as well as possible then this will result in a result that is detrimental to other people or institutions is subject to disciplinary sanctions.

Thus the act of using tear gas is not a crime if:

- 1) The use of tear gas is not prohibited by law;

- 2) The use of tear gas is not threatened with criminal sanctions;
- 3) The use of tear gas in accordance with the standards as ordered by Perkapolri Number 1 of 2009;
- 4) Implementation of the use of tear gas that does not conflict with Perkapolri Number 1 of 2009.
- 5) Do not cause loss for others.

In principle, the use of tear gas in police actions is allowed based on Article 5 paragraph (1) of Perkapolri Number 1 of 2009. Tear gas is allowed to be used in police actions when the Police are facing danger or threats that are very urgent and emergency. The use of tear gas can turn into a criminal act if the act fulfills the formulation of the criminal act.

It is more clear to know that an act can be said to be a criminal act if the act fulfills the elements of a criminal act as presented by Prof. Moeljatno who gave the summary of the criminal act as follows: [7]

- a) a) The existence of human actions, in the form of acts, ie active actions or positive actions. And omission is a passive act or a negative act, which is an act that allows a criminal act to occur;
- b) b) The act fulfills the formulation in the law;
- c) c) The act is against the law. It is said to be against the law when the act is contrary to the rules in force, ie in relation to prohibitions or orders set out in the criminal law.

Based on the opinion of Prof. Moeljatno above that an act is said to be a criminal act if the act fulfills the elements of a criminal act as found by Prof. Moeljatno above. The explanation related to the elements of the criminal act fulfilled by the perpetrator (Police) in the event of the tear gas shooting in Kanjuruhan will be described as follows:

There is Human Action. The human actions referred to are active actions and passive actions. Active action is the perpetrator deciding to do something, while passive action is the perpetrator deciding not to do it.[2]. An example of an active act is Article 362 of the Criminal Code, where the perpetrator commits a criminal act in the form of stealing belonging to another person with the intention of possessing the item in a way that violates the law. While an example of a passive act is a perpetrator who leaves another person in a state of mortal danger, when in fact the perpetrator is capable of providing help to another person, such an example as stipulated in Article 351 of the Criminal Code. In this case, the element of human action in the event of Kanjuruhan is in the form of active action. The act in question was the firing of tear gas at the Kanjuruhan stadium which was

careless and did not foresee the possibility of unwanted consequences. Because of his lack of caution in the firing of tear gas at the Kanjuruhan event, the supporters in the stadium panicked. The reason for the panic was due to the impact of the tear gas firing that resulted in injuries and deaths.

The act fulfills the formulation in the law. A person's act can be said to be a criminal act when the act is threatened with a criminal act. As previously explained that the use of tear gas is allowed in police actions. However, the use of tear gas can also turn into a criminal act. In this case, it is related to the incident of tear gas firing by the police at the Kanjuruhan incident which is suspected to be the main cause of the injuries and deaths. Actions by the police who fired tear gas carelessly and unexpectedly resulted in consequences prohibited by law. The firing of tear gas at the Kanjuruhan stadium which did not consider the exact situation and conditions resulted in losses for others. The act was due to police negligence in the use of tear gas at the Kanjuruhan stadium resulting in injuries and deaths. The police action has fulfilled the formulation of Article 359 of the Criminal Code and Article 350 paragraphs (1) and (2) of the Criminal Code.

The act is against the law.

According to Simons, it is said to be against the law when the act is "contrary to the applicable law".[2] in the category of acts against the law as follows:

- 1) Deliberate acts against the law;
- 2) Acts against the law due to negligence;
- 3) Acts against the law without any fault (without elements of intentionality or negligence).[2]

Based on the factual findings of the TGIPF Kanjuruhan, Komnas HAM stated that there are actually no dangerous conditions for the security personnel (Brimob) who are involved in firing tear gas.[8] In addition, the massive and continuous firing of tear gas is considered an excessive and excessive action.

The act of using tear gas in the Kanjuruhan incident is considered against the principle of general obligation. Because his discretionary actions do not guarantee public safety and are unreasonable because they are done without serious consideration. In the end, the act of using tear gas in the Kanjuruhan incident, which is considered to be the cause of the injury and death, is judged to be against the law. Acts against the law in question are against the law as stated in articles 359 and 360 of the Criminal Code.

In the event of Kanjuruhan fulfills the element of resistance, namely against formal law and against material law. Here the perpetrator (Police) is considered against the formal and material law. Seen from the point of view of breaking the formal law, that is, the perpetrator has

broken the law as stipulated in articles 359 and 360 of the Criminal Code. While going against the material law is not just breaking the law, because the law is not just the law. But it also covers laws that are not laws, such as against the rules that apply in society.[2] In this case, the perpetrator (police) is also considered to have violated the material law, which is to violate unwritten norms such as: neglecting precision in acting, not creating security, and not caring about public safety.

Criminal Liability Against Police Negligence for Tear Gas Firing Actions That Cause Victims Elements of a Criminal Act

The form of the criminal act in the Kanjuruhan incident is the application of excessive discretionary actions and not paying attention to the principles as set out in Article 3 of the Perkapolri Number 1 of 2009. Before deciding to use tear gas in the stadium, the situation and conditions faced should be considered. The policy concerned should think long and hard about the possibility of unwanted consequences. The use of tear gas in the stadium would obviously pose a dangerous risk, but that was not considered. With the use of tear gas in the stadium will trigger panic in the audience and may create other unwanted risks.

The actions of the police in the Kanjuruhan incident match the formulation of the law as set out in Article 359 and Article 360 of the Criminal Code. Where the yardstick for a person to be held accountable is based on the consequences that are prohibited by law, namely in the form of injuries and deaths. So that the act of shooting tear gas that is suspected of negligence caused the impact of injuries and deaths. This is a criminal act that matches the formulation of Article 359 and Article 360 of the Criminal Code. And what is prohibited in articles 359 and 360 of the Criminal Code is an act done with negligence that results in injury and death. And the conclusion of this article is in accordance with the actions of the Police who fired tear gas in Kanjuruhan, resulting in casualties and deaths.

The elements of Article 359 and Article 360 of the Criminal Code are:

Element of Whose Goods

The element of "whose property" is every person as a legal subject who can be held legally responsible for the actions he has committed.[9] To determine the meaning of "whose goods" means to point to the perpetrator of a criminal act that is currently being suspected under the related article. In this case, the element of "whose goods" is meant is the policy. Where the police as a legal subject in its existence is a "human being" who has legal rights and obligations.[10]

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The element "because of his fault or his forgetfulness" Article 359 of the Criminal Code

The element "because of his fault/forgetfulness" is a lack of care, negligence, forgetfulness, negligence, or very lack of attention.[11] The wording of the element "due to fault or negligence" in article 359 of the Criminal Code shows that negligence means an unintentional action by the perpetrator that results in the death of someone, and the act is not actually realized by the perpetrator. Because of his negligence in acting and resulting in the death of someone, so the perpetrator can be threatened with criminal charges.

Based on decision number 11/pid.b/2023/Pn.Sby concluded that in general, under normal conditions, other parties who are in the same position as the perpetrator (Police), of course should easily guess or predict the level further that will be done as an effort to avoid the possibility of unwanted consequences. However, the perpetrator actually ignores the possibility of unwanted consequences that may occur.[12] Even though the perpetrators should have been able to guess beforehand, that the firing of tear gas in Kanjuruhan stadium where there are thousands of people can cause panic. With that panic will trigger thousands of people to save themselves avoiding tear gas. Unfortunately, the condition of the stadium's exit is not ideal due to the lack of coordination of the security personnel, which ultimately causes an unwanted impact. This is certainly reasonable and can easily be expected and predicted, that the firing of tear gas in the stadium will pose a dangerous risk. But the reality is that the perpetrators neglect to guess so that eventually the unwanted consequences occur. Thus, this is where the perpetrator is judged to have committed negligence.

The element of "causing another person to die" Article 359

According to article 359 of the Criminal Code, the element "causing another person to die", is an element resulting from an act done due to negligence. Because the act of firing tear gas at the Kanjuruhan stadium that was not calculated and did not anticipate the possible consequences had an impact in the form of people dying.

Based on decision No. 11/pid.b/2023/Pn.Sby that the negligence of the Police in firing tear gas at the Kanjuruhan stadium resulted in the death of 135 people as stated in the indictment.[12]

Element "causing serious injury" Article 360 paragraph (1)

That what is meant by a serious wound is a wound that is not possible to heal completely or a wound that may cause death. Based on the decision No. 11/Pid.B/2023/Pn.Sby stated that due to the

negligence of the police in firing tear gas at Kanjuruhan stadium, 24 people were seriously injured.[12]

The facts of serious injuries suffered by Kanjuruhan's victims include the following: burns on body parts; pulmonary hemorrhage; abrasions on the earlobe; bruises on the head; swelling of the brain due to blunt objects. Where the severe wound is predicted to cause death.

The element of "causing injury to another person in such a way as to result in temporary illness or temporary inability to perform work or position" Article 360 paragraph (2)

What is meant by "injury in such a way as to cause temporary pain" is a temporary wound which is likely to be able to heal again and does not pose a threat of death.[13] Based on the decision Number 11/Pid.B/2023/Pn.Sby stated that because of the negligence of the perpetrator (Police) who fired tear gas at the Kanjuruhan stadium had an impact in the form of victims who were injured in such a way that resulted in temporary illness or being unable to carry out their work temporarily as many as 623 people.[12]

Responsible Ability

The Criminal Code does not explain directly the definition of responsible capacity, but Article 44 of the Criminal Code explains "no one can be punished for an act which cannot be held accountable to him", provided that his soul is disabled, his mind is imperfect or he has a change of mind. A person can be held criminally accountable if the actions he takes are unlawful. In order for someone to be able to be said to be responsible, they must fulfill the following elements:

- 1) The ability of the soul, including: (1) Being able to realize the nature and actions; (2) Can determine the will for the action whether the action will be carried out or not; (3) Can know if the act committed is disgraceful.
- 2) The state of the soul, including: (1) the soul is not disturbed by continuous or temporary illness; (2) no defects in growth; (3) undisturbed by shock, hypnotism, anger, and unconscious influence.

Based on information from CNN Indonesia that from the police institutions involved in the Kanjuruhan incident there were 3 (three) suspects from members of the National Police, where the names are:[14]

- (1) Kompol Wahyu Setyo Pranoto, (Head of Ops Polres Malang), is suspected of being a person who knows about the FIFA regulations that prohibit the use of tear gas, but does not prohibit and does not

prevent his men from using tear gas at the stadium.

- (2) AKP Hasdarmawan (Danki 1 Brimob Polda East Java), the person who ordered the tear gas to be fired at the stadium.
- (3) AKP Bambang Sidik Achmadi (Kasat Samapta Malang Police), the person who gave the order to fire tear gas at the audience.

Where a police officer is certainly considered a person who is capable of being responsible. As we know, to become a member of the police, one must be physically perfect and not have a mental disability or disease. Thus the police who were accused of committing a crime in the Kanjuruhan event are considered capable of being responsible and criminally accountable.

THERE WAS AN ERROR

The element of error is the most central element in terms of criminal liability, there are two types of errors in criminal law, namely intentional (*dolus*) and negligence (*culpa*). Mistakes are deemed to exist, if in that person intentionally or negligently commits an act which causes an effect prohibited by law or criminal law and is carried out in a state of being able to be responsible.[15]

In the case of the shooting of tear gas at the Kanjuruhan stadium resulting in injuries and deaths, it is suspected that it was done by mistake. Whereas the error referred to is negligence/omission, especially not expecting enough about the possible consequences that could occur. In the case of the shooting of tear gas at the Kanjuruhan stadium resulting in injuries and deaths, it is suspected that it was done by mistake. Whereas the error referred to is negligence/omission, especially not expecting enough about the possible consequences that could occur.

In fact, as a police officer who is considered competent and knows the rules, it is appropriate to make assumptions about the actions he has committed. Logically firing tear gas in a stadium where there are thousands of people of various kinds, will definitely cause panic which can trigger everyone to scatter to save themselves from the tear gas shots. The panic, of course, also triggered a jostling condition to get out of the stadium.

Unfortunately, due to the lack of proper coordination between security personnel, the condition of the stadium doors was closed and it was not feasible to access the thousands of people who panicked due to tear gas shots. So that this caused many people to shortness of breath, keos, trampled, and led to injuries and deaths. The existence of injured and dead victims was due to the negligence of the Police in using tear gas at the stadium and not foreseeing the consequences and risks.

There is no justification for abolishing punishment

There is no justification for abolishing punishment as an element of a person's responsibility for criminal acts that have been committed, or in other words, it is commonly called criminal responsibility. In fact, the Criminal Code does not mention the term justifying reasons or reasons for forgiving, but the Criminal Code only mentions the reasons for the elimination of crimes. Justification reasons are reasons that eliminate the unlawful nature of actions, so that what is done by the perpetrator becomes an act that is justified.[16] According to Roeslan Saleh, that there is no reason for justification which is the ability to be responsible, the form of will which is intentional or negligent, the mistake is not erased or there is no excuse for forgiveness, all of which are included in the notion of error (*schuld*).[2]

The justification reasons can also be referred to as reasons for abolishing a crime, in criminal law there are two parts, namely:

- 1) Elimination of crimes in general, which applies to all formulations of offenses referred to in articles 44, 48-51 of the Criminal Code.
- 2) Elimination of crimes in particular applies to the formulation of offenses in certain articles, namely Articles 122, 221 paragraph (2), 261, 310, and Article 367 paragraph (1) of the Criminal Code.[17]

There are various justification reasons in the form of: (1) Forced defense (article 49 paragraph 1 of the Criminal Code); (2) Carry out law orders (article 50 of the Criminal Code); (3) or Carry out the order of office (article 51 paragraph 1).

In the Kanjuruhan incident, the person who fired the tear gas was a member of the Mobile Brigade under superior orders. Where the tear gas shooting resulted in injuries and deaths at the Kanjuruhan stadium due to lack of caution and lack of suspicion of the perpetrators. However, Brimob members cannot be held accountable because of justification reasons, namely because of Article 51 paragraph (1) of the Criminal Code. So that those who should be responsible are the superiors/leaders who gave the order to shoot the tear gas. So automatically the supervisor is responsible because no one other than him can be accounted for. This is in accordance with Article 51 paragraph (1), that the superior is responsible. So there is no justification for him (the perpetrator who gave the order to shoot the tear gas).

3 Conclusion

That tear gas is a form of the stages of using force in police action in stage 5 (five) in the form of chemical gas weapons. The use of tear gas is

permitted in police actions based on Article 5 paragraph (1) of the Police Chief Regulation No. 1 of 2009. The use of tear gas is a form of exercising the police's discretionary rights. The act of using tear gas can be divided into two categories, namely the use of tear gas which is not a crime and the use of tear gas which is a crime:

- The use of tear gas which is not a crime if the use is in accordance with the standards as stipulated in Perkapolri Number 1 of 2009; Observing the principles of the use of police force; expected use of the risks and impacts; adapted to the situation and the hazards encountered. If the police are guided by the standards for the use of tear gas then it doesn't have a detrimental impact on other people, it doesn't meet the elements of a crime.
- The use of tear gas is a crime if the use of it is deliberately intended to endanger the lives of other people, the use of which is not guided by the Police Chief Regulation No. 1 of 2009, is carried out arbitrarily without considering the risks and impacts that will arise. If the use of tear gas is not in accordance with the procedure, it means that it is considered an unlawful act. If its use causes an impact that is prohibited by law (injured and deceased victims), and fulfills the formulation of a criminal offense in the law, then the act of using tear gas turns into a criminal offense.

Whereas the criminal acts committed by the police during the Kanjuruhan incident have fulfilled the elements of criminal responsibility, namely they have been deemed to have fulfilled:

- a. Criminal acts according to Articles 359 and 360 of the Criminal Code.
- b. Fulfills the element of ability to be responsible, that as a police officer it is clear that he is considered a person capable of being responsible because he is not physically or psychologically disabled. As we know, the requirements to become a police officer must meet ideal physical standards, be physically and mentally healthy. So it should be considered capable of being responsible.
- c. Fulfills the elements of an error in the form of negligence/omission.
- d. Fulfills the element of no justification which abolishes punishment. Whereas based on Article 51 paragraph (1) of the Criminal Code, those who are entitled to be responsible for the act of shooting tear gas at the Kanjuruhan stadium are superiors/leaders/commanders who give orders. This meant that the subordinates (Brimob) who carried out the tear gas shooting did not need to be held

responsible because the criminal responsibility shifted to their superiors/leaders. Thus the superiors/leaders who gave the order to shoot tear gas found no justification for abolishing punishment. So that superiors/leaders who give orders to shoot tear gas should be held criminally accountable.

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