

Sar Officers Are Free Of All Legal Liability In Certain Circumstances

Muhamad Abdullah

abdullah_hitamputih@yahoo.co.id

Doctoral Program of Legal studies, Sultan Agung Islamic University, Semarang

Abstract

Accidents, disasters and human endangerment conditions cannot be predicted when and where they will occur, the consequences of their occurrence are so large and complex, of course, they will have physical and psychological impacts on victims, victims' families and on rescuers who carry out search and rescue. Another impact of this condition can also deplete natural resources, human capital, and social capital, even institutional capital in an effort to provide protection for victims, victims' families, and especially to rescuers. Moreover, handling victims of accidents, disasters and human conditions requires certain skills. In certain limitations, the actions taken by rescuers do not rule out an adverse effect on the victim and must be held accountable by the rescuer. Based on the background of various events and their impact, the rescuers realized the need for legal protection in the form of a more concrete (penal policy) in the form of immunity rights for rescuers in carrying out their duties.

Keywords: Rescuer, Legal Protection, Legal Liability, Immunity Rights

Introduction

Basically, search and rescue activities are carried out by countries around the world in accordance with international conventions, especially for countries that have ratified international agreements. The 1974 International Safety of Life at Sea (SOLAS) Convention was ratified by the Indonesian government on 17 December 1980. Furthermore, through Law Number 17 of 1985, the Government of Indonesia has ratified the United Nations Convention on the Law of the Sea. (UNCLOS). The Indonesian government has also ratified the maritime search and rescue convention in 1979 by issuing Presidential Regulation No. 30/2012 about Maritime Search and Aid.¹

Search and rescue services are part of national goals, because they are one of the human rights that must be considered and obtained by everyone equally, without any exceptions. As Article 28A of the 1945 Constitution of the Republic of Indonesia clearly emphasizes that everyone has the right to live and has the right to defend life and life. This means that the right to life is a basic human need and is a right for every citizen. In the preamble to Law Number 29 of 2014 about Search and Rescue, in letters a and b it is emphasized that the Unitary State of the Republic of Indonesia is responsible for protecting all

¹. Quoted from the 2019 National Search and Rescue Agency Annual Report, p. 1

Indonesian people and all spilled Indonesian blood with the aim of providing protection for their lives and lives including protection from accidents, disasters, and conditions endangering humans through search and assistance in a fast, precise, safe, integrated and coordinated manner by all components of the nation.

The above affirmation implies that search and rescue services are required to have maximum arrangements so that everyone gets services in the field of search and rescue without exception, based on the principles of humanity, togetherness, public interest, integration, effectiveness, efficiency, justice, sovereignty, and discriminatory nodes. Because this concerns human rights that cannot be ignored, in the interests of group or ethnicity, religion and social strata of society.

The development of search and rescue handling nowadays is of considerable concern to the world, not only for the various types of accidents, disasters and conditions that endanger humans but also handling technology and increasingly sophisticated supporting facilities. Unfortunately this is not directly proportional to the regulations governing the impact of handling search and rescue which does not rule out the possibility of causing legal problems, especially those related to SAR officers and victims.

The community demands that SAR officers have better skills and knowledge in the field of search, rescue and rescue than before. However, some of the implementation of search and rescue activities or in simple language, SAR operations, found several wishes of victims / their families and the community who witnessed the implementation of SAR operations to intervene in handling victims, where the actions of the SAR officers could not be solved by ethical principles and in such circumstances. This means that the rule of law has worked; automatically it cannot be separated from the rights and obligations of the parties involved.

The National Search and Rescue Agency or Basarnas is a non-ministerial government agency that carries out government affairs in the field of search, rescue and rescue that are in direct contact with people who need 24-hour search and rescue services. SAR officers will carry out their roles and functions according to their competencies, SAR officers have competencies based on their qualifications / skills in carrying out searches and assistance, not taking medical action. When SAR officers take medical action it is a collaborative activity with doctors, health workers and other potential SAR.

In the Decree of the Minister of Health Number 1239 Year 2001, Article 15 paragraph 4 reads: medical treatment services can only be performed based on a written request from a doctor. It is clear that medical action is only legal to be carried out by doctors, not other medical personnel, especially SAR officers. If the doctor is unable to perform a medical procedure, the doctor may ask for help from other medical personnel to carry out the action (including SAR officers), provided that the doctor is obliged to give a clear delegation of authority to the medical staff who helps in writing to perform the medical action.

The next question is: what about actions taken by SAR officers in certain circumstances, and these actions are considered medical measures? Broadly speaking, criminal law issues related attitudes or behavior, which attitudes can damage or threaten the legal system of society. It refers first of all to one's behavior and to personal guilt as a result, so that not every person who causes the death / loss of another person can be punished for his or her actions, or in other words not every criminal act can be punished.

In carrying out their duties in the community's life, SAR officers have encountered an incident (case) where the SAR officer took action (medical) which resulted in the victim's death. Even though the incident has never been filed by criminal or civil lawsuits by the families of the victims or by living victims who have suffered losses, this should still be a serious concern for policy makers because the fact that in the future SAR officers will not be able to only provide procedural explanations, of course it needs to be made. *a warning* to officers in the field and executors of search and rescue activities that because of medical

assistance in carrying out search, rescue and rescue tasks it may become possible to become a legal problem. As is the case when SAR officers must take actions that are not in their authority for the safety of the victim, where this action is carried out without delegation and regular procedures from the doctor or the party entitled to give the delegation.

Problem Formulation

1. Is the rescue action carried out by SAR officers in certain circumstances can be justified according to laws and regulations?
2. Can the loss suffered by the victim as a result of the actions of SAR officers in certain circumstances be used as an excuse to waive offenses?

Objectives

1. Knowing that rescue actions carried out by SAR officers in certain circumstances can be justified according to statutory regulations.
2. Knowing the losses suffered by the victim due to the actions of SAR officers in certain circumstances can be used as an excuse to waive offenses.

Research Methodology

The type of research used is juridical empirical research, or it is called field research, which examines the applicable legal provisions and what happens in reality in society.² Empirical juridical research is legal research regarding the enactment or implementation of normative legal provisions *in action* at any particular legal event that occurs in society.³ Or in other words, is a study 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 is collected then it leads to problem identification which ultimately leads to problem solving.⁴

Research Result and Discussion

Based on the Regulation of the Head of the National SAR Agency Number PK. 2 of 2017 concerning *Rescuer* Competency Standards in the National SAR Agency, in Article 1 paragraph 3 *Rescuer* Competency Standards are a measure of the minimum capabilities that *Rescuer* must have which includes aspects of knowledge, skills, behavioral attitudes required in carrying out their duties and positions. "Duties and positions" is the authority to carry out search and rescue services. Search and rescue means the activity of searching for, helping, and saving the lives of people who are lost or feared missing or facing danger in ship accidents (ship accidents) and aircraft (aircraft accidents), accidents with special handling (special accidents), disasters in the emergency response stage (disaster), and / or human endangerment (HE). Meanwhile, according to the Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia Number 10 of 2014 concerning *Rescuer* Functional Position and Credit Figures, what *Rescuer* means is Civil Servants who are given full duties, responsibilities, authority and rights by the authorized official to conduct searches and help. Law Number 29 of 2014 concerning Search and Rescue explains the definition of Search and Rescue Officers are individuals who have Search and Rescue expertise and / or competence.

2. Suharsini Arikunto, *Research Procedures: A Practical Approach*, Jakarta: Rineka Cipta, 2012, p. 126

3. Abdulkadir Muhammad, *Law and Legal Research*, Bandung: Citra Aditya Bakti, 2004, p. 134

4. Bambang W, *Legal Research in Practice*, Jakarta: Sinar Grafika, 2002, p. 15

Table 1 Data on the Administration of Search and Rescue in Indonesia
January 2019 - December 2019

| SAR OFFICE | RESEARCH OPERATIONS IN 2019 | | | | | |
|----------------|-----------------------------|---------------|----------|-----|------------------|-------|
| | AIRCRAFT ACCIDENT | SHIP ACCIDENT | DISASTER | CEH | SPECIAL ACCIDENT | TOTAL |
| BANDA ACEH | - | 37 | 6 | 76 | 1 | 120 |
| MEDAN | - | 12 | 7 | 92 | 1 | 112 |
| PADANG | - | 8 | 5 | 54 | 2 | 69 |
| PEKANBARU | - | 16 | 2 | 30 | - | 48 |
| JAMBI | 1 | 4 | 4 | 50 | - | 59 |
| BENGKULU | - | 5 | 5 | 17 | 1 | 28 |
| PALEMBANG | - | 1 | 2 | 35 | 1 | 39 |
| LAMPUNG | - | 17 | 5 | 15 | 1 | 38 |
| TANJUNG PINANG | - | 30 | 1 | 25 | - | 56 |
| PANGKALPINANG | - | 15 | - | 21 | - | 36 |
| NATUNA | - | 4 | 1 | 2 | - | 7 |
| MENTAWAI | - | 5 | - | 8 | - | 13 |
| BANTEN | - | 9 | 4 | 18 | 1 | 32 |
| JAKARTA | - | 5 | 2 | 39 | 1 | 47 |
| BANDUNG | 2 | 15 | 15 | 75 | 5 | 112 |
| SEMARANG | - | 19 | 3 | 115 | 5 | 142 |
| SURABAYA | - | 24 | 4 | 104 | 3 | 135 |
| YOGYAKARTA | - | - | 5 | 21 | 2 | 28 |
| DENPASAR | - | 23 | 1 | 45 | 2 | 71 |
| MATARAM | 1 | 19 | 1 | 22 | - | 43 |
| KUPANG | - | 14 | 5 | 16 | 1 | 36 |
| MAUMERE | - | 20 | 8 | 17 | - | 45 |
| PONTIANAK | 1 | 30 | 3 | 26 | - | 60 |
| BALIKPAPAN | - | 12 | 1 | 35 | - | 48 |
| BANJARMASIN | - | 10 | 4 | 29 | - | 43 |
| MANADO | - | 33 | 4 | 21 | 3 | 61 |
| GORONTALO | - | 5 | 1 | 13 | - | 19 |
| PALU | - | 32 | 11 | 18 | 5 | 66 |
| MAKASSAR | - | 32 | 12 | 46 | - | 90 |
| KENDARI | - | 33 | 11 | 31 | - | 75 |
| AMBON | - | 26 | 1 | 20 | 1 | 48 |
| TERNATE | - | 22 | - | 6 | - | 28 |
| SORONG | - | 37 | - | 5 | - | 42 |
| MANOKWARI | - | 12 | 3 | 10 | - | 25 |

| | | | | | | |
|--------------------|----------|------------|------------|--------------|-----------|--------------|
| BIAK | - | 7 | - | 20 | - | 27 |
| JAYAPURA | 1 | - | 2 | 11 | - | 14 |
| TIMIKA | 2 | 30 | - | 4 | - | 36 |
| MERAUKE | - | 8 | - | 9 | - | 17 |
| GRAND TOTAL | 8 | 631 | 139 | 1,201 | 36 | 2,015 |

Source: 2019 Annual Report of the National Search and Rescue Agency

The number of 2,015 times of search and rescue / SAR operations in 2019 is not the number of SAR operations that can be said to be small or small, this number if averaged 167 times in one month and / or equal to an average of 5 to 6 SAR operation times per day.

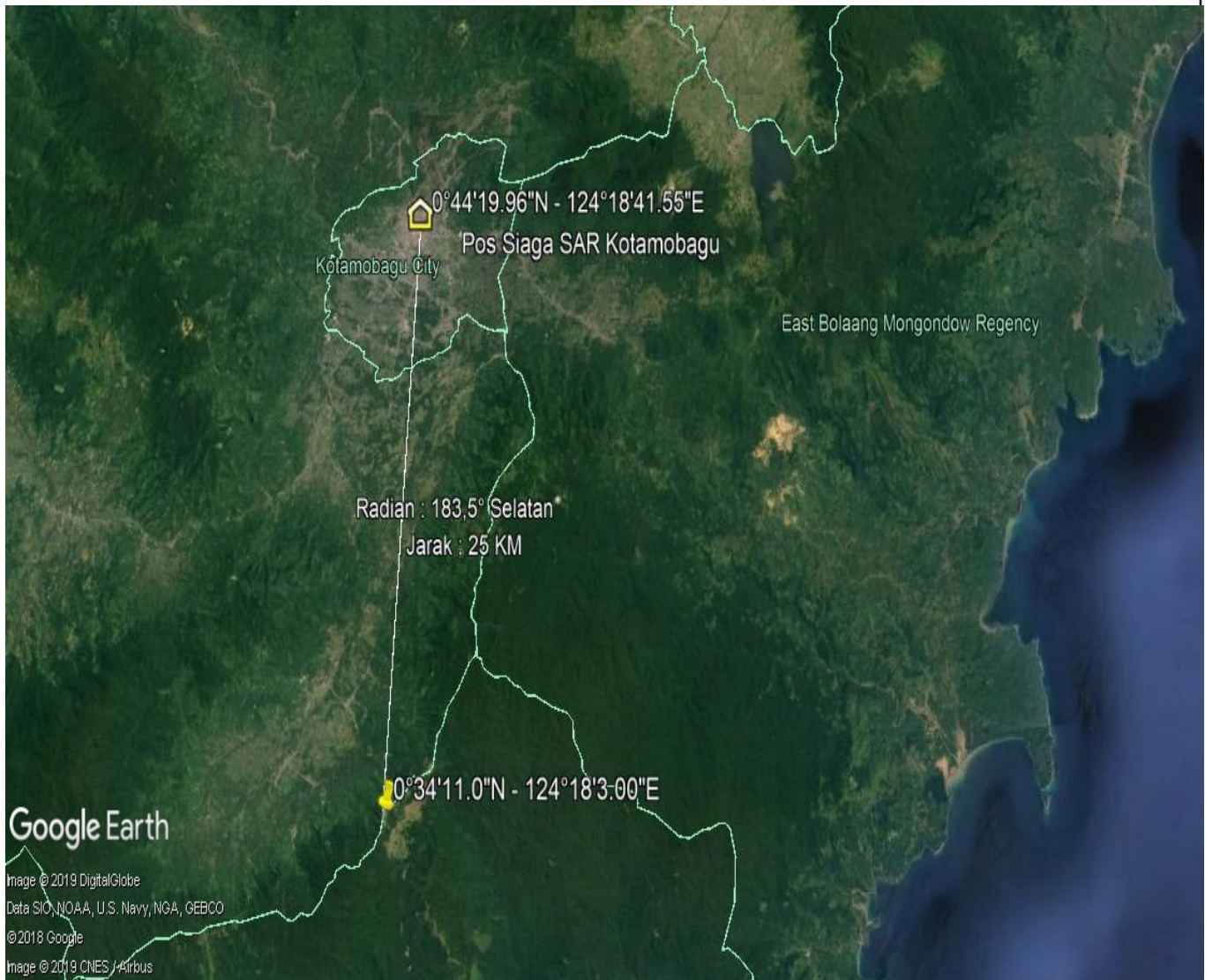
From the various kinds of incidents, it certainly makes us always be careful and vigilant, because accidents, disasters, and dangerous conditions, humans never see and see who will get it, as well as when and where it will happen. Of the 2,015 times the SAR operation, there was one incident from several incidents that became the author's attention for the author to write in this paper.

Table 2 Report on the Implementation of the Landslide Disaster SAR Operation

At Tambang Rakyat Bakan Village, Lolayan District, Bolaang Mongondow Regency

| | | |
|---|---|---|
| Type of Occurrence | : | Landslide Disaster SAR Operation in People's Mine in Bakan Village, Lolayan District , Bolaang Mongondow Regency |
| Chronology | : | TW 0226 2320 there was a landslide disaster in People's Mine in Bakan Village, Lolayan District , Bolaang Mongondow Regency |
| Realization Stage | | |
| <ul style="list-style-type: none"> - TW 0226 2340 H The standby officer of the National SAR Agency of the Manado SAR Office received and recorded a report from the Head of the Disaster Management Division of the Bolmong Regency Regional Disaster Management Agency regarding the occurrence of a Landslide Disaster at the People's Mine in Bakan Village, Lolayan District, Bolaang Mongondow Regency. - Initial data is obtained that the mine workers who were hit by landslides have successfully evacuated 10 people. However, it is estimated that there are still victims who are still trapped in the excavation of the mine from the information of survivors, there are still around 60 victims buried by landslides. - Head of Operations and Alerts for the National SAR Agency, Manado SAR Office, ordered the Kotamobagu SAR Corps to prepare and dispatch a rescue team. | | |
| Preparation Stage | | |

- TW 0226 2350 H SAR Kotamobagu corp checks the incident data with the National SAR Agency of the Manado SAR Office, the location is obtained at coordinates $00^{\circ} 34' 11.00'' \text{N} - 124^{\circ} 18' 33.00'' \text{E}$, the distance between the location of the incident and the Kotamobagu SAR Post is a distance of more than 25 km, with a travel time of 1.5 hours during the day and normal conditions.
- TW 0227 0040 H Kotamobagu SAR Post Team departs for the location.



Planning Stage

- TW 0227 0230 H, Kotamobagu SAR Post Team arrived at the location and coordinated with the Bolmong Regency Police and the Bolmong District Disaster Management Agency.
- SAR Kotamobagu corp carries out SAR operation planning, division of tasks and plot deployment plans.

| Operation Stage | |
|--|--|
| Day I | : - TW 0227 0300 H implementation of the evacuation of landslide victims - Until TW 0227 0700 H the joint SAR team had evacuated 15 landslide victims, with 14 survivors and 1 dead. |
| Day II | : - Up to TW 0228 0320 H the joint SAR team has evacuated 10 more victims with 5 survivors and 5 dead. - The total number of victims who have been evacuated until the second day is 19 survivors and 6 people died |
| Day III | : - Until TW 0301 1700 H the joint SAR team evacuated 2 victims in a state of death. - The total number of victims who have been evacuated up to day III is 19 survivors and 8 people died |
| Day IV | : - Naught |
| Day V | : - Naught |
| Day VI | : - Until TW 0304 1740 H the joint SAR team evacuated 1 victim in a state of death. - The total number of victims who have been evacuated up to day III is 19 survivors and 9 people died. |
| Day VII | : - Naught |
| Day VIII | : - Naught |
| Day IX | : - Naught |
| Day X | : TW 0308 1000 H an operational evaluation was carried out by the National SAR Agency Operations Director together with the Bolaang Mongondow Regent, the Kotamobagu Mayor, the JRBM Company Management, the Bolmong Police Chief, the Bolmong Military District Commander and the victims' families, with the conclusion that the SAR operation was closed. Followed by monitoring for 3 (three) days by Kotamobagu SAR Post. |
| Last Stage | |
| Compilation of the final report on the implementation of the Landslide Disaster SAR Operation in the Mine of Bakan Village, District Lolayan, Bolaang Mongondow Regency. | |

Source: Summary report of the Landslide Disaster SAR Operation in the Mine of Bakan Village, District Lolayan, Bolaang Mongondow Regency, National SAR Agency, SAR Manado office.

The 10-day SAR operation was carried out by various elements of the SAR potential from National SAR Agency, Indonesian National Army, Indonesian Republic Police and Volunteers (Manado Kansar Rescue Team, Kotamobagu SAR Post and Amurang SAR Post, Kansar Gorontalo Rescue Team and Palu, Army (Commander of the Military District of Bolaang Mongondow Regency)), Indonesian Navy (*Yon Marinir* Bitung), North Sulawesi Police DVI Team, Kotamobagu Police, Bolaang Mongondow District BPBD, Bolaang Mongondow District Health Office, Kotamobagu Hospital Medical Team, JRBM Rescue Team, Bolaang Mongondow District Red Cross, and SAR Baguna North Sulawesi) is a SAR operation

which certainly deserves appreciation. However, without reducing the efforts of officers in the field, there are several things that need attention by all SAR officers, including:

1. The discovery of an incomplete human body with limbs can be considered by the victim's family to be a procedural error in the evacuation process, so that in certain situations there may be legal consequences.
2. The length of the evacuation process and it is estimated that there are still some victims who have not been found due to being buried by landslides, it can also be considered by the families of the victims if the SAR Officers who carry out SAR operations do not have the competence to rescue so that it can cause distrust of the victim's family and the suspicion of the victim's family that the search is carried out and help is not in accordance with the SOP. So that it is possible for the victim's family to take legal action, even though the length of the evacuation process is due to the main factor being natural factors, not due to the intentional element of the officers.
3. The loss of the victim's life during the evacuation (medical action) by SAR officers, also of course can result in legal action by the victim's family, because it is considered that the SAR officer was negligent / committed malpractice.

In connection with some of the writer's notes, this certainly needs to be explored legally whether the actions carried out by SAR officers as above can be legal remedies by the families of the victims, even if there is legal remedies by the families of the victims, what legal basis can be used by SAR officers / agency in protecting its officers who are carrying out SAR operations.

Obligation to Provide Rescue

Paying attention to the incident report as above means placing someone to help, talking about people who need help, so it cannot be separated from that person's condition. In other words, there are situations and conditions where that person needs someone else to come out of the condition. This condition is a condition in which 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 will result in death, as in the example above. Where article 531 of the Criminal Code reads:

Anyone who witnesses a person in danger of death, failing to 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.⁵

According to R. Soesilo in his book entitled *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal* (Criminal Code / KUHP and its Complete Comments Article by Article) states that what is meant by "in a state of death danger" Article 531 of the Criminal Code

5. Moeljatno, *KUHP Kitab Undang-undang Hukum Pidana*, Jakarta: PT Bumi Aksara, 2012, p. 193

is an immediate danger of death.⁶

R. Sugandhi, S.H. in *KUHP Kitab Undang-Undang Hukum pidana Berikut Penjelasannya* (the Criminal Code Criminal Code Book Followed by the Explanation) explains 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 if he provides help, it is not dangerous for himself, then the person can be threatened with this article if he does not provide help and the victim dies.⁷

Meanwhile, from positive law in Indonesia, the meaning of self-help is contained in Government Regulation No. 17 concerning Search and Rescue Operations Article 1, which reads:

Relief is all efforts and activities to seek, help, rescue, and evacuate people who face emergencies and / or dangers in accidents, disasters, or human endangerment conditions.

Based on the description above, we can see that someone, in this case, search and rescue officers of the National Search and Rescue Agency must assist the above conditions as ordered and mandated by the law.

Reason for Abolishing Crime and Reason for Abolishing Prosecution Against Search and Rescue Officers

Whereas according to the teachings of error (*schuld*) in criminal law, it consists of the element of deliberation (*dolus*) or negligence / 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 several reasons 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 legislators' authority to determine whether there have been special circumstances formulated in the reasons for the annulment of crimes.⁸

The reasons for the elimination of punishment are: Reasons that allow a person who commits an act that fulfills the offense's formulation, but is not sentenced. Unlike the case with reasons that can abolish prosecution, the reason for the abolition of punishment is decided by the judge by stating that the nature of the violation of the act is erased or the mistake of the author of the nullification is due to the existence of statutory and legal provisions that justify the act or that forgive the author. The Criminal Code does not

6. R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor: Politeia, 1995. pp. 340-341

7. R. Sughandi, *KUHP Kitab Undang-Undang Hukum Pidana Berikut Penjelasannya*, Surabaya: Usaha Nasional, 1980, p. 538

8. Wirjono Prodjodikoro, *Azas-Azas Hukum Pidana di Indonesia*, Bandung: Eresco, 1989, p. 34

explain what is meant by an excuse for criminals and the difference between justification and excuse. The Criminal Code only mentions things that can abolish crimes.⁹

The science of criminal law also distinguishes the reasons for the remission of crimes in line with the distinction between the conviction of the act and the maker's conviction. The 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:¹⁰

1. The justification for eliminating 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.
2. Reasons for forgiveness or reasons for eliminating mistakes concerning the personality of the maker, in the sense that a person cannot be blamed or he is innocent or cannot be held accountable, even though it eliminates the fault of the maker, so as not to be convicted.

The justification reason, as described above, is the reason that removes the nature against the law of the act, so that what the defendant did then became a proper and true act, in the Criminal Code is listed in Article 51 paragraph 1.

While the reason for forgiveness in the Criminal Code is in Article 44, it is stated that a person who is not able to determine his will, he has no faults. The ability must be due to his deformed or sick internal organs are in his body.

The reasons for criminal removal other than Article 44, are also regulated in Article 48 to 51 of the Criminal Code, namely:

1. Force (*Overmacht*)
Article 48: "Whoever commits an act due to the influence of force, is not punished". In other words, when a person commits a crime under compulsion, then he is not punished. In Article 48 of the Criminal Code, what is meant is psychic coercion (*vis comulsiva*), not physical (*vis absoluta*).
2. Forced defense (*noodweer*)
Article 49 paragraph 1: "No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed."
Article 49 paragraph 2: "Forced defense that transcends the limit, which is directly caused by the great shock of the soul due to the attack or the threat of the attack, is not punished."
3. Enforcing the law
Article 50: "Whoever commits an act to carry out the law provisions is not punished."
4. Executing departmental orders,
Article 51 paragraph 1: "It shall not be lawful for any person to perform an act to carry out an order of office which has been given by an authority authorized to give such order."

In the theory of criminal law, other than for justification and forgiveness reason for the criminal

9. Narindri Intan Ardina, "Tindakan Perawat Dalam Keadaan Keterbatasan Tertentu Sebagai Alasan Penghapus Pidana". *Jurist-Diction*. Vol. 2 No. 1, January 2019, p. 247

10. Sri Endah Wangyuningsih, *Model Pengembangan Asas Hukum Pidana Dalam KUHP Berbasis Nilai-Nilai Ketuhanan Yang Maha Esa*, Semarang: Fastindo, 2018, pp. 65-66

removal, there are reasons for prosecution removal. The reason for the removal of prosecution is the role of authority from the government. The government considers that other than what normally written in the law, there are reasons for removing crimes outside the law, for example: ¹¹

1. the right of parents, teachers to discipline their children or pupils (*tuchtrecht*);
2. rights arising from the employment (*beroepsrecht*) of a physician, nurse, pharmacist, midwife and scientific researcher (*vivisectie*);
3. permission or consent from the person harmed about an act that can be punished, if done without permission or consent (consent of the victim);
4. representing the affairs of others (*zaakwaarneming*);
5. the absence of an element of nature against material law;
6. there is no fault at all

Based on the description of the reasons for abolishing crime in criminal law, if it is associated with the development of times such as the current era, it makes society easier to claim rights, one of them in search and assistance. Moreover, that does not exclude the possibility of an impact on search and assistance officers' actions can be used as an excuse to provide responsibility for the losses incurred. Of course, this is not regardless of negligence or considered malpractice.

Before the loss is caused, it is first reviewed for the actions taken by the SAR officer. SAR officers as human beings in carrying out their duties have the possibility of the victim having a disability and even died after being dealt with. It can happen, even if the SAR officer has performed his duties following good professional standards. Such a condition is referred to as job risk, but is interpreted by other parties as negligence or malpractice.

SAR officers, in fact, only have competence as a first aid provider in the act of search, assistance, and evacuation rather than medical action. In this case, SAR officers do not have absolute authority over search and rescue (medical) actions, because search and assistance (medical) actions are the authority of medical personnel, namely doctors and dentists.

A SAR officer who performs SAR operations and performs (medical) actions outside the authority or causes the SAR officer to deviate from authority or exceed his authority due to the conditions under such conditions based on the concept or theories of responsibility as described above, the SAR officer can be said to have committed negligence or malpractice. Thus, SAR officer can be asked for criminal responsibility.

However, if in carrying out his duties under certain circumstances, a SAR officer provides assistance due to law enforcement and due to coercion from the victim / victim's family, and / the victim's family, and it is proven that they do not fulfill the element of responsibility, then SAR officers cannot be held responsible for the crime.

Judging from the element of deliberate error or negligence, the actions of SAR officers can be categorized as deliberate mistakes if it is proven that the SAR officer wants and realizes that his actions in providing help resulted in losses. Of course it is difficult to prove, or without realizing, that the actions carried out are negligent mistakes that result in losses the victim.

Based on the element of criminal liability, not all SAR officers' actions in certain circumstances can

11. Narindri Intan Ardina, "Tindakan Perawat Dalam Keadaan Keterbatasan Tertentu Sebagai Alasan Penghapus Pidana". *Jurist-Diction*. Vol. 2 No. 1, January 2019, p. 249 as quoted from R. Sudarto, *Suatu Dilema Dalam Pembaharuan Sistem Pidana Indonesia* (Inagural Speech, 1974)

be held accountable. It can happen if one element of criminal responsibility is not fulfilled. Judging from the concept of reasons for eliminating crimes, SAR officers' actions in certain circumstances, namely taking (medical) actions by assisting their authority, the SAR officers have carried out their duties as referred to in Article 50 of the Criminal Code. Besides, the action of SAR officers in providing help is a right that arises because of work. This is a reason for eliminating crimes that are outside the Criminal Code.

Article 50 of the Criminal Code stipulates that it is carried out for the public interest, not for the perpetrator's interest in principle. In this case, what is meant by the prevailing laws and regulations that give authority / power to SAR officers to carry out search and rescue tasks. Search and rescue officers who commit an act even though it is a criminal act because it is done based on a law order, they cannot be punished. So there is a greater interest that must take precedence, this greater interest is a justification for SAR officers who carry out their duties in certain circumstances by providing (medical) action by statutory regulations. Likewise, in carrying out statutory orders, SAR officers must do so in a balanced manner.

As with the case that has been decided by the Sleman District Court (Case No. 05 / PID.SUS / 2011 / PN.SLMN) regarding the possession of sharp weapons, with the defendant Arief Johar Cahyadi Permana. The brief description of the incident regarding the possession of sharp weapons is as follows that on November 24, 2010 at around 00.10 on Solo Street, precisely in Maguwoharjo, Depok, Sleman, witness Mg.Sutrisno and witness Suprihono Hadi (both members of the Sleman Police) and members from various functions, including one drug, one Samapta, one sat Then was carrying out Kilat Progo 2010 raid operation. The raid operation's target was to eradicate thuggery, including sharp weapons without a permit. At that time, cars and motorbikes passing on Solo Street 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 motor vehicle documents' completeness belonging to the defendant. After that witness Mg.Sutrisno was suspicious of the small black bag carried by the defendant and immediately examined the contents of the bag, witnessed also by witness Suprihono Hadi, it turned out that in the defendant's bag there was found 1 (one) sharp weapon type of folding knife and was admitted by the defendant stated that the penknife belonged to the defendant himself. Then witness Mg. Sutrisno asked the defendant about the possession permit for the sharp weapons carried and controlled by the defendant. He admitted that he did not have permission from the competent authorities to carry the sharp weapons. 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. Furthermore, the trial process rolled on with the judge's decision to release the defendant from all legal charges. One of the judges' considerations, the defendant was a volunteer member of SAR, where only certain people, namely people who have a high concern and sense of humanity towards society and are selfless for being Merapi volunteers are full of various risks. 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 judges' panel believes that the defendant has been proven to have committed an act as the accused but is not a criminal act / *onslag van recht vervolging*.¹²

The judge's decision above can be used as jurisprudence and learning for all search and rescue officers, even if there is a similar incident or there is a lawsuit for the actions of the search and rescue officer who are deemed to have caused harm to the victim, or caused the victim to die, then the legal settlement is carried out by mediation as restorative justice.

A mediation mechanism is an option for dispute resolution (non-litigation). The reason is, someone can take other legal means (litigation), for example, through a civil route in the form of a lawsuit for damages

12. Rizky Mustika Dewi & Risky Dwi Nvitasari, "Telaah Normatif Putusan Lepas Dari Segala Tuntutan Hukum Dalam Perkara Kepemilikan Senjata Tajam (Studi Kasus Putusan Pengadilan Negeri Sleman Nomor05/Pid.Sus/2011/Pn.Slmn)", Journal of Verstek Vol. 4 No. 1, 2016

caused by the negligence of search and rescue officers. The dispute settlement in search and rescue through mediation has been running, but it has not been institutionalized because of normative regulations until now.

Conclusion

That search and rescue officers / SAR officers have competence in search and rescue in carrying out search and rescue tasks.

SAR officers carrying out their duties in certain circumstances such as accidents, disasters, and / or difficult conditions to carry out search and rescue and are at risk for both victims and SAR officers, based on Article 50 of the Criminal Code, then emergency medical action, is an action which is due to carrying out the order of the law can be considered as not negligence or malpractice. So that this Article provides exceptions to the actions of SAR Officers in certain circumstances.

References

A. Books

2019 Annual Report of the National Search and Rescue Agency of 2019

Wirjono Prodjodikoro, *Azas-Azas Hukum Pidana di Indonesia*, Bandung: Eresco, 1989.

Sri Endah Wangyuningsih, *Model Pengembangan Asas Hukum Pidana Dalam KUHP Berbasis Nilai-Nilai Ketuhanan Yang Maha Esa*, Semarang: Fastindo, 2018.

Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor: Politeia, 1995.

R. Sughandi, *KUHP Kitab Undang-Undang Hukum Pidana Berikut Penjelasannya*, Surabaya: Usaha Nasional, 1980.

Moeljatno, *KUHP Kitab Undang-undang Hukum Pidana*, Jakarta: PT Bumi Aksara, 2012.

Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Bandung: Citra Aditya Bakti, 2004

Bambang W, *Penelitian Hukum Dalam Praktek*, Jakarta: Sinar Grafika, 2002

B. Journals

Narindri Intan Ardina, “Tindakan Perawat Dalam Keadaan Keterbatasan Tertetnu Sebagai Alasan Penghapus Pidana”. *Jurist-Diction*. Vol. 2 No. 1, January 2019.

John Chaffey, “*Legal Issues in Search & Recue*.”

Annemarie Esler, Aimee C.H. Goodman, Alexander J. Wood, *Water Rescue within UKSAR: consent, capacity and necessity*. *Journal of Search & Rescue* Volume 3, Issue 2, November 2019.

Risky Mustika Dewi & Risky Dwi Novitasari, “Telaah Normatif Putusan Lepas Dari Segala Tuntutan Hukum Dalam Perkara Kepemilikan Senjata Tajam (Studi Kasus Putusan Pengadilan Negeri Sleman Nomor05/Pid.Sus/2011/Pn.Slmn)”. *Journal of Verstek* Vol. 4 No. 1, 2016

C. Laws

1945 Constitution of the Republic of Indonesia.

Law No. 29 of 2014 concerning Search and Help.

Government Regulation No. 22 of 2017 concerning Search and Rescue Operations.

Presidential Regulation of the Republic of Indonesia No. 83 of 2016 concerning the National Search and Rescue Agency.

Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia No. 10 of 2014 concerning Rescuer Functional Positions and Credit Figures.

Regulation of the Head of the National SAR Agency No. PK. 2 of 2017 concerning Rescuer Competency Standards in the National SAR Agency.