






Redefining Mechanism of Checks and Balances of Indonesian National Police Duties in Cyber Space against Citizens' Human Rights

Muhammad Fajar Sidiq Widodo^{1*} ; Anni Nur Rohmah²  and Moh Ahza Ali Musthofa³ 
^{1,2} Constitutional Law Departmet, Institut Agama Islam Negeri (IAIN) Kediri, Jl.Sunan Ampel
Nomor 7, Kota Kediri, Indonesia

³ Faculty of Law, Universitas Sebelas Maret, Jalan Ir. Sutami 36 Ketingan, Jebres, Surakarta,
Jawa Tengah, Indonesia
m.fajar.sw@iainkediri.ac.id

Abstract. Indonesia, under the leadership of President Joko Widodo, has drafted a bill on the addition of police authority in the cyber domain. This bill has been criticized for not being part of the National Legislation Program (Prolegnas). Some of the issues that have been discussed include the surveillance of citizens' freedoms in the cyber domain, which has too many authorities. The internet has become an essential tool for Indonesians, allowing them to carry out various activities, such as shopping, working, and accessing government services. However, internet usage is increasing, reaching 110 percent in usage. This increase is due to various reasons, such as faster access, better use of data, and better access to justice. The justice system in Indonesia is based on a bill that aims to protect the rights and interests of the public, enforce the law, provide assistance, and provide relief to the public. However, the bill does not comprehensively regulate the mechanism of oversight and balancing of these large authorities. Several initiatives have been proposed to improve the oversight and balancing of such oversight authority in policing so that cyberspace surveillance develops properly without having to sacrifice the interests of citizens. This research uses normative legal research by a statutory approach.

Keywords: Police, Cyber Space, Checks and Balances

1 Introduction

Towards the end of the 7th President of the Republic of Indonesia, Joko Widodo. The Indonesian people were shocked by the emergence of the Draft Law (RUU) on the Indonesian National Police (Polri). The House of Representatives (DPR) suddenly initiated a revision of the Polri Law, even though the revision of the Polri Law is not in the National Legislation Program (Prolegnas).

There are several issues that are in the spotlight, including internal and external police supervision, retirement age, additional police authority in the cyber world and so on. Moreover, the discussion of the bill, which suddenly appeared on the DPR's discussion agenda, is similar to the first ratification of the Job Creation Law. A similar event is about the lack of Meaningful Participation. If this happens, it is suspicious that there is something behind the haste to change the Police Law.

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One of the highlights is the issue of the authority to monitor the police in cyberspace. Nowadays, people can no longer be separated from the internet, the internet has almost become a basic need that is very important for society. The internet can facilitate every activity, starting from searching or doing work can be done with the internet. Ease in every daily activity such as buying and selling goods or services, access to government services, access to banking and so on. This convenience allows internet users to do more productive activities.

One of the productive activities in the cyber world is the creation of a content that contains materials that are needed or interested by the community. It can be educational, entertainment, social, cultural, political, economic, legal, etc. all types of material or content are a form of freedom of expression from internet users. It is not uncommon in the vast cyberspace that content is often found that is misleading if not filtered properly.

Internet users in Indonesia are getting very high, reaching more than 110 million users. The following is data on internet users in Indonesia from the Association of Indonesian Internet Service Providers (APJII):

Year	User (in million)
2015	110,2
2016	132,7
2017	143,26
2018	171,17
2019-2020	196,71
2021-2022	210,03
2022-2023	215, 03

Source: Association of Indonesian Internet Service Providers (APJII), 2023 Indonesian Internet Penetration Survey

The table 1 above shows that there is an increase in Internet users from year to year. This of course must be accompanied by various facilities that support internet users in Indonesia. Such as fast access, user data security, easy access to justice in the cyber world, etc.

Many things can be done in the cyber world to get access to justice. Like the phenomenon of no viral no justice where it has happened in several criminal cases that were not taken seriously, after being enlivened in social media the law enforcement process has been taken more seriously.

The criminal law enforcement system in Indonesia starts with the police. This is certainly very reasonable, considering that the authority for security issues is the monopoly of the police. Article 2 of Law No. 2 of 2022 on the Indonesian National Police (Polri Law) states that the functions of the police are: maintenance of public

security and order, law enforcement, protection, protection and service to the community.

Based on this function, in the Academic Paper and Bill, Polri wants to expand its functions not only in the real world but also in the cyber world. Actually, there is nothing wrong if Polri wants to update the rules that have been the basis of its authority for more than 20 years. However, it is not necessarily replaced. There are things that must be considered, especially since Indonesia is a State of Law, not a state of power. Everything must be orderly to ensure the legal ideals of certainty, there are procedures that must be followed and not necessarily on the basis of power alone.

There are several events that need to be considered related to cyberspace.

1. Blocking internet access in Papua and West Papua in 2019.
2. The birth of virtual police in 2021.
3. Slowing down internet access in Wadas village in 2022.
4. Prohibition of investigative journalistic content in the Broadcasting Bill in 2024.

Indonesia is a state of law. That is what is stated in the clause of article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945).

The constitution in Indonesia was designed in such a way by the framers of the Constitution to create a balance in the division of power. power is divided so that it is not concentrated in one person alone. it is feared that if the great power is only held by one-person, arbitrary actions will emerge, leading to totalitarian and absolute rulers.

Lord Acton in his very famous adage, namely: Power tends to corrupt and absolute power corrupts absolutely. from this situation a system of division of powers was created by Montesquieu known as trias politica. Trias politica divides the authority into 3 parts, namely: Legislative (Lawmakers), Executive (Executors of Laws) and Judiciary (Holders of judicial power). The division aims to create a Checks and Balances mechanism where each holder of power has the authority to supervise and balance or complement each other.

What is happening in the draft amendment to the Polri Law is very lame. Polri will have such great authority without strict supervision and the power to balance this authority. Considering that personal data that is included in the private sphere of citizens will be very easily accessed by the police. Freedoms that are the rights of citizens will be monitored easily. In a broader realm, the police can easily regulate access to information circulating in the cyber realm. Like a landlord, with that much authority the police can do anything. Such as slowing down, blocking the internet, deleting or raising an issue for an individual's interest, etc.

So, it is necessary that this great authority be monitored and balanced with the same great authority. This is interesting to be researched more deeply to formulate a Checks and balance mechanism for this great authority. Moreover, the police are an institution that monopolizes the authority over public security and order. Based on above description how is the mechanism of checks and balances of Polri's authority on citizens' human rights.

2 Research Method

This research is normative legal research using a statutory approach. [1] This research is theoretical because it aims to find, clarify, and analyze legal rules based on existing legal sources, such as laws and regulations, legal doctrines, and other legal literature. Data collection techniques are carried out by means of literature studies. Data analysis techniques use analytical descriptive data analysis methods that refer to a particular problem which is then linked to literature or legal expert opinions or based on applicable laws and regulations. [2]

3 Discussion

Indonesia has ratified several international legal instruments relating to freedom of expression. One of them is the International Covenant on Civil and Political Rights (ICCPR). Indonesia has ratified the ICCPR since 2005, which means that Indonesia accepts, recognizes and must comply with what is the rule in the ICCPR. The state is obliged to respect, protect, fulfill and promote the human rights of all its Citizen without discrimination. In Article 19, there are several paragraphs that guarantee these freedoms. Among them are:

1. Everyone has the right to hold opinions without interference.
2. Everyone has the right to freedom of expression; this right includes the freedom to seek, receive and impart information and ideas in any form, regardless of boundaries, either orally, in writing, or in printed form, in the form of works of art or through any media of his choice.
3. The exercise of the rights set out in article 2 of the ICCPR carries with it specific duties and responsibilities. These rights may therefore be subject to certain limitations, but only those prescribed by law and necessary to:
 - a. Respect the rights or reputation of others.
 - b. Protect national security or public order or public health or morals.

A joint United Nations (UN) statement in 2015 emphasized that, under the Human Rights Act, internet blackouts cannot be justified on any grounds. In fact, the UN Special Rapporteur on freedom of expression David Kaye said that internet blackouts are a violation of international law. This emphasizes the importance of internet access as a fundamental human right, which should not be arbitrarily cut off by governments or authorities.

Internet blackouts can also have a negative impact on a country's economy. Many businesses and industries depend on internet connectivity for their daily operations. When internet access is interrupted, business productivity can suffer significantly, which in turn can hinder economic growth and create uncertainty in the labor market.

In addition, internet outages are often used by governments as a tool to control public opinion or stop political protests. These actions create a tension between government power and citizens' freedom of speech. In some cases, blackouts are also used to block access to websites and social media platforms that criticize the ruling regime or government. Moreover, internet outages also create challenges for humanitarian and relief efforts in crisis situations. Humanitarian organizations often

rely on internet access to coordinate aid and provide critical information to affected populations. When this access is disrupted, relief efforts can be hampered, increasing the risk to the safety and well-being of people in need of emergency assistance.

Internet and social media restrictions also limit press freedom and freedom of speech. This harms citizens' access to public services. Most importantly, the violations have deprived people of their human right to communicate with their families, the public, especially when public security has been compromised. In the midst of the rapid development of information technology, police authority in cyberspace has become increasingly important to monitor activities that have the potential to harm public security.

For example, in some countries, cyber police play a crucial role in monitoring and tackling cybercrimes such as online fraud, personal data theft, and security attacks aimed at critical infrastructure. Without sufficient authority, it is difficult for them to identify, arrest and prosecute perpetrators of digital crimes that often cross national borders.

In this context, government-regulated restrictions on internet and social media access can also be used as a tool to support cyber policing efforts in maintaining cyber security. For example, in situations where the spread of false information or cyberattacks threatens social stability, the government may decide to temporarily restrict internet access to limit the spread of harmful content.

However, the use of cyber police authority in monitoring online activities must also be balanced with the protection of individuals' rights to communicate and access information without inappropriate intervention. These powers must be strictly regulated by clear laws and standards to ensure that their use does not abuse or restrict basic rights that are internationally protected, such as freedom of expression and privacy.

3.1. Guarantee of Freedom in National Law

Indonesia is a country of law that places law as the main basis in the life of the nation and state. This principle is affirmed in Article 1 paragraph (3) of the 1945 Constitution (1945 Constitution), which states that "The State of Indonesia is a country of law." In a state of law, all actions of the government and citizens must be based on the law, and ensure the protection of citizens' rights.[3][4]

The 1945 Constitution of the Republic of Indonesia is the main constitutional foundation that guarantees the basic rights of citizens. In addition, the 1945 Constitution of the Republic of Indonesia also plays a role as a pillar of law that protects and guarantees the freedom of citizens. As a democratic country, Indonesia is committed to ensuring that the principles of democracy and human rights are well maintained. Democracy in Indonesia is characterized by a system of government that involves the participation of the people, the protection of individual rights, and the fair distribution of power.

The main legal basis for guaranteeing freedom in Indonesia is contained in the 1945 Constitution of the Republic of Indonesia. The Constitution regulates a wide range of rights to freedom and human rights, including the right to freedom of opinion, freedom

of association, the right to privacy, and the right to justice. The guarantee is specifically regulated in Article 28E paragraph (3).

Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that: "Everyone has the right to freedom of association, assembly, and expression." This article is part of a constitutional amendment that strengthens the protection of human rights in Indonesia. These rights reflect the state's commitment to guaranteeing the freedom of individuals to express their opinions and participate in public life without any undue pressure or restrictions. Freedom of opinion is the fundamental right of every individual to express his or her thoughts, ideas, or opinions without fear of retaliation or censorship from any party. This right is one of the important pillars in democracy.[4]

In addition to freedom of opinion, Article 28E paragraph (3) also guarantees the right to association and assembly. The right to association is intended for individuals to join groups, organizations, or communities of their choosing, including political parties, associations, and civil society groups. The right to assemble refers to the right to hold a peaceful assembly or demonstration. This right supports active participation in political and social life, as well as strengthening relations between citizens.

Furthermore, the guarantee of freedom for citizens is also regulated in Law Number 39 of 1999 concerning Human Rights (Human Rights Law). This law is an important legal basis for the protection and fulfillment of human rights in Indonesia.

More details are in Article 23 paragraph (2) and Article 25 of the Human Rights Law. Article 23 paragraph (2) states that: "Everyone is free to have, issue and disseminate opinions according to their conscience, orally and or in writing through print and electronic media by paying attention to religious values, morality, order, public interest, and the integrity of the nation." Then, in Article 25 it is also stated that: "Everyone has the right to express their opinions in public, including the right to strike in accordance with the provisions of laws and regulations." These articles strongly support what is a guarantee of freedom, especially in terms of opinion and expression. Then, the two articles also mean that every individual has the right to have a personal opinion, express his opinion, and disseminate it to the public by any media whether orally, in writing, in print and electronically. This right includes the freedom to think and speak according to their respective beliefs and views.[5]

3.2. Discussion of Overlapping Bills

The police is a state tool as well as a state institution or institution that has the main task of maintaining public security and order, enforcing the law, and providing protection, protection, and services to the community. The legal basis for police authority is regulated in Law Number 2 of 2002 concerning the National Police (UU2/2002), but the definition of police is not explicitly explained. This is because the discussion in Law 2/2002 only discusses the functions and institutions of the police.[6]

The term police comes from the Greek word "politeia" which means the entire government of a city-state. In the context of ancient Greece, "polis" refers to an independent community or city-state, which has its own system of government and law. From this concept of "policy", terms related to administration and law enforcement in the community developed. The modern police as a law enforcement institution got its name from this concept, reflecting their duty to maintain order and security in society, similar to how the cities of the ancient Greece state sought to manage their internal affairs and protect their citizens.[6]

In Indonesia, the term "police" is defined by an expert in this legal science, Sadjijono Dr. Sadjijono "Police" means a state government agency or agency, and the term "police" is used as an institution and function. As an institution, namely a government institution, Organized and structured in a national organization. at the same time as the Function, namely the responsibilities and authorities of the institutions mentioned above, among others, the authority of the law to carry out their functions of maintaining security and public order, law enforcement, Maintaining, protecting, and serving the community.[7] Police authority includes the rights and authority given to police officers to take certain actions to ensure law enforcement and maintenance of order. This is clearly regulated by Law 2/2002.

The development of the times has brought significant changes in various aspects of life, including in the field of law and law enforcement. The creation of the Police Bill is a step taken to adapt the police institution to new challenges and dynamics that emerge over time. However, this is the opposite of being controversial and overlapping between institutions. This is due to the draft reform related to Law 2/2002 by adding and revising the existing articles in Law 2/2002. In the Academic Manuscript of the National Police Bill, it only applies the principle of legal certainty without looking at the principle of justice. Some of the main problems related to this bill include aspects of authority, accountability, and transparency, as well as a balance between law enforcement and human rights. The following is a problematic description in the Police Bill.

First, opening up the opportunity for the National Police to carry out any action without being preceded by legal proceedings. Article 16 paragraph 1 letter q of the National Police Bill states that: "Taking action, blocking or termination, and efforts to slow down access to Cyberspace for the purpose of Internal Security in coordination with the ministry in charge of government affairs in the field of communication and informatics and/or telecommunication service providers".[8]

The bill in the article opens the police room to exercise authority related to cyber space including enforcement, blocking or termination and slowing down access to cyberspace for domestic security purposes without the basis of fixed legal force or court decisions. The existence of the bill contains the meaning of the intervention of the police with the cyber world. In its history, a similar case also occurred in Papua where there was a disconnection of internet access and slowing down the movement of

cyberspace used to stem the protests of the Papuan people, which is an act of unlawful acts.[9]

Similarly, this causes a narrowing of freedom of opinion, expression, as well as the right to obtain information and citizens' rights to privacy, especially in the digital field. This narrowing is certainly not in line with Law Number 39 of 1999 concerning Human Rights and is also stated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia that "Everyone has the right on the basis of freedom of association, assembly, and expression." This article of the bill certainly leads to the eradication of citizens' freedom of opinion.[4]

The National Police Bill also affects press freedom, with provisions that allow the police to supervise and restrict news that is considered to disturb public order. This can lead to censorship and silencing of the media, which is contrary to the principles of press freedom recognized in democracy

In addition, the authority of the Cyber realm of the National Police has the potential to overlap with other institutions such as the Ministry of Communication and Information and the State Cryptography and Cyber Agency (BSSN). The National Police Bill gives the National Police significant authority in handling cybercrime, including actions to enforce, block, and terminate internet access for internal security purposes. Meanwhile, Kominfo has a leading role in the regulation and management of the frequency spectrum, as well as the supervision of telecommunication content and infrastructure. BSSN, on the other hand, is responsible for national cybersecurity, including protection against cyber threats and information security.

Overlapping authorities can hinder the efficiency and effectiveness of law enforcement in cyberspace. Lack of clarity in the division of duties and authority can lead to confusion and conflict between institutions. To overcome this, a clear and efficient coordination mechanism is needed between the National Police, Kominfo, and BSSN. A firm division of duties and the development of cooperation protocols between institutions are essential to ensure that every action in cyberspace is carried out appropriately and not excessively.

Second, threats to foreigners/foreigners who empathize with the state of democracy and human rights in the territory of the Unitary State of the Republic of Indonesia. This problem is netted in the Bill Article 16A letter d: "Conducting early detection and early warning in the context of preventing, deterring, and countering every nature of the threat including the existence and activities of foreigners in order to secure national interests by upholding human rights." [8]

Although the regulation mentions the need to uphold human rights, in practice, early detection and early warning can lead to human rights violations, such as abuse of authority, excessive surveillance, or discrimination against certain groups, especially foreigners who contribute to and empathize with the state of democracy in Indonesia. This contains excessive supervision for foreigners which will have a negative impact

on freedom of expression and assembly, all of which are not in line with the guarantee of freedom for every human being.

Third, the expansion of the authority to request information materials to check the flow of funds as stated in the Bill Article 16B paragraphs (1) and (2). In the bill, it can be done when it feels threatened by national interests and security. In other words, the National Police can ask for information or otherwise, to institutions, both ministerial and non-ministry. and checking the flow of funds and extracting information instead of national interests and security.

Reasons of national interest and security contain the potential for the National Police to be allowed to monitor any citizen activity critical of the government or anyone deemed worthy of monitoring for reasons of "security disturbances". In addition, the police may deviate from the principles of human rights when applying this provision, because the police have a very wide discretion and can act according to their own judgment under the pretext of "national interest". This provides a lot of room for abuse of power, which can actually lead to human rights violations which are certainly not in line with the 1945 Constitution of the Republic of Indonesia and the Law/Human Rights.

This is also accompanied by overlapping authority with the Financial Transaction Reporting and Analysis Center (PPATK) regarding the examination of fund flows. Of course, this will cause conflicts between institutions and legal uncertainty. This is as if the National Police is at the forefront of any government affairs in the sense of a superbody.

The increase in the authority of the National Police in the Bill should be accompanied and accompanied by strict supervision of the institution, especially if there is a violation against its individuals. But in fact, in the Police Bill, there is very little discussion related to supervision, as well as in the academic text. The Academic Text of the National Police Bill should be a strong foundation in the formation of laws that will regulate police institutions. However, if the aspect of supervision of the National Police institution is not discussed in depth, this can raise concerns regarding transparency, accountability, and control over the power held by the National Police. There are several reasons why the lack of supervision discussion in the academic manuscript can be a problem:

1. **Accountability:** Without adequate oversight, the National Police can operate without strong external oversight, which can lead to abuse of power.
2. **Transparency:** Lack of in-depth oversight can lead to a lack of transparency in police operations, which should be clearly regulated in law.
3. **Public Trust:** Effective supervision is key in building and maintaining public trust in the institution of the National Police. Without clear supervision, this trust can be disrupted.

4. **Prevention of Abuse:** Strong oversight is necessary to prevent and crack down on abuses of power by members of the police force, as well as to ensure that their actions are in line with the law and human rights.

Therefore, a more in-depth and comprehensive discussion of the supervision mechanism in the Academic Text of the National Police Bill is very important. This includes internal supervision through the inspectorate, external supervision by independent institutions, as well as public participation in supervising the performance of the National Police.

Supervision Theory and Practice

The existence of a supervisory mechanism in a government agency is important as a control and effort to prevent inequality and abuse of authority so that a check and balances mechanism is realized. The mechanism exists as a consequence of the separation of powers in running an institution, namely supervision and control over the performance of executive, legislative and judicial powers.[10] Through the Check and balances mechanism, it emphasizes the functions and authorities of each institution in carrying out its duties. According to Fuadi, the check and balance mechanism is carried out in several ways, namely:

- Granting authority over an action to more than one branch of government
- Granting the authority to appoint certain officials to more than one branch of government
- Legal remedies from one branch of government against another
- Direct supervision from one branch of government to another branch of government
- The granting of authority to the court as the final word if there is a conflict of authority between the executive and the legislature.

This mechanism seeks to achieve structural balance so that law enforcement is carried out fairly and prevents abuse of power. The National Police of the Republic of Indonesia as one of the state institutions as stated in Article 2 of the National Police Law of the Republic of Indonesia (UU POLRI) is present in the context of maintaining public security and order, law enforcement, protection, protection, and service to the community. Such a wide range of tasks and functions require a strict supervision mechanism in order to prevent abuse of power that will affect the professionalism of the institution. Therefore, the breadth of authority must go hand in hand with the supervision mechanism.

Police institutions have significant weaknesses in carrying out their functions because the breadth of tasks given after the reform is not balanced with an adequate control system. This huge institution relies on the control of its own colleagues in it. On the other hand, after the Reformation, these institutions often emphasized discussions of strength and solidarity. As a result, "sectoral ego" becomes a big problem

when the mission of reform with the basic framework of democratization, namely public involvement or participation in public institutions, is hit.[11]

Supervision through the check and balance mechanism of an institution as a form of minimizing the impact that is detrimental to the public such as abuse of power, neglect and violation of human rights, and public trust in the performance of the institution. The supervision mechanism in the National Police is especially related to the aspect of Human Rights as a basic right.

Control and supervision are crucial both internally and externally for the institution. Lack of optimal control and supervision related to internal conflicts of interest and weak external supervision. The roles of Irwasum, Wasidik and Divpropam often do not work when it comes to the interests of individuals, elites both in institutions and political and economic elites externally. Meanwhile, the role of the national police institution, namely the National Police Commission, which is expected to be an external supervisor, is more of a subordinate part of the institution that will be supervised. This happens because the state police institution is under 1 legal umbrella of the Police Law. Not to mention when it comes to the composition and structure of the National Police Commission.

In maximizing the check and balance mechanism, efforts are needed to optimize institutional performance such as strengthening internal supervision, realizing transparency and accountability, cross-sector cooperation, and strengthening regulations.

Analysis Fulfillment of Human Rights

Guaranteeing Human Rights in cyberspace is crucial, especially related to the social and economic development of a society. Human rights often intersect, namely freedom of expression, the right to privacy, protection of discrimination, access to information, and security. The protection of these rights is crucial, especially prone to irregularities.

Data Privacy: A person's right to privacy has been explicitly recognized by the constitution through Article 28G paragraph 1 of the 1945 Constitution of the Republic of Indonesia, especially when it intersects with the cyber world which has a more complex structure. Personal data refers to data that represents an individual's identity for identification. Authority in cyber access has the potential to access personal data and the occurrence of hacks that can be used arbitrarily.

Freedom of Expression: Everyone has the right to express their opinions and voices as a form of expression. In the context of the cyber world, freedom of expression has become wider where there is a breadth of expression through various media. On the other hand, there is the potential for abuse of authority by illegal monitoring, including wiretapping of citizens' communications without a legal basis, namely permission from the court. In addition, there is also blocking and decreasing internet access speed in an area and arrests without strong evidence so that they are subjective.

Access to information: The massive circulation and dissemination of information in the digital era makes it easier to access and obtain information so that everyone has the same opportunity. Restrictions on access to information will weaken the implementation of checks and balances through social control by the community or the public in monitoring the performance of the institution.

4 Conclusion

In the context of the Bill on the Police of the Republic of Indonesia (Polri), Indonesia is facing major challenges related to the adjustment of regulations to the police with the dynamics of an increasingly sophisticated era, especially in cyberspace. The bill raises concerns about the potential abuse of power by the police without adequate oversight, given the new authority given in regulating cyberspace. Discussions surrounding the bill highlight the importance of maintaining a balance between state power in maintaining security and the protection of human rights, such as freedom of expression and privacy.

The National Police Bill faces criticism because it is considered to open up opportunities for abuse of power, especially related to regulation in cyberspace. The use of the authority to block, terminate, or slow down internet access without clear legal force and transparent oversight raises concerns about violations of individual rights, such as freedom of expression. The presence of this bill has sparked a debate about the need for a strong checks and balances mechanism to prevent abuse of authority that can harm society.

In addition, the bill also highlights the debate on the balance between law enforcement and human rights protection. Effective law enforcement is necessary to maintain public order, but it must be done without sacrificing individual freedom. Increasing police authority in cyberspace, while considering risks to privacy and freedom of expression, is a key focus in the evaluation of this bill. In conclusion, the Bill on the Police of the Republic of Indonesia must ensure clear, transparent, and law-based arrangements to maintain justice and human rights in this digital era.

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