

Urgency Development of National Law That is Oriented in the Protection of Human Rights Learning from Cases of Human Rights Violations^{*}

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Abstract : The development of national law is still in process. The national law in the future must provide certainty of the protection of human rights. The flow of globalization has given every citizen broad access to understand the value and concept of human rights protection. The problems in this research are: How is the concept of human rights in Indonesia? 2) How are the human rights violations occurring in Indonesia and the settlement efforts? 3) How is the urgency of the development of national law that is oriented towards the protection of human rights in the future? This research uses normative approach. The research data used is secondary data in the form of library materials. The analysis used the induction-interpretation-conceptualization. The results of this study show: human rights are a fundamental right. Every human being has a degree, dignity and equal rights. Many gross human rights violations in Indonesia. Human Rights Court ever held in Indonesia yet, but considered to be blunt. Development of national laws on the protection of human rights should be oriented in line with the global demands that each country must uphold human rights.

Keywords : Development of national law, orientation, human rights.

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1. INTRODUCTION

The development of national law is still in process. The national law in the future must provide certainty of the protection of human rights. Therefore, globalization has given extensive access to every community to understand the value and the concept of Human Rights. Human rights are the basic rights that every human being possesses as a gift of God Almighty. These basic rights have been brought into being and are inherent in human beings and should not be violated. Every human being has a degree, dignity and equal rights.

Previously humans were less aware of the existence of the same degree of the other human. The suppression of human beings to each other, as well as state repression against its people. The most concrete example can be seen in colonization from one nation to another. Since World War 2, recognition of human rights is a must of a country and must be guaranteed by its constitution. The Universal Declaration of Human Rights December 10, 1948 is a milestone in the enactment of the guarantee of human rights which is the declaration of the world's countries.

Increasing awareness of the international community on human rights issues in a relatively short time is a step forward in democratic state life. There is the same orientation that is toward a state system that upholds human values. One of the indicators is the implementation of institutions related to human rights, such as the establishment of the International Criminal Court (ICC) through the Rome Statute 1998, which has been in effect since ratified by 60 countries on July 1, 2002 (Atmasmita, 2004).

One thing that can not be denied, in Indonesia is also often a violation of human rights, from ordinary human rights violations, to gross human rights violations. As a participating member of the Rome 1998 conference, although it has not yet

ratified the Rome Statute, Indonesia also regulates human rights through Law No. 39 of 1999 about Human Rights. As a follow up, Law No. 26 of 2000 on Human Rights Court was passed. The birth of these two laws is expected to assist in the enforcement, protection and settlement of human rights violations.

Factually, the human rights court has ever held are unable to resolve serious human rights violations that have occurred. Indonesia remains in the spotlight of international duania as a country that can not solve human rights violations. Even human rights violations also occur with various motives. Departing from where the author views, in the development of national law in the future should not ignore the protection of human rights. The development of national law should be oriented towards the protection of human rights.

The problems in this research are: How is the concept of human rights in Indonesia? 2) How are the human rights violations occurring in Indonesia and the settlement efforts? 3) How is the urgency of the development of national law that is oriented towards the protection of human rights in the future?

This research uses normative approach and the data used is secondary data that is written document obtained through library search. The data analysis method used is reflective.

2. THE CONCEPT OF HUMAN RIGHTS IN INDONESIA

The word human rights is a translation of the human right or the right of human, meaning human rights. But in some literature the use of the term human rights is used instead of the use of human rights (Muzaffar, 2003). Human rights in Indonesia are generally better known by the term "human rights" as a translation of basic right (UK) and grondrechten (Dutch),

or it may also be called civil rights. The term monumental human rights was born from the success of the French Revolution of 1789 in the Declaration des Droits de L'homme et du Citoyen, with the motto of *liberte, egalite, fraternite* (Bahar, 1997).

Human rights are universally recognized fundamental rights. The right is attached to human beings because of their nature and nature as human (Rahayu, 2011). Human rights as a basic right owned by every human being as a gift of God Almighty that can not be inviolable existence. The basic right has been brought into being and is attached to the human being as God's creature. Every human being has the same degree, dignity and rights.

Generally, human rights can be defined as a set of rights inherent in the nature and existence of human beings as God's creatures that must be respected, upheld and protected by the state, law, government and everyone. According Muladi (1997), human rights are natural rights inherent in human beings since humans are born (inherent). Without that right man can not grow and develop as a whole person.

In the past, humans did not recognize the existence of other human degrees that resulted in the oppression between people with each other. The most concrete example can be seen in colonization from one nation to another. The term human rights develops in accordance with the times, in the sense of changing human civilization from time to time. Originally known as natural right, based on the theory of natural law that everything comes from nature including human rights. The term was later replaced by the right of man, but was ultimately not accepted, as it did not represent women's rights. After World War II and the establishment of the United Nations, a new, more popular term is now human right (Abidin, 2006).

Human rights guarantees are a must from a country through its constitution. The Universal Declaration of Human Rights,

December 10, 1948, is a milestone in the enactment of human rights guarantees. The text is a worldwide statement of human rights whose main content is stated; "All people are born free and have the same dignity and rights. They are endowed with reason and mind, should associate with each other in brotherhood ". The rights that are governed by the UN Charter of the Universal Declaration of Human Rights of 1948 are: 1) Right to think and expression, 2) Right to have something, 3) Right to get a flow of belief or religion, 4) Right to live, 5) freedom of life, 6) Right to good name, 7) Right to gain employment, 8) Right to legal protection.

Human rights discourse on the international level has experienced a very significant development. Since it was proclaimed in 1948, there have been two other historical milestones; first, the acceptance of two United Nations covenants on civil, political, economic, social and cultural rights. The two covenants have been declared since 1966, but not until ten years after ratified thirty-five UN member states. Secondly, the adoption of the Vienna Declaration and its Action Program by representatives of 171 countries on 25 June 1993 at the UN World Human Rights Conference in Vienna, Austria. This second declaration is a compromise between the visions of countries in the West with the views of developing countries in the upholding of human rights (Muzaffar, 2003).

Whereas in Indonesia, the recognition of Human Rights is listed in the Preamble of the 1945 Constitution of the State of the Republic of Indonesia; "That indeed freedom is the right of all nations ...". In addition, there is also the Preamble to the Fourth Element Act, and several other laws and regulations are made by the Government. It is also mentioned in the Decree of the People's Consultative Assembly Number XVII / MPR / 1999 that human rights are a fundamental right inherent in human nature that is natural and

universal as a gift of God Almighty and serves to ensure the survival, freedom, development of people and society, may be ignored, deprived, or harassed by anyone. Article 1 of Law Number 39 Year 1999 about Human Rights also states that "human rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld, and protected by the state, law, government and everyone, for the sake of honor and protection of human dignity".

The rights contained in the Law of the Republic of Indonesia Number 39 of 1999 about Human Rights consist of: 1) Right to life; 2) Family right; 3) Right to self-development; 4) Right to justice; 5) The right to personal freedom; 6) Right to security; 7) Right to prosperity; 8) Right to participate in government; 9) Women's rights; 10) Rights of the child. Human rights arrangements in Indonesia are determined by reference to the UN Declaration of Human Rights, the UN Convention on the Elimination of all forms of discrimination against women, the UN Convention on the Rights of the Child and other international instruments regulating human rights. The material of this law is also adapted to the needs of the community and the development of national law based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia.

3. HUMAN RIGHTS VIOLATIONS IN INDONESIA AND ITS SETTLEMENT EFFORTS

Human rights violation is an act of human rights violation whether committed by individuals or by state institutions. It is mentioned in Article 1 of Law Number 39 of 1999 about Human Rights that:

Referred to as human rights violation is any act of a person or group of persons including the state apparatus, whether intentional or unintentional or negligence which

legally reduces, hinders, limits and / or deprives a person of human rights or a group of persons guaranteed by law and do not get or feared will not get the legal remedy fair and right based on the applicable legal mechanism.

The categories of human rights violations can be grouped into two types: First, gross human rights violations, including: 1) Genocide, ie any act committed with the intent to destroy or annihilate all or any part of a nation, race, ethnicity, and religion by means of acts of violence. 2) Crimes of humanity, ie an act committed in the form of attacks directed directly against civilians such as forced expulsion, murder, torture, enslavement, etc. Second, ordinary human rights abuses, which include: 1) Beatings, 2) Persecution, 3) Defamation, 4) Barring people from expressing their opinions, 5) Eliminating the lives of others.

It has become human nature that humans have two potential to do the deed, the potential for doing good, and the potential for evil. It is these evil deeds that cause harm to others who are considered to be violating human rights. Human rights violations can occur in the interaction between society and society, and government officials with the community. However, what often happens is between the government apparatus and the community.

When viewed from the historical development of the Indonesian nation, there are some events of human rights violations that are classified as normal to be helped terribly. Human rights violations are classified as ordinary, countless. Data from the National Commission on Human Rights of over 200s per month reporting against human rights violations, such as torture, religious freedom, harsh treatment of suspected terrorists, welfare, evictions, and so forth.

As for the violation of human rights, there are some of which are in the international community's attention, mlsanya: 1) The Eradication and Cleanup of the Movement of 30 September 1965. 2) The pursuit of members of the Communist Party of Indonesia in 1966-1971. 3) The case of Papua in 1969-1984. 4) Blockage of political Islam. (5) The case of East Timor in 1975-1998. 6) Land evictions and peasants' oppression. 7) The mysterious shooting of a number of criminals. 8) Aceh Military Operations Area 1989-1998. 9) The suppression of labor to the death of Marsinah in 1994. 10) The murder of journalist Bernas, Fuad Muhammad Syafruddin in 1996. 11) The attack on the office of the Indonesian Democratic Party July 27, 1996. 12) Handling of the Student Demonstration 1998-1999. 13) The case of Ambon 1999. 14) Poso Case 1998-2000. 14) The killing of a human rights activist, Munir, 2004. 15) Expulsion of burning of houses of Ahamadiyah residents in 2010. 16) Expulsion and killing of Shiites in Madura 2012. 17) Mesuji massacre case, 2011. 18) Raid to Cebongan Prison in 2013. 19) Execution of suspected terrorists especially Siyono, 2016, etc.

The emergence of cases of gross human rights violations in Indonesia peaked since 1998, tepanya after President Soeharto withdrew from his post as president. Traces of violence seen as gross human rights violations by the government began to unfold and voiced by the special community of the victim's family. The once-victimized community groups demanded the state through a new government to try the previous government and restore the rights they had been deprived of.

The new government issued various policies to resolve the human rights violations. There are two mechanisms for resolving human rights violations in the past: the ad-hoc Human Rights Court and the Truth and Reconciliation Commission. The ad-hoc Human Rights Court is a

mechanism of case resolution that uses the logic of the judicial system, while the Truth and Reconciliation Commission uses the logic of the non-judicial system (this commission has been canceled by the Constitutional Court through judicial review in 2007).

The term of the Human Rights Court is for the first time mentioned formally in Chapter IX of the Human Rights Court Article 104 Paragraph (1), (2), and (3) of Law Number 39 Year 1999 on Human Rights. The law states that the Human Rights Court is established to try gross human rights violations, such as genocide, arbitrary or extra-judicial killings, torture, forced disappearance, slavery or discrimination which is systematic discrimination in accordance with the provisions of Articles 6 and 7 of the Rome Statute of the International Criminal Court.

Implementation of the Law of the Republic of Indonesia Number 39 Year 1999 on Human Rights is immediately established Human Rights Court. As a follow up, Law No. 26 of 2000 on Human Rights Court was enacted on 23 November 2000. The Human Rights Court Mechanism is based on Article 43 of Law Number 26 Year 2000 on Human Rights Court for the criminal procedure system still follow the General Book of Criminal Procedure Code. Prosecution can be done by the public prosecutor of the Attorney General or ad-hoc from the community. The examination of cases is done by a panel of judges consisting of career judges and non-career careers.

According to Law Number 26 of 2000 on Human Rights Courts the formation of courts consists of three ideal sections. First, the National Commission on Human Rights conducts investigations based on complaints from victims or community groups about one case occurring in the past. The National Commission on Human Rights established a Commission of Inquiry into Human Rights Violations to conduct investigations

and then to issue recommendations. If in the recommendation there is evidence of alleged crimes against humanity or genocide, it will continue at the prosecution stage by the Attorney General's Office. Second, the People's Legislative Assembly discussed the investigation results of the National Commission on Human Rights and made recommendations to the president to establish an ad hoc human rights court. Third, the President issued a presidential decree for the establishment of an ad-hoc human rights court. In the second and third stages the political will of the ruling government plays an important role.

Human Rights Court in Indonesia has 2 kinds of settlement; 1) the ad hoc human rights court mechanism for past human rights abuses prior to the issuance of this law. 2) A permanent human rights court against cases after the formation of this Law. Several cases of gross human rights violations in the past that have been dealt with by this mechanism are the cases of East Timor and Tanjung Priok. The first trial was conducted in 2003 or approximately two years later than planned. As for the case of Aceh, Papua, Trisakti, Semanggi I and Semanggi II, mass riots in various places in Indonesia is also an obligation jurisdiction of the Human Rights Court have not been addressed until now.

The establishment of the Human Rights Court in Indonesia is part of the government's strategic program to show the international community that Indonesia can solve its own human rights abuses. This is a government policy in running its legal politics (Mahfud MD., 2003). The government wants to realize the supremacy of the law based on human rights values, because of the political configuration of the appointment of human rights discourse in the 1945 Constitution of the Republic of Indonesia, which is regulated by the Law of Republic of Indonesia Number 39 of 1999 about Human Rights and the Law of RI Number 26 of 2000 about Human Rights Court.

Expectations are quite large from the human rights activists and (in particular) the victim's family was not realized. The settlement of human rights violations keeps many problems. The insistence of the victim group continues to flow to the relevant institutions. Victims groups along with other elements of society continue to demand the completion of cases of human rights violations, ranging from audiences, political lobbying to demonstrations.

The Indonesian Court of Human Rights has a material jurisdiction which includes the Crime of Genocide, the Crimes Against Humanity which is a form of adoption of the 1998 Rome Statute. In fact, this is reinforced in the regulation of crimes of genocide and crimes against humanity. It is stated in the explanation of Law RI Number 26 of 2000 about Human Rights Court as a provision in accordance with Rome Statute of International Criminal Court 1998. The explanation has consequences that the crime of genocide and crimes against humanity as mentioned in Article 7 of Law RI Number 26 of 2000 about Human Rights Courts is equivalent to Articles 6 and 7 of the Rome Statute 1998 including to the adaptation of elements of crimes. Law RI Number 26 of 2000 about Human Rights Courts only has jurisdiction over crimes against humanity and genocide, but does not fully explain the elements of crimes. The law also does not regulate specific proofing procedures to adjudicate crimes of "extraordinary crimes".

Law RI Number 26 of 2000 about Human Rights Court adopted the Rome Statute 1998 but not in its entirety and "unfavorable" so that its meaning and meaning differed. Many of the provisions of Law RI Number 26 of 2000 about Human Rights Courts are dull and can not be applied properly. It is possible that the international community is not satisfied and does not believe in the system of Human Rights Court in Indonesia. The cases of human rights violations East Timor and Tanjung Priok that have been handled by

the ad-hoc Human Rights Court are evident. Victims are disillusioned with the Human Rights Court mechanism and feel they are not getting a sense of truth and justice. Some people who are supposed to be responsible actually escape from lawsuits (Rizki, et al., 2005). The harsh criticism of Law RI Number 26 of 2000 about Human Rights Courts began to evolve from the fact that many articles were misinterpreted to allow the perpetrators to be free.

4. THE NEED FOR THE DEVELOPMENT OF A NATIONAL LAW ORIENTED TO THE PROTECTION OF HUMAN RIGHTS IN THE FUTURE

Has its own laws for the people of Indonesia can show their national identity in line with expectations and aspirations of independence. These efforts and efforts must continue to be done. Not yet has the national legal system of its own products will be a problem that will continue to emerge as the development of the life of the state.

The development of the law is an attempt to form a new law to update the old law that is not relevant. Updating means replacing the old laws with the new law. Legal development in this context is due to legal reform (Hamzani, 2018). While national law is a law built based on the constitution and Pancasila as the basis of the state (Sularno, 2006). In other words, national law is a law built on the taste and engineering of the Indonesian nation.

The mechanism of legal development can be through legislation can also be through the functioning of law of the living law. Legal development through legislation such as the establishment of legislation or positive law. While the development of law through the functionalization of living law in society can be through adherence to

tradition and jurisprudence (Hamzani, 2018).

The legal direction of Indonesian law in the development of the law of its scope simplifies the list of material plans (substance) of the law to be made in the National Legislation Program. The Indonesian government has long made efforts to establish national laws through legislation. The way that has been taken more in patchwork, namely changing the provisions that have been out to date by forming a new law. The national development is still partial.

The legal development effort in Indonesia must be in accordance with the foundation and the national objectives to be achieved as mentioned in the 1945 Constitution of the State of the Republic of Indonesia: "... to protect the whole nation of Indonesia and the whole of Indonesia's blood and to promote the common prosperity, nation and participate in a world order based on freedom, eternal peace and social justice (Erfandi, 2016). The imposition of responsibility for the promotion of the general welfare shall have implications for established legal products.

National law must serve the national interest and the achievement of people's prosperity, justice and public order (Randang, 2009). As the embodiment of values, the law must contain values that are upheld by the people of Indonesia. The concept adopted by Indonesia is the concept of development law, which is putting the law as a means of community building that emphasizes the function of law as; maintaining security and order, development facilities, and means of community education (Setiadi, 2012). The development of national law is directed to realize a national legal system that serves the national interest whose material comes from the perspective and belief of the Indonesian nation. Similarly, new issues must be responded by the legal need to support the general duty of government and to advance the national interest. The

direction of long-term development of national legal development has been declared with the aim of replacing Dutch colonial law products with national law through the legislation of a new law (statutory law).

The fundamental issue in building a national legal system is equally important as to how to create a legal system conducive to the diversity of sub-systems, the diversity of substance, and the development of the areas of law that society needs. The legal system is also conducive to the creation of public legal awareness, the freedom of the law of the people, the freedom to exercise rights and obligations in accordance with the applicable rules (Randang, 2009), and as protection of human rights.

The Indonesian state by the founding fathers is idealized as a State of Law. Blue print and desaghn macro elaboration of the idea of the state of the law there is no comprehensive formula besides development of law sector which is sectoral and partial. This is inconsistent with the tradition of civil law law which tends to legislation priorities, and embraces the paradigm and fictitious doctrine which assume that once a legal norm is established, then at that moment everyone is considered to know the law.

Law enforcement against human rights violations in Indonesia is still not optimally felt by the world community. Even from the side of the regulation, it is still a lot of laws and regulations that have not provided human rights protection. The ongoing development of national law should be oriented towards the protection of human rights.

The development of a national law that is oriented towards the protection of human rights is in line with global demands that every country should exercise respect, promotion, fulfillment, protection and enforcement of human rights. Especially in Indonesia has also launched the Human Rights Action Plan which began in 2004.

The Human Rights Action Plan provides an important framework for the Government to carry out domestic and international obligations for human rights and is a strategic entry point for establish relationships on human rights issues with government agencies at the national, provincial and local levels.

5. CONCLUSION

Based on the above description can be summarized as follows: Human Rights is a basic right that is owned and carried by every human being since birth as a gift of God Almighty and should not be violated. Every human being has the same degree, dignity and rights. Human rights violation is an act of humanity violation whether committed by individual or state institution. Many events of human rights abuses in Indonesia either human rights violations until gross human rights violations. Human Rights Courts have been held in Indonesia to deal with gross human rights violations. There are several problems resolving human rights violations in Indonesia through a human rights court which in its application becomes dull. One of the reasons for adopting the Rome Statute 1998 but not in its entirety. The ongoing development of national law should be oriented towards the protection of human rights. The development of a national law that is oriented towards the protection of human rights is in line with global demands that every country should exercise respect, promotion, fulfillment, protection and enforcement of human rights.

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