

Law Enforcement Regarding Human Rights According to Positive Law in Indonesia

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ABSTRACT

This article discusses the importance of recognition and protection of human rights in the Indonesian legal system, focusing on the 1945 Constitution and its amendments, as well as Law No. 39 of 1999. Furthermore, the article highlights the establishment of law enforcement agencies, such as Komnas HAM, as a commitment by the government to ensure justice. The Second Amendment of 2000 strengthened the position of human rights in the hierarchy of national legal norms. This research aims to explore the mechanisms for applying the law to human rights violations and the remedies required in Indonesia. The application of law includes legal groundwork through the Human Rights Court, while remedies involve mechanisms such as peace, consultation, and mediation, which must take into account cultural and social values. With active community support and coordination of relevant institutions, human rights enforcement is expected to remain in line with local and universal values.

Keyword : Human Rights, Positive Law

INTRODUCTION

The recognition and protection of human rights is a crucial aspect of a country's legal system. In Indonesia, the regulation of human rights has been embedded in the legal basis of the state, especially in the 1945 Constitution which has undergone several amendments. Law enforcement related to human rights is an integral part of the government's commitment to ensure justice and protection of the rights of every citizen. Initially, Indonesia's human rights declaration was reflected in the Preamble of the 1945 Constitution, which made Pancasila the philosophical foundation of the state. However, along with the times, efforts to further consolidate and strengthen the enforcement of human rights led to the establishment of specific laws governing such matters (Hamzah, 1990).

With the enactment of Law No. 39/1999 on Human Rights, Indonesia integrated the principles of the UN Declaration of Human Rights and other international instruments into national law. This marked a significant step in providing a more concrete and comprehensive legal basis for human rights enforcement in Indonesia. The law provides the legal basis for Indonesia's law enforcement agencies, including the National Human Rights Commission (Komnas HAM), to investigate and monitor human rights violations. With this institution, the

government seeks to ensure that every case of human rights violations is handled fairly and transparently (Sumantri & Sri, 1992).

This article discusses the relationship between law and society, beginning with a review of the statement "where there is society, there is law" (*ubi societas ibi ius*). The research highlights how societies form laws in an effort to protect themselves or their groups. However, societal developments are often faster than legal reforms, resulting in some regulations becoming irrelevant to the current situation. The Covid-19 pandemic, for example, has changed various aspects of people's lives, including travel restrictions and requirements. Documents such as the Covid-19 Certificate have become important in a pandemic situation, but cases of forgery have also increased. Syndicates of Covid-19 Certificate forgery, including perpetrators who are medical personnel, indicate a serious violation of the law. The imposition of criminal and administrative sanctions is necessary to uphold justice and emphasize the importance of complying with the code of ethics, especially in the context of health services. Through an understanding of applicable regulations and laws, as well as fair enforcement of sanctions, it is hoped that the community can obtain justice and protection in accordance with current social and health conditions.

DISCUSSION

A. Application of Law to Human Rights Violations

Human rights have been recognized since the adoption of Pancasila as the basic guiding principle of the Indonesian state. Although not explicitly, these principles are reflected in the values of the Pancasila precepts. Law No. 39 of 1999 was then established to regulate human rights with reference to the United Nations Declaration of Human Rights, the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of the Child, and other relevant international instruments.

In the amended 1945 Constitution, human rights are specifically included in chapter XA articles 28A to 28J. Law No. 39 of 1999, enacted on September 23, 1999, provides an important legal foundation for human rights courts. It defines human rights violations as acts that violate rights guaranteed by law, and regulates rights such as the right to life, personal freedom, religion, and the right not to be enslaved. The law also stipulates that everyone is entitled to use all legal remedies, both national and international, to enforce his or her rights

guaranteed by Indonesian law. Article 104 provides for the establishment of a Human Rights Court to try gross violations, with a maximum period of establishment of 4 years in advance.

Initially, Government Regulation in Lieu of Law (Perpu) No. 1 of 1999 on Human Rights courts was issued, but as it was deemed inadequate, the Perpu was revoked. Law No. 26/2000 was then enacted on November 23, 2000 to replace Perpu No. 1/1999, giving the Human Rights Court the authority to deal with gross violations of human rights, including crimes of genocide and crimes against humanity.

The importance of upholding human rights emerged from the numerous cases of gross violations that triggered the proposal to establish an ad hoc Human Rights Court in Aceh. The House of Representatives submitted a proposal to the President to establish the court, marking the important role of human rights in the context of democratization and respect for human dignity. Despite the complex challenges associated with the neglect of human rights violations, the prospects for human rights enforcement in the future are expected to improve with institutional and legal progress and support from an increasingly open public sphere (Leksono & Supelli, 2001).

B. Efforts to Settle Human Rights Cases in Indonesia

Settlement of human rights cases in Indonesia is conducted by prioritizing applicable legal norms. Law No. 39/1999 on Human Rights establishes several settlement mechanisms, including peace, consultation, negotiation, mediation, conciliation, and expert judgment. This settlement process must consider the cultural, social, religious and economic values of Indonesian society. The implementation of policies related to human rights violations should take into account these values in order to resolve problems peacefully and respect the dignity of the community. Settlements that focus on the economy and the injustices felt by the community can bring sustainable peace.

The importance of promoting human values in conflict resolution is recognized, and peaceful means, such as mediation and dialogue, are considered more effective than the use of violence. Means of resolution that are accepted by all parties and prioritize human values, such as mediation and peaceful dialogue between conflicting groups, are considered wise and humane steps. In resolving cases of gross human rights violations, the means of resolution used is the Human Rights Court. If there is no evidence of gross violations, the case can be conducted in

the general court in accordance with Law No. 26/2000 which replaced Law No. 1/1999 on Human Rights courts.

The importance of understanding that human rights values must be adapted to the cultural, social and religious context of Indonesian society is recognized as the foundation for human rights enforcement. Therefore, human rights enforcement in Indonesia cannot be successful if it relies solely on universal human rights values without considering the specific values embraced by Indonesian society. This understanding is important to ensure that the enforcement of human rights in Indonesia is in accordance with the values of the society and not just as a mere platform (Supriyanto, 2014).

CONCLUSION

In the context of human rights enforcement in Indonesia, the legal framework that has been established, especially through Law No. 39/1999 and the Second Amendment to the 1945 Constitution, provides a solid foundation for the enforcement and protection of human rights. The establishment of the Human Rights Court, as a result of the law, has become a very important tool in dealing with human rights violations, especially those of a serious nature such as crimes of genocide and crimes against humanity.

In the application of the law, mechanisms that include peace, consultation, negotiation, mediation, conciliation, and expert judgment are directed at resolving cases of human rights violations by taking into account the cultural, social, religious, and economic values of Indonesian society. This understanding arises from the realization that human rights enforcement cannot succeed if it does not consider the cultural context and characteristics of society. Although there have been concrete steps in strengthening human rights enforcement, challenges remain. Effective coordination between relevant institutions, the judicial system, and active community participation are key to ensuring justice and transparency in handling cases of human rights violations.

Along with the prospect of human rights enforcement in the future, stronger institutional support and more active community involvement are expected to bring positive changes. Understanding and applying human rights values that are appropriate to the local context, while still paying attention to international standards, are crucial points to achieve effective and sustainable human rights enforcement in Indonesia.

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