

# Judicial Review Spread Hatred of Race: Case Study Riot Balinuraga - South Lampung

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**Abstract:** *Inter-ethnic conflict can occur for many reasons. In addition to sociological analysis that is usually used to describe the conflict triggers, juridical analysis can also be used to explain the cause of the conflict is not only influenced by unequal social conditions, but also by the statements or behavior that could provoke hatred in society. Act through the field of conflict management, conflict prevention it should be emphasized and efforts to maximize integration between tribes in the region of the republic of Indonesia should be improved, so that various forms of spreading hatred against the tribe in the form of words, actions can be avoided through the criminalization of any spread of hatred.*

**Keywords:** inter- ethnic conflict, conflict management act, integration

## 1. Introduction

South Lampung regency is one of regencies in Lampung Province, Indonesia. The capital of the district is located in Kalianda. This district has an area of 2109.74 Km<sup>2</sup> and a population of approximately 923 002 inhabitants (LSDA 2007). South Lampung is divided into 17 districts and consists of 248 villages and three villages. Based on the available data the population of South Lampung district can be broadly classified into two parts, namely Lampung natives and migrants. The natives in particular sub-tribe generally resides in Lampung Peminggir along the coast. Population sub-tribes spread across the South Lampung regency. Migrants who live in the South Lampung regency consists of an assortment of tribes from various regions in Indonesia such as West Java, Central Java, East Java, Bali, Sulawesi, South Sumatra, West Sumatra, North Sumatra and Aceh. Of all the tribes of the largest number of immigrants are immigrants from Java. The amount of people from Java, made possible by the colonization of the Dutch colonial era and followed by transmigration in the aftermath of independence, in addition to spontaneous population movements and spontaneous.

### 1.1 Conflict Balinuraga

On 28-30 October 2012, which coincided with the swearing youths clashed broke out in Balinuraga, South Lampung. Spontaneous Lampung into the national spotlight. Previous Lampung has become the attention -related tragedy Mesuji. Judging from the triggers that many versions of one is the act of disturbing Balinuraga village youth agom village girls who ride motorcycles and suspected sexual abuse. But when viewed on the official website of the police, the trigger is a misunderstanding. Based on the trigger, the conflict over the issue actually began with a small, but growing into a major conflict.

Historically, inter- ethnic conflict in Lampung is not a new thing, the conflict had never happened before and the trigger is just starting from a trivial matter. Even in a place not far away with today's clash occurred is in Sidowaluyo

Sidomulyo districts also have occurred in January 2012 yesterday, the trigger was the seizure of a parking lot. Here are some of the tribal wars that have occurred in Lampung:

- December 29, 2010: War Javanese / Balinese vs. Lampung in Lampung middle begins with the theft of chicken.
- September 2011: Java vs. Lampung
- January 2012: Bali vs Sidomulyo South Lampung Lampung
- October 2012: Sidomulyo Selatan.Bali vs. Lampung Lampung
- November 2012: Bekri, Central Lampung Lampung originated from Java vs. Cattle Theft

Conflict is some conflict over a comparatively large. In addition to major conflicts that have occurred in the above, in Lampung also frequent small conflicts between tribes, but usually it can still be muted so as not enlarged.

Lampung ethnic grouping in the area had been happening for a long time, in fact it is already happening since they were teenagers. In some area school children Lampung - Bali tribal child does not want to play / socialize with children - children as well as other parts with children - children of the tribe of Java and Lampung. They are usually grouped according to their tribes so that if a dispute among this group will involve their tribe. Lampung in the south is the atmosphere in this area is not healthy for a long time. Start of the school year in which the junior and senior high school STATE South Lampung seed and favorite in focused in the district capital, namely, Kalianda city. So all the children in all regions of southern Lampung must intend to continue their education in the boarding house in the city if the vehicle Kalianda or PP support. In times of high school is the one who determines / form the basic character of the next generation to the next article, in the schools these children are often involved conflicts between groups (tribal sentiments) and almost every conflict involving inter- school children in one of his trigger bullying by some children Lampung tribe to tribe children Bali / Java. Of course, the

children who are victims of bullying who are not guilty of resistance. As a result, small conflicts often occur in schools Kalianda although it could end in damping or prevented by the police. It is ironic, the school did not take preventive action of these conflicts. The school is less sensitive or as if unaware of the conflict with their students. In fact, preventive measures can be taken to grow their brotherhood in the intense interaction space, such as intensifying their interactions in the scouts, UKS, OSIS, Drumband, and other extracurricular interest to them. of conflict since the days of the high school generation to generation until it started to grow and continue to grow without any interaction space that unites them until they are at this moment growing up in a primordial frame, it is no wonder it became the critical phase and ready to explode at any time and wherever.

## 2. Materials and Method

Indonesia is a country made up of many tribes. This phenomenon is in addition advantageous on the one hand, but also detrimental to the other side that is susceptible to conflicts between tribes. On the other hand, Indonesia is a country that is "experienced" in the event of conflict between tribes. Conflicts between tribes are quite long and have occurred in Indonesia is a conflict in Sampit in Central Kalimantan Dayak involving the Madura tribe. Another example is an inter-ethnic conflict that took many lives is a riot in the village Balinuraga Kalianda District of South Lampung tribe against tribe between Bali. These examples show that Indonesia is a country that has the vulnerability of social conflicts between nuanced ethnic and tribal sentiment.

The conflict potential vulnerabilities exploited by a third party for the benefit of any issues that benefit both economically and politically. Modes which can be used to provoke social conflicts are ethnic and tribal sentiments spread of hatred against other tribes. The development of the Internet, especially social media, is an effective and efficient instrument in spreading hatred.

Sociologist Dahrendorf (1976) see conflict basically has two meanings. *First*, conflict is a consequence or result of the completion of the integration process in a society. In the context of the failure of this integration, conflict becomes a symptom of disease (syndrome) that can damage the unity and cohesion of a society within a nation. *Second*, conflict can also be understood as a natural process in the framework of social reconstruction project. In this context of conflict seen in "functional" as a strategy to eliminate the disintegrative elements in society that are not perfectly integrated. The conflict in this perspective is believed to be a medium which, when done properly, it will strengthen the process of integration in society.

Through the theory of Dahrendorf conflict can be learned that can be viewed from two different glasses: positive and negative, pessimism and optimism. Conflict as a failure of integration or conflict as a mechanism that must be passed in a nation's society to enhance the integration process of its members. According to the authors, the conflicts that occur in Indonesia, both of which brought the issue of race,

religion, economics, etc., is a learning tool for the parties to the conflict, including the government and other peace actors. When conflicts can be handled properly, then the effort restoring a diversity of beautiful frame, into something that is no longer utopian.

Efforts to understand the non-conventional conflict has made Edward Azar (1990) by introducing the concept of social conflict continue (protracted social conflict - PSC) which conflicts involving communal groups which fight each other basic needs (basic needs) such as security, identity recognition, acceptance of the existence of, access to political institutions and economic participation. According to Azar there are at least four variables in the various PSC. First, communal content and discontent are satisfied or dissatisfied attitude of certain identity groups to the social and political realities that exist. Second, deprivation or social degradation, namely the denial of social needs groups existing identity. Third, the quality of governance or quality of government administrative agencies. Fourth, international linkage or association is an association of international conflict in a particular area with a variety of actors and international events. When the state and non - state is intensified in cross-border relations, the local events are increasingly open to international exposure. Disclosure international access often complicates the situation of conflict in certain areas. Various identity groups eager to separatist movements because of the support (moral, technical and material) from governments, organizations, groups and individual sympathizers abroad.

Spreading hatred can be done in various forms, not only by directly insulting the particular tribe. Hatred against other tribes also can be done by spreading a negative stigma on a certain ethnic group. That is, the scope of the object of hatred is very broad and flexible so that it can flourish in any form.

Azar of ideas about sustainable social conflict mentioned above, it can be noted that there are some changes in the conflict theory. First, the focus of attention shifted from the dimensions of power politics, which became mainstream in the context of the Cold War, which relates to the structural dimensions of conflict resolution efforts with development, the issue of poverty, welfare and social change, political access, and identity recognition. The introduction of the structural dimension in understanding the conflict requires changes in policy orientation of the countries that seek to resolve the conflict. Second, the relationship between conflicts with the capacity of government agencies to respond to the needs of the people. Along with the strengthening of the boundary lines of primordial (ethnic, religious, kinship), then the government is not only required to meet the needs of its people but also to be able to avoid favoritism attitude that benefit the specific identity.

Therefore, in Indonesian law -law and legislation under it should be able to regulate social conflict prevention models that can arise from the act of spreading hatred. Indonesia has Law No. 7 of 2012 on Social Conflict Management (Law no. 7 of 2012), but whether the law could prevent social

conflicts that might arise from the spread of hatred against a certain race or ethnicity? Is it any other Act does not regulate the handling of social conflicts that set? Then, why the conflict could erupt in the South Lampung? Is it because of the ethnic diversity that has long lived in harmony in the region? Why not the other of these communal conflicts, fights between residents appear again once again brought to the fore the issue of ethnicity? Is it true that ethnic difference to be the only reason behind the injury of the diversity of life in South Lampung? Lots of questions, and of concern, which arises when we are faced with a situation that is increasingly widespread communal conflict in Mother Earth lately. This paper will examine the juridical spreading hatred against other ethnic conflicts by using samples Balinuraga.

The research method in this paper is done by using a juridical - normative approach to the legislation in the field of social conflict resolution. By using primary legal materials, in the form of legislation in the field of handling social conflicts, especially Law No. 7 in 2012 and secondary legal materials, such as literature books, journals, papers, and research results in the field of social conflict resolution. Techniques of data collection is done by reviewing all the material both primary and secondary law relating to the subject matter as well as documentation. In-depth and comprehensive study (harmonization) of the legislation in the field of conflict resolution and social other documents so far is still within the scope of the study carried out systematically. Search results law material to describe qualitatively analyzed and presented in accordance with the subject matter studied.

### 3. Results and Discussion

Conflict in Lampung is only one of a series of bloody events in the country that raised the primordial issues such as ethnicity, religion, kinship, as a cause of conflict. Mas'od Mochtar stated that the real clash between residents in South Lampung on 28 to 29 October 2012 is an integral part of the conflict that occurred earlier that repeated. The conflict actually has roots deeper issues than just the feud the two ethnic groups. Previous conflicts related issues Transmigration Nucleus Plantations (PIR) to shrimp farms; the issue is still unresolved store so that conflicts can arise at any time again. This is where the importance we look back at history and sociological factors behind the conflict. In the past, the Dutch ethical policy covering irrigation programs, education and transmigration. This encourages the process of state building and the accumulation of capital at the same demographic changes. Changes that became one of the causes of friction between residents and new comers. Moreover when immigrants outperform native in economic terms. Social and economic jealousies this gave rise to a defensive stance as "sons of the soil".

Samsu Rizal Panggabean assess the recurrence of conflict Lampung indicates the failure of the government, especially the security forces to prevent conflict. Moreover, it has been known that the conflict prone to recur. Handling conflict should be more serious than what has been done by the local government, police and community leaders in South

Lampung after previous incidents. The security forces failed to lower tensions and prevent violence as intervention when a conflict is almost widespread. That happened not omission but the failure to prevent violence in the early stages of the conflict. Communities in conflict -prone areas are also considered not to have the mentality of prevention. That there is a mentality approach to mitigation action when violence occurs or afterward. For districts with many indicators of conflict, including repeated incidents and violence like in South Lampung, prevention should be the primary approach of government, security forces and the public. Experience recurrence of such conflicts in South Lampung track record shows the police, military and government are not good in tackling the violence that has followed.

The conflict in South Lampung recently involving two different ethnic groups are local groups ethnically Lampung and Bali ethnic group of migrant communities. Actually, Lampung ethnic as "indigenous" was not the majority in terms of numbers. Javanese ethnic group that immigrants became the majority. Bali including ethnic minorities in South Lampung society as written in the sharing of media reports about the incident. In addition to the two conflicting groups, can be identified other actors involved either directly or indirectly, in the event of such conflict. The first is the local government. In some cases sticking out, his policies and the governor of South Lampung is somewhat sensitive to the driving force and trigger conflict. It is unfortunate, in some cases, government officials as regents and governors; it becomes part of the conflict instead of being a mediator. The second is that the police and military were in the area of conflict is not only a mediator but also to reduce the escalation of conflict. Third, NGOs existing and new come later in the context of conflict trauma healing among children and adolescents. It can be said, in South Lampung conflict, the local people are becoming major actors through a series of peace reconciliation efforts.

In addition, the factors behind the development of emerging and existing conflict consists of the root factors or root causes which are often not visible on the surface but very decisive. Some of the bloody riots that occurred in Indonesia can be explained by the framework of the economic gap or difference of control over access to economic resources. Riots between Dayaks and Madura in Sampit, Kalimantan, for example, not only due to the rise of group identities but also nourished by the Dayak ethnic exclusion from the political-economic domination for decades. Conflicts can also in South Lampung with the framework. Inequalities in access control of the economy between local and migrant ethnic quite possibly fertilize potential conflicts due to ethnic differences in the region.

Balinese ethnic community groups in South Lampung as ruler of the transport and communications sector of the economy, as some media reports, is the second largest in South Lampung regency. While the original group Lampung "only" be a spectator of the rapid progress of the economic development community Balinese descent, became the underprivileged working in diverse sectors of the economy.

Economic-based social envy is what can be expected as the root of the conflict. The root of the conflict is usually the inequities, deprivation, or the gaps in depth, structured and internalized in the body of society, not visible and often even neglected. The push factor is the relation between society increasingly tenuous due to the shifting of the tradition of living together became individualistic, the shifting of the old generation tradition that seeks to create harmony of living together is a tradition that emphasizes a new generation of self-centered perspective so easily hurt and angry when the group or group members interrupted. Triggering factor in the context of conflict, South Lampung is diverse small incidents that sparked jealousy coals of socio-economic.

In addition, the social upheaval in South Lampung initially more because of the issue of land or plantations. However, now the trigger is small incidents that tend to be trivial matters, such as the case of conflict Balinuraga triggered because of juvenile delinquency in which two girls Agom motorcyclists intercepted Balinuraga youth cycling until they fall. Why trivial issue could explode into a major problem troubling the whole region?

According Syafarudin from the University of Lampung, a conflict that once existed has not been dealt with thoroughly, low implementation and not the maximum role of existing institutions, particularly local government should close with the community and nurturing. Local government should be a facilitator in the life of the nation and society. Leaders must be present among the people so that when there is the slightest burst, can become leaders who will listen and be heard and respected.

Thus, it can be said that the violent conflict in South Lampung is a series of structural violence in the form of economic inequality, where on one side there is a group that benefited from the structure of the control of economic resources available and on the other hand there are marginalized groups, as well as cultural violence in the form of ethnic differences "legitimize" other forms of violence. Without efforts to break the chain of violence this triangle, the conflicts will continue to emerge, without ever be expected.

Law no. 7 of 2012 was the first law in Indonesia that specifically regulates social conflict. Conflict resolution, pursuant to Article 4 of Law no. 7 in 2012, includes conflict prevention, conflict termination and post-conflict recovery. Law no. 7 in 2012 also characterizes inter-ethnic enmity between tribes and as a source of social conflict. Therefore supposed Law no. 7 of 2012 into law instrument that can prevent conflict arising from tribal nuances spreading hatred. If you look at the substance, conflict prevention model of Law no. 7 of 2012 does not use punishment policy against the measures - although not yet led to the conflict - is expected to lead to conflict. Law no. 7 in 2012 a more cultural approaches in an effort to prevent conflict. The approach can be seen in Article 6 of Law no. 7 of 2012 which stipulates that conflict prevention is done with effort:

- a) Maintain the peace in the community;
- b) Develop a system of peaceful settlement of disputes;
- c) Dampen the potential for conflict, and
- d) Establish an early warning system.

Cultural approach in Law. 7 of 2012 can be seen in the absence of penal provisions. Handling is interpreted in Law no.7 of 2012 is prevention to post-conflict recovery without the use of repressive instruments. Repressive instrument handed over to other laws governing criminal sanctions for actions that could potentially provoke social conflicts.

One of the policy measures of punishment against the spread of hatred that can be found in other laws and may be the instrument of conflict prevention is the Criminal Code. Although the codification of criminal law is regarded as a legal product that is obsolete, but there are chapters that are still relevant and contextually as a repressive instrument in preventing social conflict on the basis of religion. One is Article 156 of the Criminal Code. Article 156 of the Criminal Code regulating criminal sanctions for spreading hatred against certain groups. Certain groups referred to in Article 156 include groups based on race to religion. A complete Article 156 of the Criminal Code states as follows: Whoever publicly expressed feelings of hostility, hatred or contempt toward one or several layers of people, Indonesia, punishable by a maximum imprisonment of four years or a maximum fine of four thousand five hundred dollars. Class words in this chapter and the next chapter means each part of the Indonesian people with a different or some other parts because of race, country of origin, religion, place of origin, descent, nationality or position according to constitutional law.

The weakness of this law is the scope of actions that may be liable to be widespread because the formula "...feelings of hostility, hatred or contempt toward one or several groups..." can encompass many forms of action. Law Number 11 Year 2008 on Information and Electronic Transactions (Law no. 11 of 2008) is a law that does not specifically regulate social conflict issue, but aspects of the spread of hatred to religious adherents precisely regulated in this law. Article 28 paragraph (2) of Law no. 11 of 2008 say: "Any person intentionally and without right to disseminate information that is intended to cause hatred or hostility individual and / or a particular group of people based on ethnicity, religion, race, and intergroup (SARA). " Against such actions, pursuant to Article 45 paragraph (2) shall be punished by imprisonment of six (6) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion Rupiah). As Article 156 of the Criminal Code, Article 28 paragraph (2) of Law no. 11 of 2008 also has the same drawbacks. This provision is only visible even recycled from the provisions of Article 156 of the Criminal Code. Though the form of the spread of hatred in the world imagination (internet) is also very wide-ranging.

Both the legislation shows that the criminalization policy actions spreading hatred against certain tribes - with the aim of preventing social conflict - not specifically regulated by a law. Law no. 11 of 2008 also shows that the phenomenon of

abuse of electronic media as an instrument of spreading hatred has actually photographed and anticipated through the criminal policy.

The question, whether to criminalize the dissemination of hatred it is a violation of freedom of speech? The cornerstone of free speech restrictions - in the context of the spread of hatred - contained in Article 20 paragraph (2) of the ICCPR: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law ". In retrospect philosophically, spreading hatred, according to Oliver Wendell Holmes, is not worthy of protection as freedom of speech. Freedom of speech is actually intended as a protection against the efforts of the pursuit of truth (pursuit of truth). Instead led to the discovery of truth, freedom to express hatred even more encouraging harmful acts (of violence).

When compared with the United States can be found also view the need for restrictions on freedom of speech because of the abuse of these freedoms. Michael Rosenfeld split 4 (four) major stages of development and the protection of free speech restrictions in the United States: The first is the protection of freedom of speech is intended to protect citizens from the government. This argument is reasonable in the context of a country that has just put democracy in the state. The second stage begins when the development of emerging threats tyranny of the majority opinion. Therefore, freedom of speech is intended to protect unpopular views (not suit the majority view). The third stage begins when the main function of free speech is intended to ensure an open-minded listener (open minded). The third stage provides justification for tolerance of free speech. Fourth stage is characterized by the absence of protection of discourse and the oppressed, marginalized, and minorities. The protection of freedom of speech in this stage is restricted in order to protect racial and religious groups are a minority.

In the Indonesian context is plural, the prohibition against spreading hatred should not solely aimed at protecting the tribe. The ban should be positioned as an instrument to ensure order and harmony in life because of spreading hatred in society has the potential to generate conflict. Therefore, in the context of Balinuraga case, effort should be put forward is the effort to prevent conflict with the realization of Article 9 of Law No.7 in 2012, especially with the implementation of the aspirations of the development so as not to not jealousy.

#### 4. Conclusion

Based on the discussion of these results, we can conclude some of the following:

- a) In general, conflicts Balinuraga an example of inter-ethnic conflict form that often occurs in Indonesia, the trigger is not the success of the existing inter-ethnic integration in a particular area.
- b) Law governing the handling of conflict is the most comprehensive Act No. 7 in 2012, because this Act is a

refinement of all the legislation that already exists in the field of conflict resolution. So the Law No. 7 This has been covering conflict resolution efforts in three stages, namely the stage before the conflict, during the conflict and after the conflict.

- c) Considering Law No. 7 new in 2012 published in May of 2012, while the Balinuraga conflict occurs in about October 2012, it can be understood that the potential conflict before it erupts Balinuraga in October 2012 can not be anticipated potential through Act No.7 in 2012.
- d) That the legislation in the field of conflict resolution, as long as it is still not able to handle and prevent conflict, but with the enactment of Law No.7 in 2012 is expected to prevent the conflict, as the Law also regulates the handling of post- conflict not only conflict but also before the conflict .

#### 4.1 Advice

1. That freedom of speech should be given all the restrictions do not involve the deployment of tribal hatred.
2. That local governments in making development policies should promote development that is covered to the opinions and input tribes in the region. For example, the construction of the statue in South Lampung regency which led to the outbreak of conflict in Kalianda is clear evidence that the development should accommodate public opinion.

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