

The Analysis of Legal Issues and Enforcement Systems Human Rights in Indonesia

Dewi Mulyanti, SH., MH

Faculty of Law at University of Galuh Ciamis, Together with The Council Journal Menarasiswa, Indoensia

Abstract: *Human rights are the basic rights or fundamental rights inherent in human beings since man was created as a gift of God Almighty. The right of everyone can not be done freely, because he is face to face and must respect the rights of others. Human rights are composed of the two most fundamental rights, namely equal rights and freedoms. Without these two rights it will be difficult to enforce other human rights. Acknowledgment of human rights is essentially an appreciation of all human potential and dignity by nature. Nevertheless, we must not forget that it does not merely invite the right to follow life by nature. Because in the essence of nature itupun embodied in human duty. God gives these basic rights with the obligation to nurture and perfect them. Human rights are the inherent rights of human nature and fundamental human beings as a gift of God Almighty who must be respected, guarded and protected by every individual, society, or country. According to John Locke HAM is a right given directly by God the Creator as a natural right. In article 1 of Law Number 39 Year 1999 on Human Rights stated that "Human Rights is a set of rights inherent in the nature and existence of human beings as the creature of God Almighty and is a gift that must be respected, upheld, and protected by the state, the law, government and everyone, for the sake of honor and protection of human dignity and prestige". The scope of human rights covers: 1. Personal rights, equality rights of life, freedom, security, and others. 2. Private property and social group where a person is civilized. 3. Civil and political freedom to participate in government. 4. Rights concerning economic and social issues. The nature of human rights itself is an effort to maintain the safety of human existence as a whole through the action of balance between individual interests and the public interest. Likewise, respecting, protecting and upholding human rights is a duty and responsibility of individuals, government (both Civil and Military Government Apparatuses), and the State.*

Keywords: Analysis of Legal Issues, Enforcement Systems, and Human Rights (HAM).

1. Background

The issue of human rights (human rights) is a basic right or fundamental rights inherent in human beings since humans were created as a gift of God Almighty. The right of everyone can not be done freely, because he is face to face and must respect the rights of others. Human rights are composed of the two most fundamental rights, namely equal rights and freedoms. Without these two rights it will be difficult to enforce other human rights. Recognition of human rights is essentially a tribute to all human potential and dignity by nature. Nevertheless, we must not forget that it does not merely invite the right to follow life by nature. Because in the essence of nature itupun embodied in human duty. God gives these basic rights with the obligation to nurture and perfect them. Human rights are the inherent rights of human nature and fundamental human beings as a gift of God Almighty who must be respected, guarded and protected by every individual, society, or country. Thus, the nature of respect and protection of human rights is to maintain the safety of human existence as a whole through the action of equilibrium. The balance is between rights and obligations as well as a balance between individual interests and the public interest. Efforts to respect, protect, and uphold human rights are mutual obligations and responsibilities between individuals, governments (civil and military government apparatuses), and the state.

Problem Formulation

In this paper the author identifies the problem as follows:

- 1) What is the definition of Human Rights (HAM)
- 2) Various human rights institutions in Indonesia
- 3) Issues and Enforcement of Human Rights in Indonesia
- 4) What are some examples of human rights violations

2. Discussion

2.1 Definition of Human Rights (HAM)

Human rights (human rights) are the basic rights inherent in human beings, without those rights humans can not live as human beings. According to John Locke Human rights are rights given directly by God Maha Creator as a natural right. In article 1 of Law Number 39 Year 1999 on Human Rights stated that "Human Rights is a set of rights inherent in the nature and existence of human beings as the creature of God Almighty and is a gift that must be respected, upheld, and protected by the state, the law, government and everyone, for the sake of honor and protection of human dignity and prestige".

The scope of human rights includes:

- 1) Personal rights, equality rights of life, freedom, security, etc.
- 2) Private property and social group where one is located
- 3) Civil and political freedom to participate in government.
- 4) Rights concerning economic and social issues

Human rights are themselves the means of maintaining the safety of human existence as a whole through the act of balancing the interests of the individual with the common good.

Likewise, respecting, protecting and upholding human rights is a duty and responsibility of individuals, governments (both Civil and Military Government Apparatuses), and the state. Based on the above human rights formulation, conclusions can be drawn about some basic aspects of the nature of human rights, namely:

- Human rights are not necessary to be given, bought or inherited, human rights are part of human beings automatically
- Human rights apply to all people regardless gender, race, religion, ethnicity, political or social outlook, and nation
- Human rights can not be violated, no one has the right to limit or violate the rights of others. People still have human rights even though a country makes laws that do not protect or violate human rights.

2.2 Kinds of human rights institutions in Indonesia

In the effort to protect and uphold human rights, there have been established official institutions by the government such as Komnas HAM, National Commission on Violence Against Women, Human Rights Court and institutions formed by the community especially in the form of pro-democracy NGOs and HAM. The description of each is as follows. 1. Komnas HAM Komisi Nasional (Komnas HAM) was initially established by Presidential Decree No. 50 of 1993. The establishment of this commission is an answer to the demands of society and international pressure on the need for human rights enforcement in Indonesia. Then with the issuance of Law No. 39 of 1999 on human rights, which in it regulates Komnas HAM (Chapter VIII, article 75 to 99), Komnas HAM which is formed by the Presidential Decree must conform with the Law of RI Number 39 Year 1999. Komnas HAM aims: a. To assist in the development of conditions conducive to the implementation of human rights. Improving the protection and enforcement of human rights for the development of a complete Indonesian human person and the ability to participate in various areas of life.

To implement these objectives, Komnas HAM performs the following functions:

- 1) **The function of assessment and research:** To carry out this function, Komnas HAM has the authority to: a. Conduct assessment and research of various international instruments with the aim of providing suggestions on the possibility of accession and or ratification. Conduct assessment and research of various laws and regulations to provide recommendations on the establishment, amendment and revocation of legislation relating to human rights.
- 2) **Extension function:** In order to implement this function, Komnas HAM has the authority to:
 - a) Disseminating insights about human rights to the people of Indonesia.
 - b) Increase public awareness about human rights through formal and non formal education institutions and various other groups.
 - c) Cooperation with other organizations, institutions or other parties at national, regional, and international levels in the field of human rights.
- 3) **Monitoring functions:** This function includes the following powers:
 - a) Observation of the implementation of human rights and the compilation of reports of such observations. Investigation and examination of incidents that arise in a society where human rights violations are suspected.
 - b) Calling to the complainant or the victim or the complained party to be asked for or heard his / her

statement. The calling of witnesses to be asked for and heard of his testimony, and to the complainant's witness asked to submit the necessary evidence. Review at the scene and other places considered necessary.

- c) f. Calling the parties concerned to provide written information or submit the necessary documents in accordance with the original with the approval of the Chief Justice.g. Local examination of houses, yards, buildings and other places occupied or owned by certain parties with the approval of the Chief Justice.
 - d) h. Giving opinion based on the approval of the Chief Justice of a particular case that is in the judicial process, if the case is stamped on human rights violations in public matters and hearings by the courts which then Komnas HAM's opinion shall be notified by the judge to the parties.
- 4) **The mediation function:** In carrying out the mediation function Komnas HAM has the authority to:
- a) Peace of both parties.
 - b) The settlement of cases through consultation, negotiation, conciliation and expert judgment. Providing advice to the parties to resolve disputes through the courts.
 - c) Submitting a recommendation on a case of human rights violation to the government for follow-up. Submission of recommendation on a case of human rights violation to DPR RI to be followed up. For every person and or group having strong reason that their human rights have been violated can submit report or complaint or written on Komnas HAM. A complaint will only be served if it is accompanied by a correct identity of the complainant and a clear explanation or clear evidence of the material being filed.
- 5) **Human Rights Court:** The Human Rights Tribunal is a special court which is located in the general judicature and domiciled in the district or city. The Human Rights Tribunal is a special tribunal against gross human rights violations covering crimes of genocide and crimes against humanity (RI Law Number 26 Year 2000 on Human Rights Court) The crime of genocide is any action committed with the intention to destroy or destroy all or part of the nation, race, , ethnicity, and religion. The ways in which crime of genocide, for example; kill, actions that cause physical or mental suffering, create conditions that result in physical extinction, force actions aimed at preventing birth, forcibly transferring children from certain groups to other groups. part of a widespread or systematic attack that he knew that the attack was directed against civilians.
- Crimes against humanity for example:
- 1) Murder, extermination, slavery, torture
 - 2) Forcible eviction or displacement
 - 3) Arbitrary deprivation of liberty or other arbitrary deprivation of physical liberty in violation of the fundamental provisions of international law
 - 4) Rape, sexual slavery, forced prostitution, forced pregnancy, sterilization or forced sterilization or other forms of sexual violence are equivalent
 - 5) The persecution of a particular group or association based on a commonly recognized political, racial,

- national, ethnic, cultural, religious, ethnic, cultural, or other cultural notion as prohibited under international law
- 6) Forcible disappearance (arrest, detention, or abduction accompanied by a denial of acknowledgment of such action and provision of information about the fate and whereabouts of the victim with the intention of relinquishing from legal protection for a long period of time)
 - 7) The crime of apartheid (oppression and domination by a racial group of racial or other groups and done with a maskud to defend the rules of the ruling government or regime).

The Human Rights Court has the duty and authority to examine and decide cases of gross human rights violations. The Human Rights Court is also authorized to examine and decide cases of gross human rights violations committed outside the territorial boundaries of Indonesian territory by Indonesian citizens (WNI). Besides, it is also known as the Ad Hoc Human Rights Court, which is authorized to adjudicate gross human rights violations that occurred before the enumeration of UURI Number 26 Year 2000 on Human Rights Court. Therefore, gross human rights violations do not recognize expiration. In other words, the Ad Hoc Human Rights Court is the application of the retroactive principle of gross human rights violations.³ The National Commission for Child Protection and the Child Protection Commission of Indonesia National Child Protection Commission (KNPA) was born from the national child protection movement that actually began in 1997. Then in the reform era, the responsibility to provide child protection is left to the community. KNPA's duties undertake child protection from treatment, for example: discrimination, exploitation, economic or sexual, abuses, cruelty, violence, torture, injustice and other mistreatment. KNPA also encouraged the birth of UURI Number 23 Year 2002 on Child Protection. Besides KNPA is also known KPAI (Indonesian Child Protection Commission). KPAI was established based on the mandate of article 76 of RI Law Number 23 Year 2002.

The Indonesian Child Protection Commission is tasked with:

- 1) Disseminating all provisions of laws and regulations relating to child protection
- 2) Collecting data and information, receiving public complaints, conducting detectivesahan, monitoring, evaluation, and supervision on the implementation of child protection.
- 3) Provide reports, suggestions, inputs and considerations to the President in the context of child protection. For example, for the task of providing input to the President / government of KPAI asking the government to immediately make a law for smoking ban for children or at least include article of smoking ban for children in the Act. The National Commission on Violence Against Women was formed according to Presidential Decree No. 181/1998. The basic consideration of the establishment of the National Commission was to prevent and eliminate all forms of violence against women.

The National Commission is independent and aims to:

- 1) Disseminating understanding of the forms of violence against women.
- 2) Developing conditions conducive to the elimination of violence against women.
- 3) Increasing efforts to prevent and overcome all forms of violence against women and women's rights.

In order to realize the above goals, the National Commission has the following activities:

- 1) Dissemination of understanding, prevention, prevention, elimination of all forms of violence against women. Assessment and research on various UN instruments on the protection of human rights of women. Monitoring and researching all forms of violence against women and providing opinions, suggestions and judgments to the government.
- 2) Dissemination of results of monitoring and research on the occurrence of violence against women to the community. Implementation of regional and international cooperation in efforts to prevent and combat violence against women.
- 3) Truth and Reconciliation Commission The Truth Commission was formed based on UURI Number 27 of 2004 on the Truth and Reconciliation Commission.

The existence of the Truth and Reconciliation Commission (TRC) to:

- 1) Provide an alternative to solving gross human rights violations outside the Human Rights Court when the settlement of gross human rights violations through human rights courts and Ad Hoc human rights courts is deadlocked.
- 2) Mediation facilities between perpetrators and victims of gross human rights violations to resolve outside the human rights court. Thus expected the problem of gross human rights violations can be resolved, because if it can not be solved it will be a stumbling block for efforts to create a sense of justice and truth in society. If the sense of justice and the desire of the people to reveal the truth can be realized, then it can be realized reconciliation (peace / reconciliation). This reconciliation is important for the life of the nation and the state can be avoided from the long-standing conflict and grudge of history among fellow children of the nation. The peacekeeping of the nation's children is the main capital for building this nation and country toward progress in all fields.
- 3) Pro-democracy and human rights NGOs In addition to human rights enforcement agencies established by the government, the community also established various human rights institutions. Human rights institutions established by the community, especially in the form of NGOs (Non-Governmental Organizations) or NGOs (Non Governmental Organization) whose programs focus on democratic development efforts (democratization) and human rights development. These NGOs are often referred to as Pro-democracy and Human Rights NGOs.

These NGOs include:

- 1) YLBHI (Indonesian Legal Aid Foundation Foundation)
- 2) Contrast (Commission for Missing Persons and Victims of Violence)
- 3) Elsam (Institute for Policy Research and Advocacy)

- 4) PBHI (Association of Legal Aid and Human Rights of Indonesia).

The NGOs dealing with various aspects of human rights, according to their own interests and abilities are generally formed prior to the establishment of Komnas HAM. In implementing the protection and enforcement of HAM, NGOs appear to be working partners of Komnas HAM. For example, NGOs assist victims of human rights violations to Komnas HAM. In many areas, NGOs have also grown rapidly with an interest in human rights and democracy as well as other aspects of life. For example in Yogyakarta there are approximately 22 NGOs. NGOs in the Yogyakarta area exist which is a branch of a central (National) NGO also stands alone.

2.3 Issues and Enforcement of Human Rights in Indonesia

In line with the mandate of the Constitution, Indonesia holds that the promotion and protection of human rights should be based on the principle that civil, economic, socio-cultural, and development rights are one unity that can not be separated, whether in the implementation, monitoring, or in the implementation. In accordance with article 1 (3), articles 55 and 56 of the UN Charter, the promotion and protection of human rights should be conducted through a conception of international cooperation based on the principle of mutual respect, equality, and inter-state relations and applicable international law. Human rights covers the eradication of corruption, anti-terrorism, and the eradication of drugs and drug abuse.

Therefore, law and human rights enforcement must be observed not expressly discriminatory and consistent. The main activities of law and human rights enforcement include the following:

- 1) Implementation of the National Plan of Action on Human Rights (RANHAM) from 2004-2009 as a national movement
- 2) Improving the effectiveness and strengthening of legal institutions or institutions whose functions and tasks to uphold human rights
- 3) Increased efforts to respect equality of every citizen before the law through the example of the head of State and other leaders to comply / obey the law and human rights consistently and consequently
- 4) Enhancement of various operational activities of law enforcement and human rights in the framework of organizing social order so that the dynamics of society can run properly.
- 5) Strengthening efforts to eradicate corruption through the implementation of the National Action Plan for the Eradication of Corruption.
- 6) Improved law enforcement against eradication of terrorism and narcotics abuse and other drugs.
- 7) Rescue of performance evidence in the form of documents or archives / state institutions and government agencies to support law enforcement and human rights.
- 8) Improved coordination and cooperation that ensures the effectiveness of law enforcement and human rights.

- 9) Development of transparent legal institutional management system.
- 10) Review and refine the basic concepts in order to bring about a simpler, faster, and more precise legal process at a cost that is affordable to all levels of society.

2.4 Examples of Cases of Human Rights Violations

The following are examples of cases of human rights violations that often occur in the immediate environment, quoted from various sources:

- 1) The occurrence of persecution on the pram of STPDN by its senior under the guidance of coaching that caused the death of Muntu Clip in 2003.
- 2) Lecturers who are lazy to enter the class or lazy to give an explanation to a course to the students is a gross violation of human rights to every student.
- 3) Merchants selling on the sidewalks are human rights violations against pedestrians, causing pedestrians to walk by the roadside so they are highly vulnerable to accidents.

Parents who impose their will to have their child enrolled in a certain department in the course are a violation of human rights against a child, so a child can not choose a course that suits his interests and talents. Cases of parents who have killed children over the age of 12, which means that the right to live the children disappears. The lower classes are treated unfairly, the evidence is that if the lower society makes a mistake suppose to steal their legal proceedings very quickly, but if the upper class people commit mistakes such as corruption, the legal process is very long. The Case of Female Workers (TKW) working abroad was persecuted by her employer⁸. Child child abuse cases are mostly done by young people married outside of marriage

3. Conclusion

Human rights (HAM) are the basic rights possessed by human beings in accordance with their actions. Every individual has a desire for his / her human rights to be fulfilled, but one thing we need to remember that Never violate or oppress the human rights of others. In the life of the state of human rights is regulated and protected by the legislation of RI, where every form of human rights violations either committed by a person, a group or an agency or even a State will be tried in the implementation of the human rights court, the human rights court shall proceed through a judicial process through the law of the human rights court as contained in the Human Rights Court Act. Suggestions As social beings we shall be able to defend and defend our own human rights. In addition we must also be able to respect and safeguard the human rights of others not to make us violate human rights. And do not let our human rights be violated and trampled by other people. So in maintaining human rights we must be able to align and balance our human rights with other people.

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