

Law Enforcement of Human Rights (HAM) in Indonesia

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Abstract

The article discusses law enforcement regarding human rights in Indonesia which is based on law number 39 of 1999. The author chose this title because until now law enforcement, especially related to human rights in Indonesia, is still not optimal, mainly because until now Indonesia is still in a transition zone which is still colored by legal uncertainty. The main issues in this article are: how is the application of law to human rights violations, which institution tries human rights violators, what means of settlement are used in cases of human rights violations in Indonesia, and what are the principles of Islamic law regarding human rights. In conclusion, human rights (HAM) are the basic rights possessed by humans in accordance with their work. Where every individual has his desire so that his Human Rights can be fulfilled. The human rights (HAM) of each individual are limited by the human rights of others. In Islam, Islam first pays attention to human rights (HAM). The emergence of violations of Human Rights (HAM) values, is motivated by an egoism which is concerned with personal or national interests, resulting in underestimating the values of Human Rights or other nations, resulting in a form of oppression or slavery in another form. In a state, human rights (HAM) are regulated and protected by the laws of the Republic of Indonesia, in which every form of violation of human rights (HAM) whether committed by a person, group, or tried in the implementation of human rights (HAM) trials. The Human Rights Court (HAM) takes court proceedings through the Human Rights court procedural law, as contained in the Law on Human Rights (HAM) courts. The concept of Human Rights (HAM) can be seen from two sides, including the western and eastern views.

Keywords: Law Enforcement, Indonesia, Human Rights

INTRODUCTION

First, we need to know that humans are creatures that have been given privileges by the Almighty. We are given reason and thought that humans are called creatures that are more loved by God Almighty. And because of that, sometimes humans forget that they also have to have rules in social life.

And because so far there are many people around us who do not know anything about rules, many countries and state officials and their ranks have chosen to make appropriate legal rules.

Example: In accordance with the 1945 Constitution in article 1 paragraph (2), that sovereignty is in the hands of the people and implemented according to the 1945 Constitution. Even though many obey and disobey the rule of law they still have to live their lives they are according to the correct rules. In our country the declaration of human rights is also a rule of rights and powers contained in the 1945 Constitution.

In Law no. 39 of 1999 concerning Human Rights (HAM), regulations regarding Human Rights (HAM) are determined by referring to the United Nations (UN) Declaration of Human Rights. Whereas in the 1945 Constitution (which was amended), issues regarding Human Rights (HAM) are specifically stated in chapter X articles 28A to 28J. Which is the result of the second amendment in 2000.

Cases of violations of human rights (HAM) that have been recorded in Indonesia:

- May 1997 riots
- The East Timor case
- The Tanjung Priok incident
- Storming of PDI offices, etc.

The series of events that became cases of human rights (HAM) in Indonesia, none of which were resolved in law due to the investigation of the main perpetrators who were hard to find.

Problem Formulation

This research wants to find answers to the following research questions:

1. How is the application of law to violations of Human Rights (HAM)?
2. Which institution prosecutes human rights (HAM) violators?
3. What are the means of resolution used in cases of violations of human rights (HAM) in Indonesia?
4. What are the principles of Islamic law regarding Human Rights (HAM)?

Purpose of Writing

One of the objectives of this writing is as follows:

1. So that readers can find out about the application of law and violations of Human Rights (HAM).
2. So that readers can find out which institutions try these Human Rights (HAM) violators.
3. So that readers provide suggestions or means to solve problems in cases of human rights (HAM) violators.

Usefulness of Writing

As for the usefulness of writing this scientific paper which provides benefits for the development of law academically and we can provide input for parties involved in the issue of Human Rights (HAM). Can add to the repertoire of knowledge in the field of law regarding criminal law and human rights (HAM). Understand and explore the meaning of Human Rights (HAM) with all its aspects.

METHOD

The methodology used in this study is normative research, and also uses a type of research descriptive with a normative juridical approach, based on the applicable laws and regulations.

Writers can conduct research using descriptive methods in the form of decisions. The author uses secondary data as a normative research approach and looks for decision materials such as scientific writings and scientific journals on Human

RESULTH AND DISCUSSION

Application of Law on Human Rights Violations

Arrangements regarding Human Rights (HAM) have existed since the ratification of Pancasila as the basis for the guidelines of the Indonesian state, although implicitly the regulations regarding Human Rights (HAM) are determined by guidelines in the Declaration of Human Rights (HAM), United Nations (UN) in law no 39 of 1999. The United Nations (UN) Convention on the elimination of all forms of discrimination against women, the United Nations (UN) convention on children's rights and various other international instruments that regulate human rights (HAM),

according to the legal needs of society and the development of national law based on Pancasila and the 1945 Constitution.

The government in terms of carrying out the mandate that has been mandated through the TAP MPR, Law No. 39 of 1999 concerning Human Rights (HAM), on 23 September 1999 Law No. 39 of 1999 concerning Human Rights (HAM) which regulates several important matters relating to the Human Rights Court.

First, the definition of human rights violations is described as any act of a person or group of people including state officials, whether intentional or unintentional, this is based on the applicable legal mechanism (article 1 paragraph 6).

Second, the right to life, the right to personal freedom, the right to religion, the right not to be enslaved, the right to be recognized as an individual and equality not to be prosecuted on the basis of law in the case of gross violations of human rights (HAM) which are classified as crimes against humanity.

Third, in Article 7 it is stated that everyone has the right to use all national legal remedies and international forums guaranteed by the law of the Republic of Indonesia regarding Human Rights (HAM) to become national law.

Furthermore, Article 104 paragraph 1 of the Constitution (UUD) No. 39 of 1999 states that those authorized to try gross violations of Human Rights (HAM) are human rights courts which are deemed inadequate so that the government replaced the law . .

On November 23, 2000, Law No. 26 of 2000 concerning the Human Rights Court in lieu of Perpu No. 1 of 1999. The Human Rights Court is tasked with resolving cases of gross violations of human rights which constitute genocide crimes, namely the destruction or annihilation of all or part of a national, racial or ethnic group, by means of killing group members, resulting in physical and mental suffering heavy on group members. Imposing measures aimed at birth and forcibly transferring children in the group to other groups.

Thus the future prospects for upholding Human Rights (HAM) will certainly be better and brighter, bearing in mind that on the one hand the institutional process of Human Rights, among others, through renewal and formation of laws continues to show significant progress and the establishment of a public space that is more open to the struggle for human rights . Human Rights (HAM).

Institutions that can adjudicate human rights

Indonesia is a country based on law. All actions of the people in Indonesia must be in accordance with the norms and rules that exist in Indonesia. Indonesia is based on the constitution, which means there are no policies, authorities and mandates without a legal basis.

The judiciary in Indonesia is a judicial function mandated by the constitution. Courts play an important role in adjudicating and enforcing the law, which is not arbitrary.

Indonesia as a country that has a culture that has a very long history and is well known for upholding human values that are diverse in the culture of the archipelago.

Human Rights (HAM) which are still general in nature contained in the Criminal Code (KUHP). The problem of Human Rights (HAM) is growing day by day.

Law no.39 of 1999 concerning Human Rights (HAM) is contained in article 104

1. to try gross violations of human rights (HAM) penalties
2. the court referred to in paragraph 1 is formed by law for a long period of 4 years.
3. before there is a Human Rights (HAM) court as referred to in paragraph 2, cases of violations as referred to in paragraph 1 are tried by an authorized court.

There are four courts for human rights violations (HAM) in Indonesia, namely:

- public court
- martial justice

- religious court
- commercial court

The Human Rights Court (HAM) in Indonesia is now in a new era. Mandate of law no.39 of 1999 concerning Human Rights (HAM). The Human Rights Court (HAM) in Indonesia was held for the first time on March 14 2002, which tried cases of violations of Human Rights (HAM) in East Timor.

The role of KOMNAS HAM

Article 75 KOMNAS HAM has the following objectives:

- Develop conducive conditions for the implementation of Human Rights (HAM) in accordance with the Pancasila of the 1945 Constitution and the UN charter.
- Improving the protection and enforcement of Human Rights (HAM) in order to develop the human person.

According to article 76 in order to achieve its objectives, Komnas HAM must carry out the functions of study, research, counseling, monitoring, mediation regarding human rights where the National Human Rights Commission must consist of community leaders who are dedicated and have high integrity and live up to the ideals of this country and respect Human Rights values. The National Human Rights Commission is located in the capital of the country, and can also be established in the regions as a representative of the National Human Rights Commission.

The legal basis of Komnas HAM, at first, the National Commission on Human Rights (HAM) was established by Presidential Decree No. 50 of 1993 concerning the National Human Rights Commission. Since 1999 the existence of Komnas HAM has been based on a law, namely Law no. 39 of 1999 which also stipulates the existence, purpose of function, membership, completeness principle, as well as duties and authorities of Komnas HAM. Besides the authority according to Law no. 39 of 1999, is also authorized to conduct investigations into gross violations of human rights (HAM) with the issuance of Law no. 26 of 2000 concerning the Court of Human Rights (HAM).

Article 78 states:

- 1) The National Commission on Human Rights has completeness consisting of:
 - a) Plenary Session. Plenary Session is a session held to validate the results of the session.
 - b) Sub Commission. The Sub-Commission or Commission Session is a forum for hearings that discusses and makes a temporary decision from delegated and appointed members of the commission meeting.

Article 83 states:

1. There are 35 members of the National Human Rights Commission who are elected by the People's Legislative Assembly of the Republic of Indonesia based on the proposal of the National Human Rights Commission and inaugurated by the President as the head of state. What is meant by "adjusted by the President" is in the form of a presidential decree adjustment by the President associated with the independence of the National Human Rights Commission (Komnas HAM). The proposal in question must accommodate all aspirations from various levels of society in accordance with the conditions set, the number of which is at most 10 people.
- 2) The National Human Rights Commission has a secretariat general as an element of service.

Obstacles to upholding Human Rights (HAM)

Problems in the territory of the Republic of Indonesia are related to cases of violence which lead to violations of Human Rights (HAM).

Obstacles to upholding Human Rights (HAM) are caused by:

- The government as a policy obligation
- TNI, Polri as security officers
- Society as civil actor
- Groups in society

Settlement Efforts in Human Rights Cases in Indonesia

The settlement used in cases of violations of human rights (HAM) in Indonesia by prioritizing the rules of applicable legal norms .

The Human Rights Court (HAM) has the duty and authority to decide cases of gross human rights violations, for example:

- Murder,
- People cause physical suffering,
- Create or annihilate other groups,
- Coercion.

The Human Rights Court also has the duty and authority to decide cases involving violations of human rights in the form of crimes against humanity, namely as follows:

- Murder,
- Annihilation,
- Slavery,
- Expulsion,
- Deprivation,
- Torture,
- Rape ,
- Persecution,
- The crime of apartheid.

The emergence of forms of violation against the values of Human Rights or the nation on this earth, is motivated by an egoism of personal or national interests, resulting in despising the values of Human Rights or of other nations, resulting in a form of oppression or slavery in another form: wealth and power are used to commit acts that are unjust and detrimental to the interests of other human beings, which ultimately demeans and discriminates against human dignity and noble values.

The resolution mechanism for Serious Human Rights Violations is based on Law Number 26 of 2000 concerning Human Rights Courts. This law stipulates that the settlement of human rights violations is carried out by the Human Rights Court and for cases of past serious violations it is carried out in two ways , namely through an ad hoc Human Rights Court and through the Truth and Reconciliation Commission.

Meanwhile, the Truth and Reconciliation Commission (KKR) is mandated by the MPR Decree and is one of the mechanisms for resolving gross human rights violations.

The most important element that should be of concern is the matter of victims. Victims of human rights violations are people who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or a substantial loss of their basic rights.

Victims also include the immediate family or direct dependents of the victim.

Principles of Human Rights According to Islam

Actually, humans have different values in themselves. Therefore, Islam as a religion that actually gives "Rahmatan Lil Al-Amin" to humans on this earth without discriminating against origin or class.

Human Rights (HAM) in Islam were born together with the saying of monotheism when a Muslim professes faith in Allah who has no worshiper besides Him. But humans have obtained their rights since they were still in the womb.

A comprehensive view of Islam does not only explain Human Rights (HAM), but also gives human rights proportionally according to the position of humans as devotees of their humanitarian message. The most ornate of all Human Rights (HAM) rights is the right to live and be respected, as well as a life that is valued as a human being. Retaliation for crimes on this earth should not happen and so does that every human being does not have the right to take the life of a fellow human being without the crime he has committed, because that has crossed the line of humanity.

The concept of Human Rights (HAM) can be seen from two sides, including the western and eastern views. The flow has a very significant difference in views. If the western view understands that human rights have no limitations, such as the abolition of death penalty and qisas, in the Islamic religion, this is considered inhumane.

While the eastern view by putting forward Islamic values which have different dimensions in understanding human rights, even though everyone has human rights but still has limitations such as still applying Islamic laws which according to the western view this is considered inhumane and violates human rights. Human Rights (HAM).

Islam also carries out the principle that in fact every human being on this earth may not be subject to differences in rights between one human being and another. It is clear that Islam is a religion that does justice to anyone, including people outside of their religion. For example, the country of Indonesia, where there is no region in Indonesia that does not have Islam there. Therefore, state leaders make rules and distribute rights in accordance with other regions. In such a way, human rights (HAM) have been taught by Islam which is so thick with elevating the legal values of a human being.

CONCLUSION

Human Rights (HAM) are the basic rights possessed by humans in accordance with their work. Every individual has his desire so that his Human Rights can be fulfilled. But there is one thing we need to remember, namely that never violate or suppress human rights (HAM). The human rights (HAM) of each individual are limited by the human rights of others. In Islam, Islam first pays attention to human rights (HAM). The emergence of violations of Human Rights values (HAM), is motivated by an egoism which is concerned with personal or national interests, resulting in despising the values of Human Rights or other nations, resulting in a form of oppression or slavery in other forms: wealth and power are used to commit acts that are unjust and detrimental to the interests of other human beings, which ultimately demeans and discriminates against human dignity and noble values. Within the state, Human Rights (HAM) are regulated and protected by the laws of the Republic of Indonesia, in which every form of violation of Human Rights (HAM) whether committed by a person, group, or tried in the implementation of Human Rights trials (HAM). The Human Rights Court (HAM) takes court proceedings through the Human Rights court procedural law, as contained in the Law on Human Rights (HAM) courts. A comprehensive view of Islam does not only explain Human Rights (HAM), but also gives human rights in a proportionate manner in accordance with the position of humans as worshipers of the message of humanity. The concept of Human Rights (HAM) can be seen from two sides, including the western and eastern views.

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