

Human Rights in The Justice System In Indonesia

Ika Novitasari¹, Asrullah²

Faculty of Social and Political Science, Universitas Sulawesi Barat

Correspondent Email: asrullah@unsulbar.ac.id

ABSTRACT

To ensure the recognition and protection of human rights, Indonesia has several legal instruments related to human rights. Specifically to try gross human rights violations, Law Number 26 of 2000 concerning Human Rights Courts was enacted. The Human Rights Court is a court within the General Court which is only assigned and authorized to examine and decide cases of gross human rights violations. Investigations into cases of gross human rights violations are within the authority of the National Human Rights Commission. The investigation and prosecution of gross human rights violations is the authority of the Attorney General.

Keywords: *Justice System, Human Rights, Indonesia*

INTRODUCTION

The history of human rights can actually be said to be almost as old as the existence of mankind on earth. Why do you say that, because human rights are inherent in every human being, so that their existence cannot be separated from human life. Various efforts to realize human rights in real life from the past to the present are reflected in the human struggle to maintain human dignity. and its dignity from acts of arbitrariness and tyranny. The emergence of human awareness of their rights as human beings is one of the important factors behind and gave birth to the idea that later became known as HAM.

A new chapter in the development of human rights internationally took place after the world experienced tremendous destruction as a result of World War II. Association formed It is undeniable that the Nations (UN) as an international organization in 1945 had a very large influence on the development of human rights in the future. This is indicated, among other things, by the recognition in the United Nations Charter of the existence of human rights and the purpose of establishing the United Nations itself, namely to encourage respect for human rights internationally. Although the charter has not clearly formulated what is meant by human rights. The historical milestone for human rights regulation that is international in nature was only produced precisely after the United Nations General Assembly declared the Universal Declaration of Human Rights on

December 10, 1948. This declaration is the first international document which contains a human rights "catalog" made based on an agreement international.

Because there are many human rights violations, there is also a lot of pressure, both from within the country and from abroad so that there is protection for human rights in Indonesia. To respond to these pressures, Presidential Decree No. 50 of 1993 established the National Human Rights Commission or Komnas HAM whose activities include monitoring and investigating the implementation of human rights as well as providing opinions, considerations and suggestions to state government agencies regarding the implementation of human rights. After the New Order era was replaced by the Reform Order era, the MPR only succeeded in making provisions regarding human rights, namely Tap. MPR Number XVII/MPR/1998 concerning Human Rights whose text is structured as follows:

1. Views and attitudes of the Indonesian people towards human rights
2. Human Rights Charter

Article 44 of the Human Rights Charter stipulates that in order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations. On the basis of the provisions contained in Article 44 of the Human Rights Charter, Law Number 39 of 1999 concerning Human Rights was born. In the general explanation of Law Number 39 of 1999 it is stated, among others:

Regulations regarding human rights are determined by referring to the UN-HAM Declaration, the UN Convention on the Elimination of All Forms of Discrimination Against Women, the UN Convention on the Rights of the Child, and various other international instruments that regulate human rights.

Law Number 39 of 1999 is the umbrella for all laws and regulations governing human rights, so that violations, either directly or indirectly, of human rights are subject to criminal, civil and administrative sanctions in accordance with statutory provisions.

After the enactment of Law Number 39 of 1999, at the MPR annual session in 2000, the MPR on the basis of Article 37 of the 1945 Constitution, made a second amendment to the 1945 Constitution, namely by adding CHAPTER XA on Human Rights which consists of Articles 28a to Article 28j. Article 104 paragraph (1) of Law Number 39 of 1999 stipulates that to try gross human rights violations a human rights court is formed within the general court environment. On the basis of the provisions contained in Article 104 paragraph (1) of Law Number 39 of 1999, a Government Regulation in Lieu of Law Number 1 of 1999 concerning Human Rights Judiciary was stipulated, but did not obtain approval from the DPR to become a Law and Instead, Law Number 26 of 2000 concerning the Human Rights Court was issued which was published in the State Gazette of the Republic of Indonesia Year 2000 Number 208, which came into force on November 23, 2000 by revoking and declaring the Government Regulation in lieu of Law Number 1 of 1999 concerning Human Rights Court while the elucidation of Law Number 26 of 2000 is contained in the Supplement to the State Gazette of the Republic of Indonesia Number 4026. In the general explanation of Law Number 26 of 2000 it is stated that with this law it is hoped that it can protect human

rights, both individuals and society and become the basis in enforcement, legal certainty, justice and feelings of security for both individuals and society against gross human rights violations.

DISCUSSION

To ensure the recognition and protection of human rights, Indonesia has several legal instruments related to human rights. Specifically to try gross human rights violations, Law Number 26 of 2000 concerning human rights trials was issued. In the general elucidation of Law Number 26 of 2000, the establishment of the Human Rights Court was carried out based on the following considerations:

1. Serious violations of human rights are "extra ordinary crimes" and have a broad impact both at the national and international levels and are not criminal acts regulated in the Criminal Code and cause both material and immaterial losses which result in feelings of insecurity both for individuals and society, so that it needs to be restored immediately in realizing the rule of law to achieve peace, order, tranquility, justice and prosperity for all Indonesian people.

2. Regarding gross violations of human rights, special steps of inquiry, investigation, prosecution and examination are required. The specificity in handling gross human rights violations are:

- a. Investigators are needed by forming ad hoc teams, ad hoc investigators, ad hoc prosecutors and ad hoc judges.
- b. It is necessary to emphasize that investigations are only carried out by the National Human Rights Commission while investigators are not authorized to receive reports or complaints as stipulated in the Criminal Procedure Code.
- c. Provisions are required regarding certain time limits for carrying out investigations, prosecutions and examinations in court.
- d. Provisions regarding the protection of victims and witnesses are needed.
- e. Provisions are needed that emphasize that there is no expiration for gross human rights violations.

The Human Rights Court is a court within the General Court which is only assigned and authorized to examine and decide cases of gross human rights violations. Until now, only 4 (four) Human Rights Courts have been formed, namely the Human Rights Court at the District Court Central Jakarta, Surabaya District Court, Medan District Court, and Makassar District Court. As for gross human rights violations that occurred before the promulgation of Law Number 26 of 2000, they were examined and decided by the Ad Hoc Human Rights Court which is within the General Courts whose establishment was at the suggestion of the People's Representative Council of the Republic of Indonesia based on certain events with a Presidential Decree. In the event that the People's Representative Council of the Republic of Indonesia proposes the establishment of an Ad Hoc Human Rights Court, the People's Representative Council of the Republic of Indonesia will base it on allegations that gross human rights violations have occurred which are limited to certain

locus and tempus delicti that occurred prior to the promulgation of Law Number 26 of 2000 concerning Human Rights Court

Absolute Scope of Authority Regarding the scope of absolute authority or absolute competence of the Human Rights Court, based on Articles 4 and 5 of Law Number 26 of 2000, the Human Rights Court has the duty and authority to examine and decide cases of gross human rights violations and has the authority to examine and decide on cases of gross human rights violations outside territorial boundaries of the Republic of Indonesia by Indonesian citizens. Serious human rights violations include:

- a. The crime of genocide is: any act committed with the intent to destroy or annihilate all or part of a national, racial, ethnic or religious group by:
 - Killing group members
 - Causes serious physical or mental suffering to group members
 - Creating living conditions for groups resulting in their physical destruction in whole or in part
 - Imposing measures that prevent births within the group, or forcibly removing children from certain groups
- b. Crimes against humanity, namely: any act committed as part of a widespread or systemic attack of which he is aware that the attack was aimed directly at the civilian population in the form of:
 - Murder
 - Extermination
 - Slavery
 - Expulsion or forcible transfer of population
 - Arbitrary deprivation of liberty or deprivation of other physical freedoms that violate (principles) of the main provisions of international law
 - Torture
 - Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence
 - Persecution of a particular group or association based on political equality, race, nationality, ethnicity, culture, religion, gender or other reasons that have been universally recognized as something that is prohibited under international law
 - Enforced disappearance of persons
 - The crime of apartheid (an inhumane act committed in the context of an institutional regime of oppression and domination by a member of a racial group over a group or other racial groups committed with the intention of maintaining that regime. Not all cases of gross human rights violations fall within the scope of absolute authority or absolute competence of the Human Rights Court, because Article 6 stipulates that the Human Rights Court does not have the authority to examine and decide on cases of gross human rights violations committed by a person under the age of 18 (eighteen) years at the time the crime was committed, namely a provision similar to that contained in Article 26 of the Rome Statute

RELATIVE SCOPE OF AUTHORITY

Apart from determining the seat of the Human Rights Court, Article 3 paragraph (1) of Law Number 26 Year 2000 also determines the relative scope of authority or competence of the Human Rights Court, namely the area The law of the Human Rights Court covers the jurisdiction of the District Court concerned. Because until now no human rights court has been formed in every district court, to find out the relative scope of authority or competence of a human rights court, one has to look at the presidential decree on the establishment of the human rights court in question. As a transitional provision, by Article 45 paragraph (1) jo. paragraph (2) determined at the time of the entry into force of Law Number 26 of 2000 on November 25, 2000, a Human Rights Court was established, as follows: a. Human Rights Trial at the Central Jakarta District Court with jurisdiction covering the following areas: a.1 Special Capital Region of Jakarta a.2 Provinces: West Java, Banten, South Sumatra, Lampung, Bengkulu, West Sumatra, and Central Kalimantan b. Human Rights Trial at the Surabaya District Court with jurisdiction covering the provinces: East Java, Central Java, Bali, South Kalimantan, East Kalimantan, West Nusa Tenggara, East Nusa Tenggara, and the Special Region of Yogyakarta c. Human Rights Trial at the Makassar District Court with jurisdiction covering the provinces: South Sulawesi, Southeast Sulawesi, Central Sulawesi, Maluku, North Maluku, and Irian Jaya d. Human Rights Trial at the Medan District Court with jurisdiction covering the provinces: North Sumatra, Riau, Jambi, West Sumatra, and the Special Region of Aceh.

INVESTIGATION

The definition of an investigation according to Law Number 26 of 2000 is contained in Article 1 paragraph (5) which stipulates that what is meant by an investigation is a series of investigative actions to seek and discover whether there was an event suspected of being a gross human rights violation to be followed up with an investigation in accordance with provisions stipulated in Law Number 26 of 2000. Investigations into gross violations of human rights are carried out by the National Commission on Human Rights and in the case of carrying out such investigations the National Commission on Human Rights may form an ad hoc team consisting of the National Commission on Human Rights and members of the public in accordance with the provisions of Article 18 paragraph (2) of the Law on Human Rights Courts. Investigation In Law Number 26 of 2000 there is no provision regarding investigations. Therefore to find out what is meant by investigation in Law Number 26 of 2000, one must look at the provisions stipulated in the Criminal Procedure Code. Article 1 paragraph (2) stipulates that what is meant by investigation is a series of investigative actions in and according to the method stipulated in the Criminal Procedure Code to seek and collect evidence with that evidence to shed light on the crime that occurred and to find the suspect. The fundamental difference between an investigation and an investigation, if an investigation aims to determine whether or not there was an incident of gross human rights violations, while an investigation aims to determine who is a suspect who can be suspected of committing these gross human rights violations. The authority to conduct

investigations into cases of gross violations of human rights rests with the Attorney General but does not include the authority to receive reports and complaints as stipulated in Article 21. According to Article 21 paragraph (3), the Attorney General can also appoint ad hoc investigators consisting of elements of government and elements of society.

ARREST

The Attorney Sgung as an investigator has the authority to make arrests for the purposes of investigation of someone who is strongly suspected of having committed gross violations of human rights based on sufficient initial evidence by showing a letter of assignment and giving the suspect an arrest warrant stating the suspect's identity by stating the reasons for the arrest, the place where the examination was carried out and a brief description of the serious human rights violations that are suspected. Arrests can be made no later than 1 day (Article 14 paragraphs 1, 2 and 5). In the event that the suspect is caught in the act, the arrest will be made without a warrant with provisions that the arrestee must immediately hand over the caught along with the evidence to the investigator (Article 11 paragraph 4).

DETENTION

Detention for the purposes of investigation can be carried out for a maximum of 90 days and can be extended for a maximum of 90 days by the Head of the Human Rights Court in accordance with his jurisdiction. If the investigation process has not been completed during the period described above, then the detention can be extended for a maximum of 60 days by the Head of the Human Rights Court in accordance with the jurisdiction. Detention for the purposes of prosecution can be carried out for a maximum of 30 days and can be extended for a maximum of 20 days by the Chief Justice of the Human Rights Court in accordance with his jurisdiction. In the event that the 50-day detention period has expired while the prosecution process has not been completed, the detention may be extended for a maximum of 20 days by the Chief Justice of the Human Rights Court in accordance with his jurisdiction. Detention for the purposes of examination at a human rights court session can be carried out for a maximum of 90 days and can be extended for a maximum period of 30 days by the head of the human rights court in accordance with its jurisdiction. Detention for the purposes of examination at the appeal level at the High Court can be carried out for a maximum of 60 days and this period can be extended for a maximum period of 30 days by the Chief Justice of the High Court in accordance with its jurisdiction. Detention for cassation examination at the Supreme Court can be carried out for a maximum of 60 days and this period can be extended for a maximum of 30 days by the Chief Justice of the Supreme Court (Articles 12-17).

PROSECUTION

As with what is meant by investigation in Law Number 26 of 2000 there is also no provision regarding what is meant by prosecution, only provisions regarding what is meant by investigation as contained in Article 1 number 5. Therefore what what is meant by

prosecution in Law Number 26 of 2000, must also be seen in the provisions of the Criminal Procedure Code In Article 1 number 7 of the Criminal Procedure Code, what is meant by prosecution is the act of the public prosecutor to transfer a criminal case to the Human Rights Court which authorized in matters and according to the manner stipulated in the Criminal Procedure Code with a request to be examined and decided by a judge at a trial court. In carrying out his duties as a public prosecutor, according to Article 23 paragraph (2) the Attorney General may appoint an ad hoc public prosecutor consisting of government and community elements.

EXAMINATION AT THE HUMAN RIGHTS COURT SESSION

Examination of cases of gross violations of human rights as referred to in paragraph (1) is carried out by a panel of judges at the Human Rights Court totaling 5 people consisting of 2 judges at the relevant Human Rights Court and 3 ad hoc judges (Article 27 paragraph 2). Ad hoc judges at the District Court and High Court are appointed and dismissed by the President as the Head of State at the recommendation of the Chief Justice of the Supreme Court who are appointed for a period of 5 years and can be reappointed for 1 term of office (Article 28, Article 32 paragraph 4). Meanwhile, ad hoc judges at the Supreme Court are appointed for one term of office of 5 years (Article 33 paragraph 5). Cases of gross violations of human rights are examined and decided by the Human Rights Court within a maximum period of 180 days from the time the case is transferred to the Human Rights Court (Article 31). If a case of gross violation of human rights is appealed to the High Court, the case is examined and decided within 90 days from the time the case is transferred to the High Court (Article 32 paragraph 2). In the event that a case of gross violation of human rights is appealed to the Supreme Court, the case is examined and decided within a maximum period of 90 days from the time the case is transferred to the Supreme Court (Article 33 paragraph 1).

COMPENSATION, RESTITUTION AND REHABILITATION

Every victim of gross human rights violations and/or their heirs can obtain compensation, restitution and rehabilitation as stated in the decision of the Human Rights Court (Article 35 paragraphs 1 and 2) 1. Compensation is: compensation provided by the state because the perpetrator is unable to provide full compensation which is his responsibility. 2. Restitution is compensation given to victims or their families by perpetrators or third parties, which can be in the form of returning property, paying compensation for loss or suffering or reimbursing costs for certain actions. 3. Rehabilitation is restoration to its original position, for example honor, good name, position or certain rights. Compensation, restitution and or rehabilitation is given to the victim or the victim's family who is the heir (Article 1, Article 2 paragraph (1) of Government Regulation Number 3 of 2002 concerning Procedures for the Protection of Victims and Witnesses in Serious Human Rights Violations)

TRUTH AND RECONCILIATION COMMISSION

The Law on Human Rights Courts provides an alternative settlement for serious human rights violations committed outside the Human Rights Court, namely by the Truth and Reconciliation Commission (Article 47). The existence of the Truth and Reconciliation Commission as referred to in MPR-RI Decree Number V/MPR/2000 concerning the Consolidation of National Unity and Unity is intended as an extra-judicial institution established by law whose duty is to uphold the truth by exposing abuses of power and violations of human rights in the past, in accordance with applicable legal and statutory provisions and carrying out reconciliation in the perspective of common interests as a nation.

CRIMINAL PROVISIONS

The criminal provisions for gross human rights violations as referred to in Article 7 of Law Number 26 of 2000 are contained in the following provisions: Article 36 Everyone who commits an act as referred to in Article 8 letters a, b, c, d, or e shall be subject to death penalty or life imprisonment or imprisonment for a maximum of 25 (twenty five) years and a minimum of 10 (ten) years . Article 37 Everyone who commits an act as referred to in Article 9 letters a, b, d, e, or j shall be subject to death penalty or life imprisonment or imprisonment for a maximum of 25 (twenty five) years and a minimum of 10 (ten) years . Article 38 Everyone who commits an act as referred to in Article 9 letter c, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 5 (five) years. Article 39 Everyone who commits an act as referred to in Article 9 letter f, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 5 (five) years. Article 40 Everyone who commits an act as referred to in Article 9 letters g, h, or i shall be subject to imprisonment for a maximum of 20 (twenty) years and a minimum of 10 (ten) years. Article 41 Attempts, conspiracy, or assistance to commit violations as referred to in Article 8 or Article 9 shall be subject to punishment with the same penalties as those referred to in Article 36, Article 37, Article 38, Article 39 and Article 40. Article 42 1) A military commander or a person who effectively acts as a military commander can be held accountable for crimes that are within the jurisdiction of the Human Rights Court, committed by troops under their effective command and control, or under their effective power and control and acts the crime is the result of not properly controlling troops, namely : a. the military commander or such person knew or on the basis of the circumstances at the time should have known that the troop was committing or had recently committed gross human rights violations; And b. the military commander or said person did not take appropriate and necessary actions within the scope of his powers to prevent or stop the said act or hand over the perpetrators to the authorized official for investigation, investigation and prosecution. 2) A superior, both police and other civilians, is criminally responsible for gross violations of human rights committed by his subordinates who are under his effective power and control, because the superior does not exercise control over his subordinates properly and correctly, namely : a. the superior knows or knowingly ignores information that clearly indicates that the subordinate is committing or has recently committed a gross violation of human rights; And b. the supervisor does not take

appropriate and necessary actions within the scope of his authority to prevent or stop the said act or hand over the perpetrator to the authorized official for investigation, investigation and prosecution. 3) The acts referred to in paragraph (1) and paragraph (2) are subject to the same punishment as referred to in Article 36, Article 37, Article 38, Article 39 and Article 40.

CONCLUSION

To ensure the recognition and protection of human rights, Indonesia has several legal instruments related to human rights. Specifically to try gross human rights violations, Law Number 26 of 2000 concerning human rights adjudicators was issued. The Human Rights Court is a court within the General Court which is only assigned and authorized to examine and decide cases of gross human rights violations. Until now, only 4 (four) human rights courts have been formed, namely the human rights court at the Central Jakarta District Court, the Surabaya District Court, the Medan District Court, and the Makassar District Court. Regarding the scope of absolute authority or absolute competence of the Human Rights Court, based on Articles 4 and 5 of Law Number 26 of 2000, the Human Rights Court has the duty and authority to examine and decide cases of gross human rights violations and has the authority to examine and decide on cases of gross human rights violations outside territorial boundaries of the Republic of Indonesia by Indonesian citizens. Serious human rights violations include crimes of genocide and crimes against humanity. Investigations into cases of gross human rights violations are within the authority of the National Commission on Human Rights. As for the investigation and prosecution is in the authority of the Attorney General. Examination of cases of gross violations of human rights as referred to in paragraph (1) is carried out by a panel of judges at the Human Rights Court totaling 5 people consisting of 2 judges at the relevant Human Rights Court and 3 ad hoc judges (Article 27 paragraph 2).

REFERENCES

- Artidjo Alkostar, 2004, Human Rights Court, Indonesia, and Civilization, Yogyakarta, PUSHAM UII.
- Atmasasmita, Romli. 2000. Introduction to International Criminal Law. Aditama Refika. Bandung
- Gultom, Binsar. 2009. A Critical View of a Judge in Law Enforcement in Indonesia. Press nation library. Medan.
- Heri Tahir, 2010, Fair Legal Process in the Criminal Justice System at Indonesia, Yogyakarta, Laksbang Pressindo
- Hestu Cipto Handoyo, 2003, Constitutional Law, Citizenship, & Rights Human Rights. Yogyakarta, Atma Jaya University
- Kaligis, O.C. 2002. Human Rights Political Court in Indonesia.
- Kaligis, O.C. & Associates, Jakarta Lamintang. P.A.F. 1990. Indonesian Criminal Law. NewRay. Bandung

Kunarto, 1997, HAM and POLRI, Jakarta, Cipta Manunggal. LG.Saraswati, Taufik Basari, et al, 2006, Human Rights (Theory, Law, Case), First Printing), Depok, UI Press Philosophy.

Majda El-Muhtaj, 2005, Human Rights in Constitutions Indonesia, Jakarta, Kencana.

Mien Rukmini, 2003, Human Rights Protection Through APTB and APKDH On The Justice System in Indonesia, Bandung, Alumni.

Muladi, 2005, Human Rights, Bandung, Refika Aditama.

Munir Fuady and Sylvia Laura L. Fuadi, 2015, Human Rights of Criminal Suspects, Jakarta, Prenada Media Group.

Philipus M. Hadjon, 2010, Legal Protection for the Indonesian People, Surabaya, Science Development.

R. Abdussalam, 2009, Police Law as Positive Law in Discipline Law Studies, Third Edition, Jakarta.

Restu Agung.Rina Noverya, Wendra Rona Putra, M. Nurul Fajri, 2014, Laws that are not Justice, Padang, Indonesian Legal Aid Foundation Padang Legal Aid Institute.

Sujatmoko, Andrey. 2015. Human Rights Law and Humanitarian Law. Rajawali Press. Jakarta

Wiyono, R. 2015. Human Rights Court in Indonesia. golden. Jakarta

The Criminal Procedure Code

The 1945 Constitution of the Republic of Indonesia

Law Number 39 of 1999 concerning Human Rights

Law Number 26 of 2000 concerning Human Rights Courts

Presidential Decree No. 50 of 1993 has established a National Human Rights Commission

Tap MPR Number XVII/MPR/1998 concerning Human Rights

Decree of the MPR-RI Number V/MPR/2000 concerning Strengthening National Unity and Unity.