

Law Enforcement Against Racial And Ethnic Discrimination In Criminal Law Perspective

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Abstract

Human life is always discrimination between humans and other humans. Human civilization always develops every age with various technologies and paradigms of people's lives that have an impact on certain superior and minority human groups. The Indonesian state still has a calculation in discriminatory behaviour in accordance with legal, economic and socio-cultural policies to provide preservation of certain political policies only, therefore the state must increase the perception of individual views to the community and certain groups. The State of Indonesia is committed to upholding and respecting human rights which have been regulated in the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution has provided arrangements related to constitutional rights with the statement that everyone has the right not to get discriminatory treatment from others or certain parties. Discriminatory treatment in the State of Indonesia has a fairly high potential, due to the very large population of Indonesia and different ethnicities, races, cultures and languages, plus the level of education and the economy is relatively low. Therefore, a legal umbrella is needed to avoid the behaviour and consistency of people who discriminate against a person or group in the State of Indonesia by establishing laws and regulations as an effort to protect the law and increase public awareness in dealing with one another.

Keywords: *Constitution, Human Rights, Law, Equality, Anti-Discrimination, Justice, Race and Ethnicity, Racial Discrimination.*

I. INTRODUCTION

Indonesia is a country that adheres to the legal tradition of Continental Europe or often referred to as civil law. The civil law tradition is characterized by a written legal system which is the main requirement in the administration of the state. Indonesia in the constitution is a legal state whose manifestation is reflected in the laws and regulations made to limit the power of the state (government) and provide guidelines for the people in carrying out their activities as citizens. Indonesia has guaranteed protection to be free from discriminatory treatment as a constitutional right as stipulated in Article 28I Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. However, in practice there is still discriminatory treatment, especially against vulnerable groups, minority groups, as well as marginalized groups. Discriminatory actions based on race and ethnicity, including violations of human rights, often occur in this country, seen from the angle of religion, culture, race, ethnicity, economy, social, occupation, education and so on. Based on these discriminatory acts, their actions continue to develop, so that they become the spotlight on the perpetrators of discriminatory acts, which then every perpetrator of these discriminatory acts is even far from touching the law in seeking justice in this country. Then in the historical order of human life, racial and ethnic discriminatory actions have resulted in violence, division and physical, mental, and social violence so that this is a violation of human rights (HAM).

The principle of equality and without discrimination must be observed in accordance with human rights instruments which are international legal instruments related to human rights in The International Covenant on Economic, Social and Cultural Rights which has been ratified by the Republic of Indonesia according to its regulation in Law No. 11 of 2005 and also The International Covenant on Civil and Political rights which has been ratified by using Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights). Conflicts that occur due to the issue of racial discrimination and ethnic discrimination have indeed become life in this country of Indonesia and have been recognized by many people and become conflicts that often

occur on the basis of belief and religion.¹Indonesia's very wide geography, the large number of people in Indonesia with various ethnicities or ethnicities makes Indonesia very vulnerable to conflicts with racial and ethnic nuances. With the differences between these ethnic groups coupled with social and economic disparities, poverty is still relatively high, and racial and ethnic discrimination that arises in society often causes friction that can trigger social unrest in the community. The racial and ethnic discrimination that arises in the community is partly due to the stigma that develops in society towards a certain group or as a result of a policy issued by the Indonesian government, both the central government and/or local government that is discriminatory.

A. Troubleshooting

The growing conflict of racial and ethnic discrimination will last a long time and of course the conflicts that occur will have a basis on racial and ethnic issues that continue to occur in Indonesia. This is the same as aspects of poverty and low economic conditions felt by people in various parts of Indonesia and cause a lack of human rights that can be felt by the community, even though human rights have been guaranteed by the State and laws and regulations.

B. Problem Formulation

Judging from the background and reasons for choosing the title above, the main issues that will be discussed in this study are:

- 1) How is racial and ethnic discrimination law enforced in Indonesia?
- 2) What are the efforts to eliminate racial and ethnic discrimination in Indonesia?

II. DISCUSSION

1. Racial and Ethnic Discrimination Law Enforcement

In overcoming and dealing with the issue of human rights violations, law enforcement is one of the indispensable instruments, and must be synergistic with other instruments. According to Ingggrid Galuh Mustikawati, various conflicts in Indonesia and several ASEAN countries, including ethnic conflicts which are horizontal conflicts, tend to occur sporadically as a result of a combination of various issues of public policy, identity, effectiveness of law enforcement, poor governance, and the struggle for natural/economic resources.²Law enforcement does not stand alone at the post-conflict peacebuilding stage to prevent the recurrence of ethnic conflicts, for example legal instruments need to be supported by reforms in the security sector that prioritize the professionalism of the Indonesian National Police and the TNI. This is done through efforts to encourage the two institutions to be able to play a role in the framework of maintaining order, security and law enforcement in the community and based on the applicable laws and regulations. Law enforcement in an ethnic conflict on a massive scale of course also has the meaning of restoring justice or restorative justice. This restoration of justice can then support the re-enactment of the rule of law, as an important condition for strengthening democracy in peacetime.³Efforts must be made to prevent racial and ethnic conflicts, there must be safeguarding of public space from the domination of a particular group to avoid ongoing racial and ethnic conflicts and racial, ethnic and religious discrimination, these conditions are an important indicator assessment to improve the quality of public space.

An explanation from Frans Magnis Suseno regarding the conditions that can be made to provide the determination of the force of law or the rule of law as it should apply in this State of Indonesia. The power of law must also be applied to the judiciary and courts to clean up the dirt contained in legal institutions, therefore the state must be able to create conditions that provide the highest legal power to avoid the emergence of ongoing racial and ethnic conflicts. Law enforcement must be realized by guaranteeing legal certainty and justice for all people in accordance with the embodiment of the law that must be maintained for various public interests as well as safeguarding human rights and providing a fair life without any discrimination. The law must run in accordance with the conditions that should be the highest constitution in

the State of Indonesia to carry out the policies in the law and provide a sense of security for the community without any conflicts that occur. The community has the right to get justice in this country as an act of legal protection with various calculations carried out by the state. The need to pay attention to the issue of law enforcement (law enforcing) in relation to justice is explained by Jimly Asshiddiqie who discusses fictitious theory. Indonesia as a country that adheres to a civil law system often adheres to the paradigm and doctrine of thinking commonly used in the civil law system, namely the application of fictitious theory. Based on this theory, everyone is considered to know about the law/statutory regulations since the norm was established and has the power to apply.

A person's ignorance regarding the existence of a law or other statutory regulations cannot free that person from lawsuits. Based on the fictitious theory, the poor, low-educated, isolated in small islands throughout the archipelago in accordance with the principle of equality before the law (equality before the law) must be treated equally by law with people who are sufficiently educated, rich and live in big city. The application of fictitious theory will not cause problems in some developed countries, especially if the country's territory is small, the level of welfare and knowledge and education of the community is quite good and equitable because in such a homogeneous society the legal information available in the community is symmetrical. The welfare of the people in the State of Indonesia is indeed not high enough, even low enough because Indonesia has a large area and has various kinds of races and ethnicities, with this condition not all people get justice at the level of economics and education. People really cannot know widely their situation by knowing the legal conditions that apply in their environment.⁴The explanation from Setya Arinanto regarding law enforcement must indeed be done to provide justice for people who receive unlawful treatment in the community environment in accordance with applicable law. Therefore, to be able to realize justice, the justice in question should be in accordance with the theory of John Rawls, namely justice as a fairness which has the following core :⁵

- a. Maximize independence. This limitation on independence is only for the sake of independence itself;
- b. Equality for all people, both equality in social life and equality in the form of utilization of natural resources ("social goods"). Restrictions in this case can only be allowed if there is a possibility of greater profits;
- c. Equality of opportunity for honesty, and elimination of inequality based on birth and wealth

2. Efforts to Eliminate Racial and Ethnic Discrimination

Various efforts have been made to eliminate discriminatory conflicts, such as those that have been drafted and stipulated in Presidential Regulation No. 7 of 2005 concerning the Medium-Term Development Plan which shows that the government shows a commitment to immediately eliminate discrimination and creates a concept to provide a sense of security for people. society and create a just and democratic state. The government has built a commitment in the form of a policy to reject all forms of discrimination that occur and occur throughout Indonesia and formulate it at the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Discrimination against Women, the policies that have been set must be adjustments are made to the applicable regulations and there must be thinking in line with international legal conventions. The State of Indonesia has been serious in overcoming racial and ethnic discrimination, referring to Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination and implementing regulations in Government Regulation Number 56 of 2010 concerning Procedures for Supervision of Efforts to Eliminate Racial and Ethnic Discrimination. Based on Law Number 40 of 2008 and Government Regulation Number 56 of 2010 it has been explained that Komnas HAM has the authority to carry out supervision.

The supervision referred to is a human right that must be respected and upheld for the common interest to enforce all forms of discrimination in the State of Indonesia. As a result, violations of regulated human rights norms cannot be given action in the form of criminal sanctions. In this position the status of concepts regarding human rights norms is placed in the context of soft law. For this reason, it is very

important to increase these moral rights into legal rights, where these rights will be guaranteed through law (positive law) which will then be enforced by legal authorities (judicial power).⁶ Policies that must be taken by the state to overcome discriminatory treatment by a person or a certain group of a person or group must also be reviewed in accordance with applicable laws related to law enforcement and legal protection. The interests of a person or group of regimes that have been in power will have a major impact on acts of discrimination in accordance with a report published by Amnesty International in 2001 regarding various concepts of racism, race, and ethnic discrimination, including:

- a. The concept of race has no biological basis. It is a socio-political construct usually based on the physical characteristics of the group;
- b. Racial categories are arbitrary and are often used for political purposes. The meaning of race and the ideological expression of racism have changed over time and across continents;
- c. Racism is often used by dominant racial groups to justify their domination, and in some cases racism is an expression of alienation and despair among those who are powerless, including victims of racism;
- d. Various manifestations of racism are always associated with broad economic and social problems.

The purpose of the existence of a law that becomes the main criteria such as social reality, solidarity, individual protection, public welfare and justice are several steps that must be taken to realize the objectives of the law, among others:⁷

- a. To change the orientation of people's views on public welfare in policies in accordance with the obligations and rights of citizens ranging from cultural, social, economic and political as the basis for state bias to provide political success. However, the condition that occurs is that the Indonesian Government since the Reformation until now still provides policies as the domination of several groups as a legal basis which causes a lot of discriminatory treatment that continues to this day.
- b. The state must empower the community in providing a review of the orientation of the community's views on racial and ethnic discrimination behavior that always occurs in the State of Indonesia. Various community groups, association groups, non-governmental organizations to the community to be able to assist in empowerment to develop the principle of equality and the rights of fellow Indonesian citizens.
- c. The urgency to build just social institutions. Social institutions are a source of lameness because they are already the starting point of luck for one and misfortune for another. This must be corrected, in order to be able to distribute basic rights and obligations and determine the distribution of benefits from social work.

III. CONCLUSION

Based on the results of the research and discussion that have been described previously, it can be concluded that :

- d. The State of Indonesia is committed to upholding and respecting human rights as regulated in the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution has provided provisions related to constitutional rights with the statement that everyone has the right not to receive discriminatory treatment from others or certain party. Discriminatory treatment in the State of Indonesia has a fairly high potential, due to the very large population of Indonesia and has different ethnicities, races, cultures and languages, plus the level of education and the economy is relatively low.
- e. The principle of equality and without discrimination must be observed in accordance with human rights instruments which are international legal instruments related to human rights in The International Covenant on Economic, Social and Cultural Rights which have been ratified by the Republic of Indonesia in accordance with the provisions in the Law. Law Number 11 of 2005 and also The International Covenant on Civil and Political rights which has been ratified using Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights.
- f. The law must run in accordance with the conditions that should be the highest constitution in the State of Indonesia to carry out the policies in the law and provide a sense of security for the community

without any conflicts that occur. The community has the right to get justice in this country as an act of legal protection with various calculations carried out by the state.

REFERENCES

- [1] Abdulajid, Syawal and Anshar, 2010. Criminal Liability of Military Commands for Serious Human Rights Violations, Yogyakarta: Laks Bang Pressindo.
- [2] Ali and Syarif Nurhidayat, 2011. Resolution of Serious Human Rights Violations, Jakarta: Gramata Publishing.
- [3] Armiwulan, Hesti, 2004, "Human Rights and Law", *Yustika Journal*, Faculty of Law, University of Surabaya.
- [4] Arief, Barda Nawawi, 2011, Development of the Criminal System in Indonesia. Semarang: Masters Library.
- [5] Arinanto, Satya, 2001, Human Rights in Political Transition in Indonesia, Center for the Study of Constitutional Law, Faculty of Law, University of Indonesia.
- [6] Asshiddiqie, Jimly, 2008, Towards a Democratic State of Law, Jakarta: Secretariat General and Registrar of the Constitutional Court.
- [7] Augusta, Cherry and Iwi Yunanto, et.al, 2010, Open Source Book: Interethnic Relations in Yogyakarta, Yogyakarta: Impulse.
- [8] Bagir, Zainal Abidin et al., 2011, Citizenship Pluralism, Bandung: Mizan and CRCS UGM.
- [9] Bello, C.K.L., Petrus, 2012. Law and Morality, Jakarta: Erlangga Publisher.
- [10] Jusuf, Ester I and Ferdi R. Srivanto, 2001, Racism: Documentation of international documents on Racism, Jakarta: Solidarity of Nusa Bangsa.
- [11] Kelsen, Hans, 2011. General Theory of Law and State, translated by Rasisul Muttaqien, Bandung: Nusa Media.
- [12] Merry, 2006. Human Rights and Gender Violence: Translating International Law into Local Justice, Chicago: University of Chicago Press.