

## THE EXISTENCE OF HUMAN RIGHTS COURTS IN INDONESIA

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### Keywords

Court Existence  
Human rights

Abstract. The main problem is How the Human Rights Court Existence in Law Enforcement in Indonesia, and the main problem is still further broken down into several sub-problems. What is the Profile of the Establishment of the Human Rights Court, How is the retroactive principle applied in the Human Rights Court to past human rights violations, and How is the existence of the Human Rights Court in law enforcement. In writing this thesis using descriptive writing methods, and using normative theological methods, normative juridical approaches, historical aspects approach, data collection methods in the form of library research, by reading, discussing and analyzing reference books, as well as in data processing and analysis methods using inductive and deductive methods. The Human Rights Court is an institution that hears and decides on any gross violation of human rights. In accordance with Law No. 26 of 2000 where every time there is a serious violation of human rights that occurs, then everything is processed in a human rights court, including crimes of genocide and crimes against humanity. The birth of this court was based on the will of the international community and Indonesia, where many human rights cases occurred in Indonesia so that this Human Rights Court was formed. The birth of Law no. 26 of 2000 concerning the Human Rights Court is a benchmark that Indonesia can try cases of Human Rights Violations itself without any outside interference. Many cases that have been tried in human rights courts in Indonesia are still very ineffective, both for all victims of cases of human rights violations committed by several individuals who have violated both past and present violations. The application of the retroactive principle in the Human Rights Court contradicts the Legality Principle adopted in the Indonesian Criminal Code. So that the effectiveness of this Human Rights Court still needs to be questioned and improved again in order to provide good things for the people in Indonesia. Many cases that have been tried in human rights courts in Indonesia are still very ineffective, both for all victims of cases of human rights violations committed by several individuals who have violated both past and present violations. The application of the retroactive principle in the Human Rights Court contradicts the Legality Principle adopted in the Indonesian Criminal Code. So that the effectiveness of this Human Rights Court still needs to be questioned and improved again in order to provide good things for the people in Indonesia. Many cases that have been tried in human rights courts in Indonesia are still very ineffective, both for all victims of cases of human rights violations committed by several individuals who have violated both past and present violations. The application of the retroactive principle in the Human Rights Court contradicts the Legality Principle adopted in the Indonesian Criminal Code. So that the effectiveness of this Human Rights Court still needs to be questioned and improved again in order to provide good things for the people in Indonesia. both to all victims of cases of human rights violations committed by several individuals who committed violations, both past and present violations. The application of the retroactive principle in the Human Rights Court contradicts the Legality Principle adopted in the Indonesian Criminal Code. So that the effectiveness of this Human Rights Court still needs to be questioned and improved again in

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## 1. INTRODUCTION

The right to life is the most basic human right for all human beings. The right to life is part of human rights which are non-derogable rights. This means that this right absolutely must be owned by everyone, because without the right to life, there are no other human rights. This right also signifies that everyone has the right to live and no one else has the right to take their right to life[1], [2].

The basic building of Human Rights which is inherent in the epicenter of independent individual authority, is innate from birth, so that it cannot be challenged with the pragmatism of the interests of power, ambition and desire. With and in whatever name, that the basics of intimate humanity must be protected, nurtured, and not allowed to exist at all in social spaces that alienate it.[3]. In Indonesia, the recognition and protection and enforcement of human rights have been legally guaranteed in various regulations, both in the 1945 Constitution as an embodiment of the State based on the law "Rechtstaat" not based on mere power.[4].

In Indonesia's long history as an independent nation, human rights issues have always been a terrible story. From one regime to another, the issue of human rights is an issue that needs to be appreciated[5], [6]. The problem of the New Order ruling for 32 years with its almost perfect dictatorship authority, violations of human rights have become the collective sin of the state apparatus in that era. has taken hundreds of thousands and even millions of innocent lives. However, after the New Order left the political stage, the shouts of the supporting power of democracy to uphold human rights became widely reported everywhere, and research and advocacy on past human rights violations actually received a special position.[7], [8].

The enforcement and protection of human rights in Indonesia made progress when on November 6, 2000, Law No. 26/2000 on the Human Rights Court was passed by the Indonesian House of Representatives and then enacted on November 23, 2000. a law that expressly states as the law that underlies the existence of a human rights court in Indonesia that will be authorized to try perpetrators of gross human rights violations[9]. This law also stipulates the existence of an ad hoc human rights court that will be authorized to try serious human rights violations that occurred in the past.[10].

## 2. METHOD

### 2.1 Types of research

The type of research used in writing this thesis is descriptive research, descriptive research is research that aims to describe systematically, factually and accurately to the object that is the subject of the problem.

### 2.2 Research approach

In carrying out the research, to obtain data that is in accordance with the subject matter of the discussion, the approaches used are: The normative theological approach (syar'i) which is an approach that is based on and departs from the shari'ah arguments which are sourced from the Qur'an and Hadith of the Prophet Muhammad SAW., which has to do with the issues discussed. The normative juridical approach is the approach used to connect the issues discussed with a legal approach, either with laws or other regulations that have to do with the problem. The historical aspect approach is an approach that is carried out within the framework of tracking the history of legal institutions, understanding the philosophy of the rule of law from time to time, and to understanding the changes and developments in the philosophy that underlies the rule of law.[11].

### 2.3 Data collection

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In collecting data, what is used is library research, which is collecting data and thought-provoking materials from a number of literatures, either changing the sentence editor or not. In writing this thesis the type of data used is the type of qualitative data. Qualitative is a type of research that produces data findings without using statistical procedures or other means of measurement (quantification). In writing this thesis the data source used is library research. Library data (library research) is to collect data and thought-provoking materials from a number of literatures, either changing the sentence editor or not.

#### **2.4 Data type**

In writing this thesis the type of data used is the type of qualitative data. Qualitative is a type of research that produces data findings without using statistical procedures or other means of measurement (quantification).

#### **2.5 Processing and analysis of data**

Data identification is by collecting some literature, then sorting and separating the data to be discussed. Data editing is an examination of research data that aims to determine the relevance (relationship) and validity of the data to be described in finding answers to the main problems. This is done with the aim of improving the quality of the data and eliminating doubts about the data obtained. Data Analysis Data analysis techniques aim to describe and solve problems based on the data obtained. The data analysis used is qualitative data analysis which requires confirmation of analytical techniques including reduction and categorization and then interpreted in an inductive and deductive way.

### **3. Results and Discussion**

#### **3.1 The Establishment of a Human Rights Court in Indonesia**

Efforts to achieve justice in the enforcement of human rights are a dynamic process that takes a lot of time. This effort is often dominated by forces that fight within the general framework of the political order to actualize it. In terms of upholding human rights, what is urgent now to be accommodated is how to deal with the demands of past human rights violations and provide guidelines. so that it doesn't happen again in the future. This concept is known as transitional justice, which relates to the challenges faced by transitional countries in an effort to get out of authoritarian government, which is more democratic.

The enforcement of justice with a populist dimension must pay attention to two principles of justice, as stated by adherents of the theory of justice. First, to provide equal rights and opportunities for the broadest basic freedoms, as broad as the same freedoms for everyone. Second, being able to reorganize the gaps that occur, so that they can provide mutual benefits for everyone, whether they come from lucky or unlucky groups. Thus, the principle of difference demands that the basic structure of society be regulated in such a way that the gap in prospects for obtaining welfare is the main thing. Authority is for the benefit of the most disadvantaged.

Before reaching the financial stage to become Law Number 26 of 2000 concerning the Human Rights Court, the discussion (draft) of the Law on the Human Rights Court has reached the tenth discussion with all changes, whether reductions, additions or some revision notes that are considered as a significant discussion. The whole is expected to accommodate all opinions, criticisms and suggestions from various elements of the community. The spirit of establishing a Human Rights Court is in principle the will of the entire nation and society, both nationally and internationally. The Human Rights Court in Indonesia is important because, to resolve cases of human rights violations, whether they are minor or serious. Therefore, the community welcomes Law no.

#### **3.2 Application of the Retroactive Principle in the Human Rights Court**

The provisions that are very closely related to the existence of an ad hoc Human Rights Court are the provisions regarding the application of the Retroactive Principle or the retroactive principle. The form of an ad hoc Human Rights Court which in Article 43 of Law no. 26 of 2000 which applies to certain locus and tempus delicti refers to the form of an ad hoc international tribunal, which among other things allows the application of the principle of retroactivity. This retroactive principle has become the most debated provision because it is considered contrary to the principle of legality in criminal law.

Different views exist in the application of crimes against humanity as a form of serious human rights crimes. If applied retroactively, it is considered not to violate the standard of legality principle in international criminal law, because the crime is merely an extension of the jurisdiction of war crimes

(an outgrowth of war crimes) and is accepted as international customary law and has been decided by an ad hoc international tribunal.

The application of the retroactive principle in gross human rights violations is still a dilemma because, first, human rights violations are a new event in the history of the Indonesian nation and there is no or no regulation in the laws and regulations in force in Indonesia. Second, gross violations of human rights are not synonymous with violations of the applicable criminal laws and regulations, and for this reason the prohibition on the interpretation of analogies still applies. Third, retroactive application of the Law on the Human Rights Court with material content regarding criminal provisions on the one hand violates the principle of law does not apply retroactively, but on the other hand, if the legal principles are not retroactively ignored, it means that the Criminal Code is applied to gross violations of human rights. This means that serious human rights violations are considered the same as ordinary crimes because if the national human rights court views human rights violations as ordinary crimes, then the international court will replace the national court even though the Rome Statute does not recognize 75 such provisions. because there is no meeting in the determination of the law. Fourth, the application of the retroactive principle requires very strong justifications, both in terms of philosophical, juridical, and sociological considerations. then the international court will replace the national court even if the Rome Statute does not recognize 75 such provisions because there is no meeting in the determination of the law. Fourth, the application of the retroactive principle requires very strong justifications, both in terms of philosophical, juridical, and sociological considerations. then the international court will replace the national court even if the Rome Statute does not recognize 75 such provisions because there is no meeting in the determination of the law. Fourth, the application of the retroactive principle requires very strong justifications, both in terms of philosophical, juridical, and sociological considerations.

### **3.3 The Existence of Human Rights Courts in Law Enforcement Against Human Rights Violations**

Currently, it appears that pressure from within and outside the country has demanded Indonesia to immediately establish or establish a law enforcement institution in the field of Human Rights to examine and prosecute cases related to violations or crimes of Human Rights that occurred in Indonesia. Thus the existence of the PERPU is a solution to provide certainty for the community and the international community that the government of the Republic of Indonesia has the will to process all forms of human rights violations or crimes, one of which is after the popular consultation in East Timor.

The term Human Rights Court itself was formally mentioned for the first time in Chapter IX of Law Number 39 of 1999 concerning Human Rights. Article 104 paragraph (1) states "to try gross violations of Human Rights in the form of a Human Rights Court in the General Courts". The formation of the Law on Human Rights Courts in Indonesia is based on the following considerations:

1. Serious human rights violations 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 material and immaterial losses that result in feelings of insecurity both for individuals and the community, so it is necessary to immediately restored in realizing the rule of law to achieve peace, order, tranquility, justice and prosperity for all Indonesian people.
2. For cases of serious human rights violations, special investigation, investigation and prosecution steps are needed.
3. The specifics in handling serious human rights violations are:
  - a. Investigators are needed by forming an ad hoc team, ad hoc investigators, ad hoc prosecutors and ad hoc judges. 77
  - 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 needed regarding a certain grace period for conducting investigations, prosecutions and examinations in court.
  - d. Provisions are needed that confirm there is no expiration date for gross human rights violations.

Whereas the process of establishing a Human Rights Court started from the 1945 Constitution which was amended as the highest legal basis, then followed successively by Law No.39/1999 on Human Rights, Perpu No.1/1999 on the Human Rights Court, Law No.26 of 2000 concerning Human Rights Court, Presidential Decree No. 53 of 2001, Presidential Decree No. 96 of 2001.

Legal policy on Human Rights includes state policies on how the law on human rights has been made and how the law on human rights should be made to build a better future, namely a state that is free from human rights violations, especially those committed by the authorities. So that what is desired can provide fresh air for the Indonesian people, especially in cases of human rights violations.

The existence of this special judicial institution is very important to maintain the authority of the law in guarding democracy and future politics which can basically be realized through government legal politics. As is the case with legal politics in the field of eradicating corruption, in its implementation it has shown encouraging results. In response to this, then, the implementation of law enforcement against human rights violations is expected to go well and sincerely demonstrate greatness and authority in building a great nation in the international community, without applying double standards in every fair policy.

Law enforcement in the field of human rights is part of law enforcement in Indonesia as a whole. Law enforcement and justice are two sides of the same coin. In this regard, the protection of human rights is a constitutional protection which is part of the law in Indonesia. In the rules and law enforcement there is also the regulation and enforcement of human rights. Implementation of human rights law enforcement to achieve justice requires the operation of the four factors forming the legal system, namely 1. The existence of laws and regulations, 2. The existence of law enforcement officials, institutions and apparatus, 3. The support of equipment or infrastructure and, 4. The existence of society as a place of enactment of law. In its implementation, it must be seen both legally.

#### 4. CONCLUSION

The establishment of the Human Rights Court in Indonesia cannot be separated from the pressure of the international community on the Indonesian government to immediately prosecute the perpetrators of crimes against humanity that occurred in East Timor, Abepura, etc. The establishment of this Court is one of Indonesia's efforts to fulfill international obligations and maximize national legal mechanisms to deal with domestic human rights violations (exhaustion of local remedies). This is of course to prevent the entry of the international legal system to prosecute Indonesian citizens who are suspected of committing gross violations of human rights. The failure of the national courts due to their unwillingness to try cases involving human rights violations. This means that Indonesia must show its seriousness in providing guarantees for the protection of human rights for its citizens, especially through the mechanism for enforcing human rights law in Indonesia. The application of the retroactive principle in the Human Rights Court is still a dilemma because the Human Rights Court is still new, not identical with criminal laws and regulations which have a non-retroactive principle and still need philosophical, juridical and sociological views.

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