

ENFORCEMENT OF HUMAN RIGHTS IN INDONESIA

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PROVISIONS and enforcement of human rights in Indonesia is based on the outlook and consciousness of the Indonesia's people that human beings are the creatures of God bestowed with basic rights to be capable of developing themselves, their roles, and their contributions to the human well being. Human rights are ones intrinsic to person as the creature of God, that are essential, universal, and permanent in nature, related to honor of human. Everybody is acknowledged and respected as having equal human rights without discriminating sexes, skins, nationalities, religions, ages, political positions, social statuses, languages, etc.

Rejection or deprivation of human rights would result in elimination of the honor of humans, restraining them from fully developing themselves and their roles. Indonesia's people realize that human rights are historic and dynamic in nature the implementation of which is always developing in societal and national lives.

Regulation of Human Rights

Provisions of human rights and basic human freedom (and citizen rights) in Indonesia are firstly laid down in the supreme law, that is, the 1945 Constitution. The provisions of human rights in the 1945 Constitution can be divided into two periods, namely, a period before the amendment of the Constitution and a period after its amendment.

The provisions of human rights and basic human freedom (and citizen rights) in the 1945 Constitution before the second amendment in 2000 provide for, among others, equality before law and in governance, equality in employment and decent life, freedom of association and assembly, freedom of expressing opinion

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both in writing and orally, freedom of devoting religion and practicing rituals according to his or her religion, right of defending nation, right of receiving education, right of developing culture, right on prosperity, and, for the poor and abandoned children, right of being cared by state.

The provisions of human rights and basic human freedom (and citizen rights) in the 1945 Constitution after the second amendment in 2000 provide for, among others, the rights of defending self and life, of marrying and having offspring through legitimate marriage, of receiving education and obtaining benefits from science and technology, of fair legal protection and certainty, of nationality status, of communicating and receiving information for developing self and social circle, of the protection of self and property, of obtaining sense of secure and protection against fear, of being free from prosecution and treatment that relegates human honor, of obtaining political asylum form other country, of being not prosecuted, not slaved, not tried by invoking a retroactive law, of being free form discriminative treatment, and of cultural identity and traditional community.

The provisions of human rights and basic human freedom (and citizen rights) are provided for furthermore in Law No. 39 Year 1999 on Human Rights. The Law lays down basic principles of provisions and enforcement of human rights and basic human freedom (and citizen rights), such as state recognizes and respect human rights and basic human freedom (and citizen rights), everybody is born free with equal honor, and everybody has right on legal protection.

The provisions of human rights and basic human freedom (and citizen rights) in the 1999 Law deal with, among others, legal protection, non-discriminative protection, equality before law, right of being not tried retroactively, right of demanding and obtaining equal treatment before law, right of receiving fair aid and protection, right of receiving more treatment and protection related to specialty, right of community law community to be protected by law and by government, right of protection on cultural identity and common law community, and right to applying all national and international laws Indonesia has received.

Furthermore, in relation to human rights and basic human freedom (and citizen rights), the 1999 Law provides for right of life, right of marrying and having

offspring, right of developing self, right of obtaining justice, right of personal freedom, right of security, right of prosperity, right of participating in governance, right of woman, and right of children.

Enforcement of Human Rights

Article 104 of the 1999 Law stipulates that an ombudsman (tribunal of human rights) be established at General Justice adjudicate severe violation against human rights. The ombudsman shall be established by law. The stated law is the Law No. 26 Year 2000 on Ombudsman. According to the Law on Ombudsman, the Ombudsman that is under General Justice is a special justice dealing with severe violation against human rights.

In attempt to develop an objective condition for the implementation of human rights in conformity with Indonesia's basic norms, i.e., Pancasila and the 1945 Constitution, and United Nations Charter and Universal Declaration on Human Rights, and also to promote protection and enforcement of human rights comprehensively in Indonesia and to promote its capability in participating in various life aspects, Government, in this case the President, established a National Commission on Human Rights through Presidential Decision No. 50 Year 1993 on National Commission on Human Rights. In order to realize its goals, the Commission conducts study, research, extension, monitoring, and mediation on human rights. Its membership consists of the public figures that are professional, of dedication, and of high integrity, and also aware of the aspirations of rule of law and laissez-faire state that is justice-oriented, and uphold human rights and basic human duties.

Regarding the violations included as violations against human rights, Article 7 of the Law No. 26 Year 2000 stipulates that the severe violations against human rights include genocide and violations against humanity. Article 8 of the Law defines genocide as any action that is conducted in intention to destroy or eliminate a nation, a race, an ethnic, or religious group wholly or partially. The action is conducted by killing all members of the group, causing severe physical or mental sufferings on members of the group, creating such a life conditions of the groups

that it will physically be eliminated wholly or partially, forcing certain actions aimed at preventing births in the group, or removing coercively children from certain groups to other ones.

Article 9 of the Law No. 26 defines violation against humanity as one of the actions conducted as part of intensive or systematic assault with knowledge that the assault is directed to civil population. The actions may be in forms of : murder; elimination; slavery, removing population by coercive manner; deprivation of freedom or that other physical freedom arbitrarily by violating basic provisions (principles) of international law; physical attack, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or other equivalent sexual violations; assault against a certain groups based on political affiliation, race, nation, ethnic, culture, religion, sex, or other reasons universally admitted as being prohibited according to international law; elimination of person coercively; or apartheid crime.

Due to the existence of the two types of crimes against human rights, violation of human rights in Indonesia, as revealed in printed and electronic mass media, fall into the second type of crimes against human rights, that is, crimes against humanity. Vied from mass media news, the outstanding violations or crimes against humanity in Indonesia include Coup on 30 September 1965 by Indonesia Communist Party (G30S/PKI) and its aftermaths, riots on 12-14 May 1998 and aftermaths, and elimination of an Indonesian human rights activists, Munir, on 7 September 2004. The resolution of the three events is considered, particularly by the victims' families, as unsatisfactory.

Constraints in Enforcing Human Rights and Their Solutions

From legal sociology perspective on legal effectiveness, a set of rules or provisions would be effective if it fulfill five aspects of legal effectiveness, namely : (1) norms of rules, (2) executive institution, (3) enforcer/executor, (4) facility of enforcement, and (5) people acceptance. The norms of rules or laws contain normative values if they are qualified for being applied as laws/rules, that is,

philosophic, judicial, and sociological qualifications. Juridical qualification includes the criteria of being legitimate, prevailing, and binding.

In facing the constraints of law/rule enforcement that doesn't fulfill legal effectiveness, then either as a whole or partially and sooner or later it should be attempted to fulfill the five types of legal effectiveness while intensifying and extending the dissemination of information on the law/rule.

Concluding Remarks

The enforcement of human rights in Indonesia continuously shows a trend of significant progress from time to time. This is resulted from the awareness of Indonesia's people on the importance of enforcing human rights in line with the growing democracy in Indonesia. In this case, education on human rights, be in a separate course on human rights or as an integral part of certain course such as civic education, makes a significant contribution. Besides, the enforcement of human rights in international (global) community also has significant influence on the progress of human rights enforcement in Indonesia.

Documents

The 1945 Constitution of Republic of Indonesia, Gazette No. 75 Year 1959.

Second Amendment of The 1945 Constitution of Republic of Indonesia, Passed by *Majelis Permusyawaratan Rakyat* (People's Consultative Council) of Republic of Indonesia in Jakarta on 18 August 2000.

Fourth Amendment of The 1945 Constitution of Republic of Indonesia, Passed by *Majelis Permusyawaratan Rakyat* (People's Consultative Council) of Republic of Indonesia in Jakarta on 10 August 2002.

Law No. 5 Year 1998 dated of 28 September 1998 on *Ratification of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Gazette of Republic of Indonesia No. 164 Year 1998, Supplement of Gazette of Republic of Indonesia No. 3783).

Law No. 9 Year 1998 dated of 26 October 1998 on *Freedom of Expression Publicly* (Gazette of Republic of Indonesia No. 181 Year 1998, Supplement of Gazette of Republic of Indonesia No. 3789).

Law No. 39 Year 1998 dated of 23 September 1999 on *Human Rights* (Gazette of Republic of Indonesia No. 165 Year 1999, Supplement of Gazette of Republic of Indonesia No. 3886).

Law No. 26 Year 1998 dated of 23 September 2000 on *Ombudsman* (Gazette of Republic of Indonesia No. 208 Year 2000, Supplement of Gazette of Republic of Indonesia No. 4026).

Governmental Rule in Lieu of Law of Republic Indonesia No. 1 Year 1999 dated of 8 October 1999 on *Ombudsman* (Gazette of Republic of Indonesia No. 50 Year 1993, Supplement of Gazette of Republic of Indonesia No. 3911).

Decision of the President of Republic of Indonesia No. 50 Year 1993 dated of 7 June 1993 on *National Commission on Human Rights*.

Decision of the President of Republic of Indonesia No. 181 Year 1998 dated of 9 October 1998 on *National Commission on Anti-Violation against Woman*.
