

Freedom of Speech According to The Indonesian Legal System

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ABSTRACT

As an embodiment of human rights, freedom of speech in public is the right of every individual and has been constitutionally guaranteed in Pancasila and the 1945 Constitution. That is the reason why legal certainty is needed regarding the concept of handling crowds and legal reform in the handling and regulation of demonstrations by the police so that human rights violations do not happen. The method used in this research is *empirical juridical*. The data used in this study is secondary data, consisting of primary legal materials and secondary legal materials. The results of the research show that the regulation of freedom of speech in public freely and responsibly has been regulated in Article 28 E Paragraph 3 of the 1945 Constitution and Law Number 9 of 1998 concerning Freedom of Expressing Opinions in Public. With this legal basis, the ideal concept of conflict resolution by expressing opinions in public as an embodiment of the legal system in Indonesia can be realized.

Keywords: freedom of speech, Indonesian legal system

INTRODUCTION

Freedom of speech is the right of every individual since birth which has been guaranteed by the constitution. Freedom has three meanings; they are physical, volitional and moral freedom [1]. The implementation of freedom of speech in public as stipulated in Article 9 Paragraph (1) of Law Number 9 of 1998 can be carried out by means of demonstrations, marches, general meetings and or free speeches. Various ways of conveying opinions in public are not always going well. There is a possibility of an anarchist demonstration causing losses ranging from property to loss of life. Freedom of speech is actually a form of human right that is under the law. The regulation on freedom of speech is also stated in Article 25 of Law no. 39 of 1999 concerning Human Rights, whereby human rights must be protected, respected, maintained and cannot be ignored, diminished or seized by anyone [2]. Actions that are not in accordance with the implementation of human rights are a violation [3]. In essence, human rights are a set of provisions or rules to protect citizens from possible oppression, shackles and or restrictions on citizens' space for movement by the government. This means that there are certain restrictions imposed on the state thus the most essential rights of citizens are protected from the arbitrariness of power [4]. The act of expressing opinions in public (demonstrations) is referred to as the embodiment of democracy and human rights. Expressing opinions in public has also been practiced and permitted in all countries [5]. The state has a role to provide protection to all people who are involved in demonstrations by assigning law enforcement officials to maintain order during the action. However, in several cases the use of excessive force by law enforcement officers against demonstrators resulted in many victims, both injured and dead. Several cases of alleged human rights violations that have occurred in Indonesia include the Malari incident (1974), student demonstrations (1978), kidnapping of activists (1997-1998), Trisakti incident (1998), the killing of 6 members of the Islamic Defenders Front (FPI), and demonstrations against the Job Creation Law (2020). In the researcher's view, the duty of the police officers during demonstrations is to ensure that conditions do not disturb security or interfere with the activities and rights of other people. However, in carrying out these tasks the police must refer to the Standard Operating Procedures (SOP) for Crowd Control (Dalmas) whether in green, yellow or red situations. In guarding demonstrations, the function of the police refers to various regulations, including

Regulation of the Chief of Police of the Republic of Indonesia (Perkap) 9 of 2008 as replaced by Perkap No. 7 of 2012 concerning Procedures for Providing Services, Security, and Handling Cases for Expressing Opinions in Public. Second, there is Perkap 16 of 2006 concerning Guidelines for Crowd Control. Third is Perkap 1 of 2009 concerning the Use of Force in Police Actions, and the last is Perkap No. 8 of 2009 concerning the Implementation of Human Rights Principles and Standards which in Article 11 clearly states that every member of the police is prohibited from arbitrarily arresting and detaining, torturing detainees or people suspected of being involved in a crime, and using excessive force and/or firearms. The concept of a Pancasila legal state was born because of encouragement from all elements of the nation to free themselves from colonialism [6]. Indonesian leaders formulated law as regulation in the form of decisions and their implementation [7]. In terms of freedom of speech or expression in public, this right has been recognized in Pancasila and the 1945 Constitution. Expressing opinions in public is one of the rights of citizens. As a constitutional state, Indonesia guarantees the basic rights of every citizen. Human rights are often referred to as *natural rights*, *human rights*, and *fundamental rights*, which concretely cannot be separated from basic obligations and responsibilities [8] that are acquired from birth [9] which cannot be violated by anyone [10]. In Indonesia, the support for human rights can be seen in Law Number 39 of 1999 concerning Human Rights which recognizes in Article 28 E Paragraph (3) that “The right to freedom of association, assembly and expression of opinion”. The right for freedom of expression is not only defined as the right to own and express opinions but also as the freedom to seek, disseminate, receive any information and thoughts orally, in writing, or in printed form, works of art, or through other media of his choice [11]. Expressing opinions in public does not always go well. Conflicts that occur are caused by perceptions of different interests [12]. Therefore, there must be conflict resolution as an effort to deal with the causes of conflict and way out to build new relationships that can be long-lasting and positive [13]. This includes issues related to the fulfillment of human rights in order to achieve legal certainty, the concept of handling masses and a legal reform in the handling and regulation of demonstrations by the police in order to avoid human rights violations

METHOD

Research in legal science starts from finding problems, determining theories, searching for data, conducting analyzes and establishing conclusions and providing suggestions on research results [14]. This research is empirical juridical [15] because the purpose is to reveal the form of expressing opinions in public in terms of Law Number 9 of 1998 concerning Freedom of Speech in Public and Law Number 39 of 1999 about Human Rights. The data used in this research is secondary data which consists of primary and secondary legal materials collected using literature study and interview techniques. The data that has been collected is then analyzed qualitatively, by describing and interpreting it based on existing legal science theories [16], then conclusions are drawn as answers to the problems studied.

RESULTS AND DISCUSSION

Freedom of speech is given as a human right, but still based on statutory regulations such as the elucidation of Law Number 9 of 1998 concerning Freedom of Speech in Public. In addition, various regulations that underlie freedom of speech in Indonesia are Article 28E Paragraph (2) and (3) of the 1945 Constitution and Article 25 of Law Number 39 of 1999 Concerning Human Rights. Student demonstrations as a manifestation of freedom of speech cannot be carried out without limits. Restrictions on the use of the right to freedom of speech have been clearly regulated in Article 28J of the 1945 Constitution, Article 69 and Article 70 of Law Number 39 of 1999. The principles that must be adhered to in freedom of expression are regulated in Article 3 of Law Number 9 of 1998 so that student demonstrations can be carried out responsibly, not anarchically or detrimental to the interests and order of other communities. The obligation to protect human rights means that the state is obliged to take action to prevent human rights violations

against its citizens. This obligation includes efforts to encourage people to respect the rights of others and regulate sanctions for violations committed by individuals or groups [17]. The articles in Law Number 9 of 1998 concerning Freedom of Speech indicate that citizens must be responsible when expressing opinions, meaning that there are restrictions on the use of this right (Article 6 of Law Number 9 of 1998). Likewise, the state (government) can limit the rights of its citizens to express opinions in public (Article 7 of Law Number 9 of 1998). Restrictions on the right to freedom of speech in Article 6 of Law Number 9 of 1998 and Article 7 of Law Number 9 of 1998 are in line with the *International Covenant on Civil and Political Rights* 1966. The efforts to protect freedom of speech can be carried out through the National Human Rights Commission which was established based on Presidential Decree Number 50 of 1993 concerning the National Human Rights Commission, the Indonesian Legal Aid Foundation (YLBHI) which originated from the Legal Aid Institute (LBH), which was founded by DPP Peradin based on Decree No. 001/Kep/10/1970. The Police of the Republic of Indonesia (POLRI) is one of the parties that has the authority to guard and maintain the implementation of freedom of speech in public. The obligations and responsibilities of the police are regulated in Article 9 of the Regulation of the Chief of Police of the Republic of Indonesia (Perkap) 9 of 2008 as replaced by Perkap No. 7 of 2012 concerning Procedures for Providing Services, Security, and Handling Cases for Speech in Public. In using the authority, the police must also be proportional as stated in Perkap No. 16 of 2006 concerning *Crowd Control Guidelines*. The police may not immediately disperse demonstrators without a clear reason, especially with tear gas because this must be adjusted to the level and escalation of the threat as referred to in Perkap No. 1 of 2009 concerning the Use of Force in Police Action. Perkap No. 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Article 11 states that every member of the National Police is prohibited from arbitrarily arresting and detaining, torturing detainees or people suspected of being involved in a crime, and using excessive force and/or firearms. The National Police even has Police Chief Regulation No. 9 of 2008 as replaced by Perkap No. 7 of 2012 concerning Procedures for Providing Services, Security, and Handling Cases for Expressing Opinions in Public. There should be no obstructions, sweeping, defamation, and arrests before the action takes place as is done by the police. Society and the Police are legal subjects which in legal life can create new values as a result of legal actions between the two or as a result of changes in civilization and technology. From time to time, the relationship between the police and the community will develop even better. This can be an inspiration in the development of national law. Substantially the Indonesian National Police is involved in the formulation of material and formal codification of law in the form of certain laws, as well as other regulations related to the territory or competition for the duties and authorities of the National Police [18]. In the life of a democratic society, nation and state, freedom of speech according to one's conscience and the right to obtain information are the most essential human rights. Protection of freedom of speech can support supervision, criticism, and suggestions for governance. This protection is important for upholding justice and truth, promoting public welfare, and educating the nation's life. Article 19 of the Universal Declaration of Human Rights confirms that everyone has the right to freedom of expression. This right also includes freedom to hold opinions without interference and is directed to seek, receive and impart information and ideas through any media and regardless of frontiers. Freedom of opinion is regulated in scope referring to article 19 of the International Covenant on Civil and Political Right. After the amendments, especially the second one in 2000, the provisions regarding human rights in the 1945 Constitution has undergone very fundamental changes. The material which originally contained only seven points of provisions which also could not fully be called human rights guarantees, has now been significantly increased thus the formulation is more complete and makes the 1945 Constitution one of the most complete regulations containing protection of human rights compared to the Constitution that was once in effect in Indonesia. In the second amendment of the 1945 Constitution, the basic provisions on human rights consist of 10 articles that are Article 28, Article 28A to Article 28I. The various provisions that have been set forth in the 1945 Constitution are substances derived from MPR Decree No. XVII/MPR/1998 concerning Human Rights, which later became material for Law no. 39 of 1999 concerning Human Rights. Therefore, in order to understand the substance regulated in the 1945 Constitution, the two related instruments, namely MPR Decree No. XVII/MPR/1998 and Law no. 39 of

1999 also needs to be studied comprehensively. In addition, as a whole it can be said that the provisions regarding human rights that have been adopted into the Indonesian national legal system originate from international conventions and the universal declaration of human rights. According to the Elucidation of Law Number 26 year 2000 concerning the Human Rights Court, the provision of human rights protection can be carried out through the establishment of *the National Human Rights Commission, the Human Rights Court, and the Truth and Reconciliation Commission*. In principle, any person or group that has strong reasons that their human rights have been violated can submit reports and complaints orally or in writing to the National Commission on Human Rights (*Komnas HAM*) and then they will follow up. Specifically for gross human rights violations National Commission on Human Rights can only conduct an investigation, while those who will follow up are the Attorney General and the Human Rights Court which are within the General Court environment. The reform of the legal system is a discourse that should be welcomed, especially regarding human rights for the sake of improving the condition of the nation. The reason is, everyone agrees that the law is one of the determinants of the improvement of the nation above the morality and personality of the people. Law violation can attack the structure, substance or legal culture, which is a unified legal system in the view of Lawrence Friedman quoted from Achmad Ali [19]. The legal downturn in Indonesia is due to the fact that the legal system that works within it experiences disorientation in movement and goals. The legal system that is intended and needs to be improved is the structure, substance and legal culture as well as infrastructure. The ideal concept of conflict resolution on freedom of speech as a manifestation of the legal system in Indonesia should be carried out peacefully. However, there are times when cases like this cannot be resolved in this way, resulting in acts of violence as a way out or as a result. This is a symptom of not being able to properly address the root of the conflict, causing violence in various forms. The researcher offers the ideal concept of conflict resolution through peace negotiations with third parties involving demonstrators, security forces and independent institutions such as National Commission on Human Rights, YLBHI or other independent institutions in accordance with the concept of the Pancasila legal state that is deliberation for consensus.

CONCLUSIONS

From the research, it can be concluded that the regulation of freedom of speech freely and responsibly is regulated in Article 28 E Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, that everyone has the right to freedom of association, assembly and expression. Derivative laws and regulations governing the right to express opinions are Law Number 9 of 1998 concerning Freedom of Speech in Public. The ideal concept of freedom of speech conflict resolution as an embodiment of the legal system in Indonesia can be implemented. When conflicts between demonstrators and security forces occur, a way out can be sought in a tripartite way where the resolution involves the demonstrators, security forces and independent institutions such as the National Human Rights Commission, YLBHI or other independent institutions in accordance with the Pancasila concept, namely deliberation for consensus.

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