Legal Politics in the Existence of Human Rights Jurisdiction that only Judge Against Serious Human Rights Violations

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ABSTRACT

National legal politics has established Indonesia as a country based on law (rechtsstaat), as stipulated in Article 1 paragraph (3) of the 1945 Constitution. The concept of a rule of law refers to the soul of the nation (volkgeist) contained in Pancasila and the Proclamation of Independence as the source of all sources. law and support for constitutionalism. Based on the description above, it appears that there is pressure from within and outside the country on Indonesia which is the background for immediately establishing a judicial institution in the field of human rights. As for his duties, none other than to examine and adjudicate cases related to human rights violations or crimes that occurred in Indonesia. For this reason, the Perppu was issued as a solution to provide initial certainty to process and resolve human rights violations. This portrait when viewed from the legal political aspect, the formation process is based on the development of legal society in the country and the global community. In other words, this process has a tendency of national interests to continue to exist in the global world arena. If Indonesia does not immediately respond to the situation at that time, it is certain that Indonesia, which has ordained itself to join the United Nations, will be ostracized from world affairs. This is because the UN firmly upholds the universal value of human rights and is committed to upholding it. Therefore, the community urged the government to immediately ratify the Perppu to become Law Number 26 of 2000 concerning human rights courts.

Keywords: Legal Politics, Existence, Human Rights Jurisdiction, Human Rights Violations.

INTRODUCTION

National legal politics has established Indonesia as a country based on law (rechtsstaat), as stipulated in Article 1 paragraph (3) of the 1945 Constitution. The concept of a rule of law refers to the soul of the nation (volkgeist) contained in Pancasila and the Proclamation of Independence as the source of all sources. law and support for constitutionalism.

Moh. Mahfud MD stated, legal politics is a crystallization of political wills that compete with each other in the enactment of law, so that certain political backgrounds give birth to laws with certain characters [1]. Legal politics, are directives or official lines that are used as a basis and way to make and implement laws in order to achieve the goals of the nation and the State. It can also be said that legal politics is an effort to make law a process of achieving state goals[2].

Bernard L. Tanya emphasized that legal politics is more like an ethic which demands that an objective chosen must be justified by common sense which can be tested and the means set for achieving it must be tested with normal criteria[3]. Precisely legal politics can be considered more as an art of making law (the art of making law) that departs from the world of Sollen to the world of sein. Sollen because what legal politics wants is not tied to what exists, it is supposed to. It is sein in nature because the thing that ought to earlier must be understood as much as possible in real life as it has been said that law is for humans. Then

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Padmo Wahjono saw that legal politics is the basic policy that determines the direction, form and content of the law to be formed[4]. This understanding is then clarified that legal politics is the policy of state administrators regarding what is used as a criterion for punishing something which includes the formation, application of law enforcement[5]. Not much different from what was said by Padmo Wahjono, Sujtipto Rahardjo defines legal politics as the activity of choosing and the means to be used to achieve social goals with certain laws whose scope includes answers to several basic questions, namely:

1. What goals are to be achieved through the existing system;
2. What methods and which ones are the best to use in achieving these goals;
3. When and how the law needs to be changed, and;
4. Can a valid and well-established pattern be formulated to assist in deciding the pattern of selecting goals and for achieving these goals properly[6].

Sunaryati Hartono, explicitly formulates the meaning of legal politics as a tool and that practically legal politics is a means and a step that can be used by the Government to create a national legal system to achieve the nation's ideals and state goals [7]. Then, the Garuda Nusantara judge defined legal politics as a legal policy or legal policy that the government intends to implement or implement nationally to create a national legal system to achieve the nation's ideals and state goals. Then, Judge Garuda Nusantara defines legal politics as a legal policy or legal policy that is to be implemented or implemented nationally by a certain country's government which includes: 1) consistent implementation of existing legal provisions; 2) development of new laws; 3) enforcement of the functions of law enforcement agencies and the development of their members; 4) increasing public legal awareness according to the perceptions of policy-making elites[8].

The connection between legal politics and the formation of a legal system as a policy direction has been explained by Utrecht who said that often general law studies as a positive legal science make judgments (waardeoordelen) about the legal principles and legal systems that have been investigated and then determine the law that should apply (ius constuendum). The matter of determining ius constuendum is basically a legal political act[9]. Furthermore, according to Utrecht, because law is also a political object, namely legal politics, legal politics seeks to make rules that will determine how humans should act. Legal politics added Utrecht, investigating what changes must be made in the law that is currently in force so that it conforms to "sociale werkelijkheid"[10]. Not much different from the opinion of Utrecht, where Teuku Mohammad Radhie said that legal politics is a statement of the will of the state authorities regarding the laws that apply in their territory and regarding the direction in which the law is to be developed [11].

The struggle of thoughts about Human Rights (HAM) is actually not a new discourse in political and constitutional discourse in Indonesia. Since independence, the pioneers of this nation have sprinkled various ideas to fight for better human dignity[12]. Therefore, it is commonplace that various demands for each human rights violation must be resolved as soon as possible without selective logging. This was also the background for the establishment of the National Human Rights Commission (Komnas HAM) in Indonesia[12]. At first the formation of this commission was greeted with skepticism (doubts), but gradually this institution began to gain public trust[13].

The formation of the National Commission on Human Rights is actually in line with the objectives set out in Article 44 of the Decree of the People's Consultative Assembly (TAP MPR) No. XVII/MPR/1998 concerning Human Rights[14]. In order to obtain effective enforcement of human rights in Indonesia, then also in Law No. 39 of 1999 concerning human rights. However, bearing in mind that there are various weaknesses, in subsequent developments a Human Rights Court is stipulated. In the future, the Perpu was submitted to the DPR but was rejected so that the Government then submitted a Draft Law (RUU)[15]. The Government's initiative finally bore fruit with the birth of Law Number 26 of 2000 concerning the Court of Human Rights. It is hoped that the existence of Law Number 26 of 2000 can become a strengthening basis

in realizing legal certainty and justice in the process of upholding human rights in Indonesia.

According to Muladi[16], even though the law adopts many international legal norms, such as the International Crime Court (ICC), it only takes a portion and its adoption is not systematic so that many important things are omitted. Important matters that were not taken into account, such as war crimes were not included, witness protection was not optimal and the procedural law still used the procedural law of the Criminal Code.

LEGAL POLITICS IN THE FORMATION OF A HUMAN RIGHTS COURT

The term Human Rights Court was formally mentioned for the first time in Chapter IX concerning the Human Rights Court at the insistence of Article 104 paragraphs (1), (2) and (3) of Law Number 39 of 1999 concerning Human Rights. This law states that human rights courts are established to try gross human rights violations, such as mass killings (genocide, arbitrary or extrajudicial killings), torture, enforced disappearances, slavery or systematic discrimination. (systematic discrimination) in accordance with the provisions of Article 6 and Article 7 of the Rome Statue of the International Criminal Court[17].

One of the consequences with the enactment of Law no. 39 of 1999 concerning Human Rights is the establishment of the Human Rights Court itself. Actually the discourse of forming a human rights court has been around for a long time, but with various political arguments from the government, up to the implementation of Law no. 39 of 1999 has not yet been formed. However, along with the strengthening of the issue of upholding human rights, this discourse has increasingly crystallized and there is no other reason for the government to form a human rights court. In the end, the Government issued a Government Regulation in Lieu of Law (Perppu) Number 1 of 1999 concerning the Human Rights Court on October 8, 1999.

If traced historically, the formation of a Perpu was actually prepared by the government in a hurry, namely in connection with the formation of public opinion, both at home and abroad. Domestically, this can be seen in the political and social situation in society which is urgent and requires the government through the courts to immediately try the perpetrators of human rights violations in various regions. Pressure from abroad, it can be explained that the Indonesian state as part of the (state party) organization of the United Nations (UN) has been in the spotlight by the international community because it is considered unable to resolve the problems of human rights violations that have occurred. Therefore, if Indonesia does not respond to this pressure, it can corner Indonesia's position in relations between nations[18].

Based on the description above, it appears that there is pressure from within and outside the country on Indonesia which is the background for immediately establishing a judicial institution in the field of human rights. As for his duties, none other than to examine and adjudicate cases related to human rights violations or crimes that occurred in Indonesia. For this reason, the Perppu was issued as a solution to provide initial certainty to process and resolve human rights violations. This portrait when viewed from the legal political aspect, the formation process is based on the development of legal society in the country and the global community. In other words, this process has a tendency of national interests to continue to exist in the global world arena. If Indonesia does not immediately respond to the situation at that time, you can be sure that Indonesia, which has ordained itself to join the United Nations, will be ostracized in world affairs. This is because the UN firmly upholds the universal value of human rights and is committed to upholding it.

Then, the community is not satisfied if the legal umbrella for human rights courts is only based on Peppu. Therefore, the community urged the government to immediately ratify the Perppu to become Law Number 26 of 2000 concerning human rights courts. Thus, the enactment of the law is part of the government's strategic program to demonstrate to the wider community that Indonesia can resolve human rights violations with the applicable national legal system [19]. This is a national government policy that is based on human

rights values.

Political human rights law, is a legal policy (legal policy) on human rights which includes state policies on how the law on human rights has been made. How should the law on human rights be made to build a better future, namely the life of a country that is free from violations of human rights, especially those committed by those in power [20], This means that when the government wants to formulate or make human rights regulations, it must have careful consideration and be consistent with the existing political situation. On this matter, then in the context of Law no. 26 of 2000, other (legal political) considerations of the government in its formation are as follows[21]:

It is a manifestation of the responsibility of the Indonesian people as a member of the United Nations. Thus, it is a moral and legal responsibility to uphold and implement the Universal Declaration of Human Rights established by the United Nations, as well as those contained in various other legal instruments that regulate human rights that have been accepted by the Republic of Indonesia.

Then in order to implement TAP MPR No. XVII/MPR/1998 concerning Human Rights and as a follow-up to Law no. 39 of 1999 concerning Human Rights. This is due to the urgent need for law, both in terms of national interests and in terms of international interests, a serious Human Rights Court is immediately established. To overcome uncertain conditions in the field of security and public order, including the national economy. At the same time, the existence of this Human Rights Court is hoped to be able to restore public and international confidence in law enforcement and guarantee legal certainty regarding human rights enforcement in Indonesia.

EXISTENCE OF HUMAN RIGHTS VIOLATIONS IN HUMAN RIGHTS COURTS

The existence of a human rights court in trying human rights violations only tries gross human rights violations which are categorized into 2 (two) types based on Article 7 of Law Number 26 of 2000 concerning Human Rights Courts, namely:

Mass Murder (Genocide).

The definition of the Crime of Genocide itself is still being debated because even though human history has witnessed many acts of genocide, the concept of this crime itself is still relatively new and was only developed as a result of the Nazi atrocities in World War II. The term “Genocide” itself has its roots in the work of a legal expert, Raphaël Lemkin, a major supporter of international conventions on this issue. Lemkin’s definition of this term is centered on a coordinated plan to destroy the “important foundations” of a group’s life, with the aim of destroying that group [22].

The crime of genocide is defined as an act committed with the intent to destroy or annihilate all or part of a national, racial, ethnic or religious group. Material acts committed within the framework of the crime of genocide include the following actions: killing, causing suffering, creating conditions for extermination, preventing birth, forcibly transferring. (Article 8 Law No. 26 of 2000).

Crimes against humanity

Crimes against humanity are defined as part of a widespread and systematic attack which he knows is directed against the civilian population, which includes: murder, extermination, exile, deprivation of liberty, apartid, rape, persecution, enforced disappearance and enslavement (Article 9 Law No. 26 of 2000).

Regarding the classification of human rights violations, another thing that needs to be considered when human rights violations or crimes are very widespread, neglect should not be an option, even though efforts

to resolve the past are not simple. In a world that since World War II has been preoccupied with spreading issues of democratization and respect for human dignity, where the process of upholding justice and political interests between transitional periods, gave birth to what Tina Rosenberg calls the great moral, political and philosophical part of this century [23].

Human Rights still contain fundamental weaknesses that can hinder the process, namely Article 28I of the 1945 Constitution of the Republic of Indonesia which is absolute by applying legalistic principles, this Article adheres to a non retroactive principle (not retroactive) which will prevent a number of cases in the past[24]. Indriyanto seno adji argues that the application of the retroactive principle manifests the lex-talionist principle (retaliation) which can lead to legal bias, lack of legal certainty and cause arbitrariness on the part of law enforcement officials and political elites with excessive political revenge. long term and high subjectivity[25]. The retroactive principle adhered to by Law Number 26 of 2000 is a test for the Human Rights Court in carrying out its functions and duties. Article 43 paragraph 1 of Law Number 26 of 2000 stipulates that gross violations of human rights that occurred before the enactment of Law Number 26 of 2000 concerning human rights courts were examined and sentencing by the Ad Hoc Human Rights Court. Based on Article 43 of Law Number 26 of 2000, if we interpret it grammatically, it is very clear that human rights courts adhere to the principle of retroactivity. The application of this retroactive principle needs to be studied further by looking at Article 7 of Law Number 10 of 2004 in conjunction with Law Number 12 of 2011 concerning the formation of statutory regulations that explicitly regulates the hierarchy of laws, namely:

1. The 1945 Constitution;
2. Laws / Government Regulations in Lieu of Laws;
3. Government regulations;
4. Presidential Regulation;
5. Regional Regulations.

With regard to the hierarchy of laws and regulations mentioned above, in fact there is a principle of enactment of laws, namely lex superior derogat legi inferior, which means that higher laws and regulations defeat lower laws and regulations. The emergence of this retroactive principle has invited views that are contrary to the existence of this principle, as stated by Barda Nawawi Arief who argues that the application of the retroactive principle is very contrary to the idea of ??protecting human rights as stipulated in Article 11 of the Universal Declaration of Human Rights (UDHR), Article 15 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR), Article 22 paragraph (1) and Article 24 paragraph (1) of the Rome Statute concerning the International Criminal Court[26].Thus it can be said that the application of the retroactive principle which allows for the reopening of cases of gross human rights violations committed prior to the promulgation of Law Number 26 of 2000 Concerning Human Rights Courts is a violation of the principle of legality from the perspective of Indonesian positive law (KUHP), will but from the other side, according to International Criminal Law the application of the retroactive principle is very possible to achieve justice which is manifested by the establishment of a tribunal court[27].

According to Bagir Manan, all legal regulations only apply in the future (prospectively). This relates to one of the principles of the rule of law. A legal relationship or event will only have legal consequences, based on (positive) legal rules that existed at the time the legal relationship or event occurred. However, in limited cases, it is possible to apply retroactive law, among others[28]:

1. Application of the law retroactively will provide benefits (beneficial) – such as leniency, receipt of income (raise increases retroactively) for those affected by the rule. The rule of law may not apply retroactively if it creates a burden (new or heavier) for those affected;
2. Retroactive application of law is necessary as a way to restore and uphold justice for various actions that are very detrimental or deeply injure the humanity of a community. This is the basis that allows

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the application of retroactive law on gross violations of human rights in the past. However, to prevent arbitrariness, its application must be strictly determined both regarding the act and the procedure for its implementation. Without these restrictions it creates arbitrariness in the application (especially in enforcement) of the law;

3. Retroactive application of law can only be carried out based on statutory regulations. There is no policy in applying the law retroactively. Laws must regulate in detail the objects and procedures for applying retroactive law.

According to Muladi, there are 2 (two) reasons for the inclusion of the retroactive principle into Law Number 26 of 2000 concerning Human Rights Courts, namely:

1. Long before the promulgation of Law Number 26 of 2000 concerning Human Rights Courts, the types of crimes of genocide and crimes against humanity were not yet known;
2. The principle of retroactivity in Law Number 26 of 2000 concerning Human Rights Courts is the political wisdom of the DPR to recommend it to the president with the consideration that these two types of crimes are extra ordinary crimes which are condemned internationally as enemies of all. mankind (hotis humani generis) And formulated as international crimes (international crimes)[29].

If viewed from the retroactive nature and does not know the expiration date of the prosecution adopted in Law Number 26 of 2000 concerning Human Rights Courts, then all forms of gross human rights violations committed by anyone over the age of 18 before Law Number 26 Year 2000 concerning the Human Rights Court promulgated into the State Gazette can be prosecuted under this Law. Serious human rights violations that occurred in Indonesia during the colonial period, if possible, can be prosecuted under Law Number 26 of 2000 concerning the Human Rights Court. then all forms of gross human rights violations committed by anyone over the age of 18 before Law Number 26 of 2000 concerning the Human Rights Court was promulgated into the State Gazette can be prosecuted under this Law. Serious human rights violations that occurred in Indonesia during the colonial period, if possible, can be prosecuted under Law Number 26 of 2000 concerning the Human Rights Court. then all forms of gross human rights violations committed by anyone over the age of 18 before Law Number 26 of 2000 concerning the Human Rights Court was promulgated into the State Gazette can be prosecuted under this Law. Serious human rights violations that occurred in Indonesia during the colonial period, if possible, can be prosecuted under Law Number 26 of 2000 concerning the Human Rights Court.

THE HUMAN RIGHTS COURT DOES NOT TRY MINOR HUMAN RIGHTS VIOLATIONS

Minor HAM Excluded in Human Rights Court

Legitimacy for the existence of an ad hoc Human Rights Court is based on Article 43 of Law no. 26 of 2000. Paragraph (1) states that gross human rights violations that occurred prior to the promulgation of this law were examined and decided by the ad hoc human rights court. Paragraph (2) states that the ad hoc human rights court as referred to in paragraph 1 was formed at the suggestion of the House of Representatives based on certain events with a presidential decree. Paragraph (3) states that the court referred to in paragraph (1) is in a public court. In its explanation, the House of Representatives, which is also the party proposing the establishment of an ad hoc human rights court, based its proposal on allegations of gross human rights violations which were limited to certain locus delicti and tempos delicti that occurred prior to the promulgation of this law.

In context and concept, human rights violations are distinguished between ordinary human rights violations and gross human rights violations. This is based on the characteristics of gross human rights violations.

Although not all parties agree that the term used is "violation". For example, Todung Mulya Lubis prefers the term "crime"[30].

When viewed from the theoretical concept, gross human rights violations (gross violations of human rights) are criminal acts like other crimes, which are unlawful and there is absolutely no justification. However, there are special things that distinguish it from other crimes (ordinary crimes). Romli Atmasasmita identified the differences between gross human rights violations and ordinary crimes as follows[31]:

(1) Gross human rights violations are universal, while ordinary crimes are more dominant in local content;

(2) Serious human rights violations are systematic, widespread and collective in nature with collective victims, while ordinary crimes are spontaneous, premeditated and casuistic in nature with victims generally being individuals;

(3) Serious human rights violations can be prosecuted and tried in any country, while ordinary crimes are prosecuted and punished in the country where the crime was committed (locus delicti). Suspects/defendants prosecuted and tried in other countries depend heavily on bilateral agreements agreed upon by each country;

(4) For gross human rights violations, the principle of "ne bis in idem" can be deviated, while for ordinary crimes the principle of "ne bis in idem" and the principle of law not retroactively apply absolutely;

(5) Serious violations of human rights are international crimes, while ordinary crimes are local crimes or national crimes and are not universally recognized

(6) In addition to national standards, international standards apply to gross human rights violations, while only national legal standards apply to ordinary crimes.

Based on Article 7 of Law Number 26 of 2000 concerning Human Rights Courts, gross human rights violations include (a) crimes of genocide and (b) crimes against humanity. In Articles 8 and 9, the elements of genocide and crimes against humanity are formulated.

Then based on the general explanation of Law Number 26 of 2000 concerning the Human Rights Court, it provides consideration that the establishment of a human rights court is based on:

1. Gross 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 the community, so that it needs to be restored immediately in realizing the rule of law in order to achieve peace, order, tranquility, justice and prosperity for all Indonesian people;
2. Regarding gross violations of human rights, special investigation, investigation, prosecution and examination steps are required. The specificity in handling gross human rights violations are:
3. It is necessary for investigators to form ad hoc teams, ad hoc investigators, ad hoc prosecutors and ad hoc judges, while for light human rights this is not done;
4. Emphasis is needed that investigations are only carried out by the National Commission on Human Rights while investigators are not authorized to receive reports or complaints as stipulated in the Criminal Procedure Code;
5. Provisions are required regarding a certain time limit for carrying out investigations, prosecutions and examinations in court;
6. Provisions regarding the protection of victims and witnesses are needed;
7. Provisions are needed that emphasize that there is no expiration for gross human rights violations.

The formation of Law Number 26 of 2000, Concerning Human Rights courts has the following objectives,

among others[32]:

1. Ideal goals: 1) To participate in maintaining world peace; 2) Ensure the implementation of Human Rights; 3) Provide protection, certainty, justice and feelings of individuals or communities.
2. Practical goals namely; to resolve gross violations of human rights due to extra ordinary crimes and have broad impacts, at the national and international levels. Cases being tried at the Human Rights Court are not criminal acts regulated in the Criminal Code, but rather acts that cause enormous casualties and losses, and result in feelings of insecurity, both for individuals and society. Therefore, the situation needs to be restored to realize the rule of law in order to achieve peace, tranquility, justice and prosperity for all Indonesian people.

Several important principles in Law Number 26 of 2000 concerning the Human Rights Court are[33]:

1. Only to try gross violations of human rights (Article 4), the Human Rights Court was established only to try gross violations of human rights, namely Genocide and violations of crimes against humanity. Meanwhile, crimes against human rights that are lightly qualified are tried in ordinary criminal courts, in district courts or military courts according to the legal status of the accused.
2. The human rights court in Indonesia has the authority to try the perpetrators of gross human rights violations, and regulates the existence of an ad hoc human rights court that has the authority to try gross human rights violations that occurred in the past[34],in accordance with Article 104 paragraph (1) of Law Number 39 of 1999 concerning Human Rights that "To try gross violations of human rights a Human Rights Court is formed within the General Court environment". Therefore, a law enforcement method is needed in a special body that has broad authority, is independent and free from any powers in an effort to resolve gross human rights violations.

Then the types of crimes that are categorized as gross human rights violations that can be tried, examined or decided and are the jurisdiction of human rights courts are[35]:

1. 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:
2. Killing group members;
3. Causing serious physical or mental suffering to group members;
4. Creating conditions of life for the group which will result in its physical destruction in whole or in part;
5. Imposing measures aimed at preventing births within the group or;
6. Forced transfer of children from certain groups to other groups.
7. Crime against humanity, namely one of the acts committed as part of a widespread or systematic attack which he knows that the attack was aimed directly at the civilian population in the form of:
8. Murder, with the formulation of an offense as Article 340 of the Criminal Code;
9. Extermination, which includes acts that cause suffering that are carried out intentionally, among others, in the form of acts of obstructing the supply of food and medicine which can cause extermination of a part of the population;
10. Slavery, in this provision includes human trafficking, especially trafficking of women and children;
11. Expulsion and forced transfer of population, namely the forced transfer of people by means of expulsion or other coercive measures from the area where they live legally, without realizing the reasons permitted by international law;
12. Arbitrary deprivation of liberty or deprivation of other physical freedoms that violate (principles) of the main provisions of international law;
13. Torture, which is intentionally unlawfully causing severe pain or suffering, both physical and mental, to a detainee or someone under supervision;
14. Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or

other equivalent forms of sexual violence;

15. Persecution against 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;
16. Enforced disappearance of persons, namely the arrest, detention or kidnapping of persons by or with power, support or approval from the state or organizational policies, followed by a refusal to acknowledge the deprivation of liberty, with the intention of releasing them from legal protection for a long period of time;
17. Apartheid crimes, namely inhumane acts with the same nature as those mentioned in Article 8 which are committed in the context of an institutional regime in the form of oppression and domination by a racial group over a group or other racial groups and are carried out with the intention to maintain that regime[36].

Arrangements regarding the crime of genocide and crimes against humanity in UU No. 26 of 2000 in its elucidation stated that it was a provision in accordance with the Rome Statute of the International Criminal Court 1998. This explanation has the consequence that the crimes of genocide and crimes against humanity as stated in Article 7 of Law no. 26 of 2000 has the same meaning as Articles 6 and 7 in the 1998 Rome Statute including adjustments to the elements of crimes. The definition of the crime of genocide in Article 8 of Law no. 26 of 2000 in general there is no problem in the sense that it is in accordance with several norms relating to the regulation of genocide in the provisions of international law [37].

Ad hoc human rights courts are courts specially formed to examine and decide cases of gross human rights violations that were committed prior to Law no. 26 of 2000. This is what distinguishes it from a permanent human rights court which can decide and adjudicate cases of gross human rights violations that occurred after the promulgation of Law no. 26 of 2000. Cases of gross human rights violations that occurred in Indonesia, for example the cases of human rights violations in Tanjung Priok and East-East, can be resolved through this ad hoc human rights court. Until now, ad hoc human rights courts have been established for cases of gross human rights violations that occurred in East Timor and Tanjung Priok[38].

The experience of ad hoc human rights courts shows that the application of provisions in Law Number 26 of 2000 cannot be applied consistently due to weak regulations. Besides that, many legal breakthroughs were also made by the panel of judges who handled cases of human rights violations in East Timor.

In contrast to the understanding of the crime of genocide, the definition of crimes against humanity is considered to have experienced a lot of distortion, especially in several key definitions of the offenses of this crime. From the process of adopting the crimes against humanity and the crime of genocide from the Rome Statute into Law no. 26 of 2000 there is a distortion that theoretically weakens the concept of the crime, especially the concept of crimes against humanity, namely there is no clarity regarding the widespread, systematic and known (intention) elements, this will result in various interpretations of the meaning on. This is different from the provisions in the Rome Statute which explicitly explain intention (Elsam, 2003), The translation of directed against any civillian population becomes aimed directly at the civilian population, which should be directed at the civilian population. The word “direct” can have implications as if only actors in the field can be subject to this article, while the actors above who make policies are not covered in this article. The term “population” to translate the word “population” has narrowed the subject of law by using regional boundaries which will narrow down the potential targets of victims of crimes against humanity only to citizens of the country where the crime took place. The translation of the term “prosecution” becomes persecution. Prosecution has a broader meaning to refer to discriminatory treatment that results in mental or physical or economic harm. By using the term persecution, acts of terror and intimidation against certain civilians or groups based on political beliefs are not included in that category, Law no. 26 of 2000 does not include crimes that include the formulation of crimes against humanity as in

letter k of Article 7 of the Rome Statute, namely other inhumane acts of the same nature intentionally causing great suffering, or serious injury to body or mental or physical health. The reasons for not including the formulation of this provision in Law no. 26 of 2000 is the understanding that this provision does not provide legal certainty and has a broad interpretation.

THE CAUSES OF MINOR HUMAN RIGHTS VIOLATIONS ARE NOT INCLUDED IN THE DOMAIN OF THE HUMAN RIGHTS COURT

Causes of Historical Aspects

A national human rights court as an internationalized domestic tribunal has been formed in Sierra Leone which is known as the special court, then in Cambodia it is known as the extraordinary chambers, and in Timor Leste it is known as the special panels. In addition, settlement of gross human rights violations at the international level committed by Indonesian citizens can also be carried out through the national Human Rights Court on the basis of the principle of universal jurisdiction [39]. Based on this principle, each country has the competence to exercise its jurisdiction in bringing to justice the perpetrators of certain international human rights crimes such as genocide, war crimes and torture. Then the basis used is that these crimes are considered to concern humanity as a whole and fall under universal jurisdiction[40].

At a diplomatic conference in July, 1998, the Rome Statute of the ICC was ratified by 120 votes in favor, 21 abstentions and 7 against, including the United States, China, Israel and India. The Rome Statute explains what is meant by crime, how courts work and countries that can cooperate with the ICC which have ratified the 1998 Rome Statute, if the signing of the Rome Statute has reached 60 countries, the ICC applies to try violations of international human rights crimes. So that on 11 April 2002 the formation was carried out in the form of an ICC court, which then the Statute began to carry out its jurisdiction on 1 July 2002[41].

International human rights crimes as referred to in the Universal Declaration of Human Rights are all crimes that are generally outlined in the universal declaration of human rights 1948 (UDHR). in the 1998 Rome statute through the jurisdiction of the International Court of Justice only covers crimes that occurred after July 11, 2002, with the scope of 4 (four) types of serious crimes, namely; genocide, crimes against humanity, war crimes, and crimes of aggression. Therefore, what has been stated in the UDHR, in general, has been accommodated in Law no. 39 of 1999 concerning Human Rights and Law no. 26 of 2000 concerning the Human Rights Court.

Thus the Rome Statute does not specifically explain that violations of discriminatory acts can also be tried in international criminal courts or referred to as the ICC, so that the scope of international courts in adjudicating cases of human rights violations is specific to four (4) human rights violations. weight ie; genocide, crimes against humanity, war crimes and crimes of aggression alone. Then the Human Rights Court in Indonesia which ratified the 1998 Rome Statute only focused on 2 (two) gross human rights violations, namely the crime of genocide and crimes against humanity as stated in Article 7 of the Law on Human Rights Courts which later became the scope of authority of the human rights court as described in Article 4 of Law no. 26 of 2000 concerning human rights courts.

Causes of Juridical Aspects

Enforcement and protection of human rights (HAM) in Indonesia made progress when on November 6, 2000 Law No. 26 of 2000 concerning the Human Rights Court by the People's Legislative Assembly of the Republic of Indonesia and then enacted on November 23, 2000.

This law is a law that expressly states as a law the basis for the existence of a human rights court in Indonesia which will have the authority to try perpetrators gross human rights violations.

Human rights violations are specifically explained in the Law on Human Rights Courts which states that human rights violations that can be tried in the realm of human rights courts are violations with the motive of genocide and crimes against humanity as contained in Article 4 of Law no. 26 of 2006 concerning the Human Rights Court explains: "The Human Rights Court has the duty and authority to examine and decide cases of gross human rights violations".

Then in Article 5 it is explained; "The human rights court has the authority to examine and decide cases of gross human rights violations committed outside the territorial boundaries of the Republic of Indonesia by Indonesian citizens."

Whereas concretely what is the cause in terms of regulation explaining that in discriminatory cases cannot be tried in the realm of the Human Rights Court is regulation through legal instruments which are expressly not stated and contained in the applicable laws and regulations according to what is contained in Law Number 26 of the year 2000 concerning Human Rights Courts, so that some minor human rights violations apart from gross human rights violations can only be tried at the local District Court according to the applicable laws and regulations, such as acts of discrimination based on race and ethnicity which are minor human rights violations that can be explained in Article 14 of Law no.40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination which states that discrimination violations can be prosecuted through a lawsuit to the District Court.

CONCLUSIONS

Discriminatory acts as minor human rights violations cannot be resolved in the realm of the Human Rights Court, due to historical reasons, namely, the 1998 Rome Statute only adopted 4 crimes that could be tried at the ICC including crimes of genocide, crimes against humanity, war crimes and crimes of aggression however, it does not condone minor human rights violations such as discriminatory acts as human rights violations as contained in the 1948 DUHAM. Juridical reasons, in this case according to Article 4 of Law No.26 of 2000 concerning the Human Rights Court expressly states that human rights violations that can be tried at the Human Rights Court are gross human rights violations, namely genocide and crimes against humanity (crimes against humanity). The reasons for the juridical basis as a manifestation of the formation of a law on the Human Rights Court in adjudicating specifically for gross human rights violationswhich can be tried in a Human Rights Court but not for minor human rights violations, for example discriminatory acts.

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