



LEGAL AID AND HUMAN RIGHTS : A REFLECTION

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Abstract: Humanity and Human Rights is a concern of mankind throughout the world. Therefore, the consequences if there is a violation of human rights anywhere in the world will be a concern for humans everywhere in this world. The difficulty that is faced with this "Human Rights" is that Human Rights have a different meaning for everyone. Historians, jurists, philosophers and theologians can differ in stating something that has significant implications for human rights, and all these differing opinions must be examined. Some parties will seek definitions of "Rights" and "Obligations" and of course "Freedoms". Other parties will argue about whether humans have inherent rights that are inherent and rooted in every human being.

Keywords: Legal aids, human rights, Reflection.

INTRODUCTION

Respect for human rights, including respect for the rights of suspects, has so far received little attention from the Indonesian criminal justice system. Especially when the *Herziene Indlandsch Regulation (HIR)* came into effect until 1981. Therefore, the Indonesian legal community has long fought for and aspired to a national criminal procedural law that is more humane and pays more attention to the rights of suspects. In another section, there have been many incidents of inhumane treatment, torture and degrading treatment of human dignity, especially those of the poor who cannot afford to pay for legal services and the defense of a professional advocate. It is in these circumstances that legal assistance is needed to defend the poor from becoming victims of torture, inhumane and degrading treatment by law enforcers. Legal aid institutions as a subsystem of criminal justice (criminal justice system) can play an important role in defending and protecting the rights of suspects. For this reason, a fair legal process (due process of law) is needed through a national criminal procedural law that is more humane and pays more attention to the rights of suspects.

The struggle of the Indonesian legal community to compile a national criminal procedural code can be said to have started since 1968 when the Second National Law Seminar was held. In fact, in the 1st National Law Seminar in 1963, the desire to replace the *HIR (Herziene Indlandsch Reglement)* with a National Criminal Procedure Code had already been put forward. In 1963 the atmosphere of high nationalism had encouraged the desire of the Indonesian legal

community to replace all colonial laws with national laws. And in 1961 a national legal development institution (*LPHN*) was established.

MAIN PROBLEM

Main problem of this article is the relation of legal aid and human right as we know that one of the implementation of human right in law discipline is the right of the people to get the legal aid when they were on the court.

METHOD OF RESEARCH

The method of research is qualitative method with the library research method. The reason by using this method is because the researcher would have easiness to find the theor

RESEARCH RESULT AND DISCUSSION

The Indonesian legal community was determined to replace colonial law, which it felt suppressed the rights of Indonesian citizens in the interests of the Dutch East Indies colonial government. However, efforts to replace the *HIR (herziene indlansch regulation)* promulgated in 1848 (which was later replaced with new texts in 1926 and 1941) were not achieved during the Old Order era. As long as the *HIR (herziene indlansch regulation)* was in effect, a lot of abuse occurred, as well as inhumane and unfair treatment experienced by the suspects. Arrest and detention do not pay attention to the rights of suspects. The Indonesian legal community cannot do much to deal with this unfair situation, only a few advocates (legal advisers) try to alleviate the suffering of the suspects or try to have the suspects tried through legal efforts in court.

When the HIR was promulgated in 1941 (S.1941-44) this was considered an important reform for the procedures for investigating criminal cases for indigenous (non-European) groups in Indonesia. For the European group, the investigative procedures are regulated in other regulations, where the guarantees for suspects and defendants are much better (Reglement Op De Stravordering s1847-40). 1846 was later updated with S.1926-559). The reason the Dutch colonial government changed the IR in 1926 to HIR in 1941, was according to the 1928 commission that handled the reform, "many years of complaints about the prevailing circumstances, were directed on one side against the organization in charge of carrying out criminal prosecutions, which cannot provide guarantees that there will be an objective and expert investigation, and on the other hand is directed to improper use or too far from statutory authority including efforts to arrest, house search and temporary detention." What wrong use of authority is meant by the commission tasked with revising the IR, which has only been perfected for two years?

In IR in 1846 (before it was amended in 1926) there were scathing criticisms from Dutch legal scholars. This resulted in a new regulation, S.1919-689, which re-regulates matters relating to arrest and temporary detention, home and document inspections, summary procedures, and bail. However, this more advanced regulation (for that time) which was intended to better protect the rights of indigenous people against the arbitrariness of law enforcement officials, was not fully enforced and was later postponed with S.1920-325. Since 1906, all plans

aimed at improving IR 1846 so that it is equivalent to the criminal procedural law that applies to European groups have always failed. That's why apparently updates via IR

Even though HIR has been formed with improvements in the criminal justice process, it has not yet been put into practice because the Japanese army entered and during that time HIR was still implemented with the same enthusiasm as IR before because there was no opportunity for law enforcers to study HIR during the Japanese colonial period (1942 to 1945). In addition, they were also influenced by the fascist *kenpeitai* (Japanese military police), so that during the revolutionary period up to the 1981 KUHAP, HIR was implemented in the spirit of IR.

In fact, what legal experts have to criticize is not HIR itself, but why legal experts are among the founding fathers. Not only applying RV (reglement op de stravordering s.1847-40) which applies to the European group. If this were enforced, there would not be so many violations of human rights. Because, in the RV (reglement op de stravordering s.1847-40) there is a guarantee defended by an advocate that can prevent human rights violations against the suspect or defendant. When the Penal Code came into effect, there was still the HIR spirit imbued with IR and *kenpeitai* (legal spirit), so that human rights violations occurred.

In the National Law Seminar II held by LPHN at Depongoro University from 27 to 30 December 1968 with the theme "Implementation of a rule of law based on Pancasila democracy"

among other things discussing criminal procedural law and human rights, a conclusion was reached that the situation had become serious due to violations of human rights. humans during the Old Order era and were subjected to efforts to change the colonial criminal procedural law (HIR). Later it turned out that the establishment of a national criminal procedural law (the criminal procedural code/KUHAP) did little to help efforts to reduce human rights violations against suspects and defendants.

The promulgation of the national criminal procedural law (KUHP) in 1981 did not change the inhumane and unfair treatment of suspects and defendants. It turns out that the Criminal Procedure Code, which is declared to be the masterpiece of the Indonesian nation in the field of law, has several fundamental weaknesses, such as the absence of sanctions against investigators to examine suspects by ignoring their right to be accompanied by an advocate (legal adviser) and the absence of court power to reject the minutes of examination of suspects who not in accordance with the due process of law procedure. In general, the function of the criminal procedure law is to limit the power of the state to act against members of the public who are involved in the criminal justice process. Provisions in the criminal procedural law protect suspects and defendants from actions by law enforcement officials and courts that violate the human rights of their citizens. Criminal procedural law regulates the authority of the Police,

Prosecutors, Judges and Advocates (Legal Counsel).

Commission III from the second national law seminar gave instructions on what had been agreed upon for the formation of the criminal procedural law in the future. This agreement was voiced by representatives of various parties in the criminal justice process and the establishment of a more humane criminal procedure law. They are, among others, JF Katijan (Chairman of the Commission from Political Parties), Prof. Oemar Seno Adji (Minister of Justice), Rusminah (Secretary of Commission, Director of Legislation Ministry of Justice), Surjadi (Judge of Supreme Court), Kadarusman (Attorney General), Nanny Razak (Key Paper Presenter; Advocate), Soemarno P. Hakim), A. Zainal Abidin (Lecturer at the Faculty of Law, University of North Sumatra/Usu). The general conclusion obtained is the affirmation of several principles and rights that are important to uphold in the Indonesian criminal justice process, namely:

1. Legality principle;
2. The principle of presumption of innocence;
3. Rights in arrest and prosecution;
4. Rights in temporary detention;
5. The minimum rights of the suspect/defendant in preparing the defence;
6. Rights in preliminary examination and trial examination
7. The need for an independent court and a way of administering justice in public; And
8. Appeals and rights to court decisions.

It was these principles and rights that were the initial messages of the New Order to be implemented by the government through more humane criminal justice practices, both during the HIR period (1968-1981), especially after the entry into force of the Criminal Procedure Code (KUHAP) since (1982).

As one of the subsystems of the criminal justice system (criminal justice system) legal aid can provide in achieving a fair legal process or "due process of law" is an 'arbitrary process' or an arbitrary legal process. Tobias and Petersen in their book a survey of a constitutional rights stated that the due process of law (which comes from England, magna charta document, 1215) is a "constitutioanal guarantee,, that no person will be deprived of life, liberty or property for reasons that are arbitrary... protects the citizen against arbitrary actions of the government." Therefore, according to them, the minimum elements of "due process" are: hearing, counsel, defense, evidence, and a fair and impartial court" hearing suspects and defendants, legal counsel, defense, This due process of law must be interpreted as protecting the independence of a citizen who is made a suspect and a defendant, where his legal status changes when he is arrested or detained, but his rights as a citizen are not lost. Even though their freedom is limited by law and suffers moral degradation, it does not mean that their rights as a suspect/defendant are lost. The rights to be heard, to be accompanied by an advocate (legal advisor), the right to submit a defense, the right to collect evidence and meet witnesses, to be

tried by a fair, honest and impartial court, and to be proven guilty through a court of law are rights that must be respected and guaranteed .

Guarantees for the rights of a suspect or defendant can be seen in the document magna charta (1215) in England and the "declaration des droits de i,home et du citoyen" (1771) and the fourth, fifth and sixth amendments to the United States constitution. All of these documents pay attention to and protect the rights of the suspect and the rights of the defendant in the judicial process, especially the right to life, property and independence. suspects or defendants in the criminal justice process and there is a possibility of abuse of authority (abus de pouvoir). Therefore, "due process of law" or understood by the police, prosecutors, judges,

According to Montesquieu (1689-1755) in book XII regarding "de i'esprit des lois" (quoted from AAG peters) "if a citizen does not have protection to defend himself in his mistakes then he also has no protection in defending his independence.

The struggle leading up to the French revolution (1789) has resulted in a number of demands to change the criminal procedural law at that time, namely:

1. process openness;
2. Advocate or legal adviser assistance;
3. Abolition forces the suspect to swear an oath;
4. Equal position of the parties (prosecutor/accused and suspect/defendant)

5. Limitation on the powers of commissioner judges;
6. Clear motivation in the judge's decision;
7. To abolish examination by torture forever;
8. Elimination of criminal justice with special forms;
9. Submission to court 24 hours after arrest and in the case of a non-serious offense, release of the suspect on bail;
10. There is a possibility for witnesses in the event of being confronted (with the suspect/defendant) to withdraw the information previously provided without the threat of punishment for providing false information.

A rule of law (*rechtsstaat*) will only be achieved if there is recognition of democracy and human rights. Therefore, YLBHI (Indonesian Legal Aid Foundation) since its establishment at LBH Jakarta in 1971, until now has had 13 LBH offices throughout the archipelago; Jakarta, Bandung, Semarang, Yogyakarta, Surabaya, Bali, Ujung Pandang, Manado, Jayapura, Medan, Padang, Palembang and Lampung, continue to fight for and have a big contribution to educating the people to recognize their rights, especially human rights. In its four year program (four years program) 1994-1998 YLBHI had two objectives, namely developing democratic forces in society and an increasingly democratic system of government emerging.

Then, the four-year program from 1998-2001 developed into three goals, namely:

1. democratic legal system develop;
2. people organization and their network develop; And
3. people's human rights awareness develop.

The four year 1998-2001 program was placed under the same goals as the action program. The aim of the action program is "rule of law" and "democratic state". The two elements complement each other. A rule of law without being equipped with the application of democratic principles will actually lead to efforts to instrument law by the state to repress its people

CONCLUSION

There are four main elements that can show the achievement of this goal. First, there are administrative systems of this kind that are effective and democratic. Such a constitutional system is reflected in the strengthening of various democratic political mechanisms, which in turn can guarantee effective political and social control of the people over the state. The people's representative council can function as part of the implementation of the function of people's control over the state.

Second, a democratic rule of law can only be achieved if the people have political, economic and social power. Thus, the strengthening of civil society institutions must develop and the people have the opportunity to organize themselves independently.

Third, The development of a democratic rule of law is also underpinned by the strengthening and independence of the judiciary and the

growing development of law as a tool for people's control of government practices.

Fourth, an important indicator in a democratic system is the acceptance of social norms that refer to respect for human rights, both by the state and the people. Thus, the universality of human rights does not only become part of the activities of state service and interpretation by the state, but becomes part of people's awareness. Even though YLBHI has played a major role in the recognition and defense of human rights and the defense of people's rights, with all of its limitations, YLBHI has not been able to withstand the collapse of legal authority and court authority for more than 27 years since its establishment in 1971. Why is that? This is due to the stagnant legal system because it is not supported by the freedom and independence of the courts and other factors. The government's interference with the judiciary has made the courts an extension of the government. The sad thing is, efforts to restore the freedom of the judiciary are not supported and come from the judges themselves but instead from advocates (legal advisers), both sporadically and individually as well as from the civil administration to the ikadin era.

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