

Democratization and Human Rights in Indonesia in the Globalization Era (Legislation Study)

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Abstract--The study of Democratization and Human Rights has the background that democratization and Human Rights are two species that move towards each other (reciprocity), and now as part of global politics, provide the consequences of recognition and protection for countries in the world. In historical records, Indonesia has a problem of human rights violations that are still largely unresolved. The existence of the institution of the Human Rights Court, the National Human Rights Commission and the Truth and Reconciliation Commission, needs to be examined for its implementation in solving human rights violations. This research used the normative juridical method, because it only tested the validity of laws and regulations. The results of his research, apparently have not shown good performance, the ongoing practice of democratization does not have a positive correlation with respect for human rights.

Keywords: *democratization and human rights, globalization*

I. INTRODUCTION

To provide opportunities, especially in expanding its influence, but for developing countries like Indonesia, there may be more threats. Nevertheless, objectively it is a necessity that we must face.[1]

Therefore, it is quite reasonable, if viewed from the time dimension, it is now called the era of globalization. Global transformation has had a profound effect of change on the fabric of people's lives, with everything in it.

The boundaries of the sovereignty of the state always fade (borderless states), as a result of global currents whose intensity sometimes cannot be predicted beforehand. Globalization is a very dynamic environment and has high turbulence. For developed countries, globalization tends.

All studies on a macro-scale are always linked to the global environment. It also includes the process of developing the state administration which is not free from global values, which were previously referred to as universal, namely democracy and human rights. The influence of this universal value is getting stronger especially with the progress of information disclosure as a result of the sophistication of communication technology, in which it does not recognize national boundaries. So, it becomes borderless, which always accompanies the current of globalization.

Expressis verbis, especially since the end of the Cold War in the eighties, the universality of democratization and human rights has become part of global politics. Both of these species grow and expand in the world.[2]

Mutually supporting and complementing each other. In this connection, David Bentham, in his book Democracy and Human Right, said that civil and political rights are an integral part of democracy, because without these rights they cannot express their aspirations. In its current development, human rights have been established as universal human values and are the responsibility of all human beings.

This factual condition seems to have penetrated the doctrine of state sovereignty, which states that the state has full authority over the lives of its citizens. However, each country has a different report card in its implementation, given the differences in understanding and social, economic and cultural backgrounds, among countries in the world, which appears in the literature different definitions of concepts as well.

II. FINDINGS AND DISCUSSION

Democratization Is A Global Demand

The use of the term "democratization" is often used to describe the process of transition from an authoritarian regime to a democratic one. As a result, democratization is often the key word in various concepts and even becomes a consideration of an effort program or decision-making activity.

Today the term democracy has become a common language that refers to the idealized political system understanding everywhere. In this modern era, almost all countries claim to be adherents of the understanding of democracy. [3]

Here is more emphasis on the character of government policy, which in the search for literature found criteria, consisting of:

- a) The formulation and implementation of policies are controlled by the people or their representatives in parliament, likewise the public is given the right of control through the mass media, interest groups, NGOs, and other "civil society".
- b) There is an equal political guarantee (political equality) for all citizens.

Fulfillment of these criteria for a government regime is not expected to provide opportunities for authoritarian government action.

During the New Order government regime, national interests seemed to be only the domain of the government that could not be contested. Critical criticisms were raised, especially after the fall of President Soeharto, that national interests were often used as an excuse for covert

interests, namely the preservation of power. There is no other power being able to influence or intervene in any of its policies, although it is recognized that it has contributed to permanent political stability.

However, over a long period of time, it has had a negative impact in the form of a "corrupt" government. Finally, after going through the reform movement, there was a big and terrible change, which was given a space for democratization, so that society seemed to be free and free from restraints. Legislation programs are carried out to expedite the road to realizing order leading to democratization, such as:

- a) Direct, free and confidential General Elections;
- b) Freedom to establish political parties;
- c) Decentralization policy (broad autonomy);
- d) Freedom of the Press (note: removal of bans);
- e) Release of political prisoners;
- f) Limitation of presidential office;
- g) Openness of public information;
- h) Bureaucratic and military neutrality from practical politics;
- i) Revocation of repressive and undemocratic political laws.

This political reform, in fact, has also increased the image of the international world, making it significant for foreign relations. Furthermore, Indonesia's success in holding legislative and direct presidential elections in 2004, solidified its image because of its ability to manage the diversity of society through universally applicable political mechanisms. This stabilization process presents Indonesia, becoming one of the developing countries that receives an assessment of global political discourse as a modern democratic country.[4]

The space for direct participation given to the public in the administration of state government shows a good commitment in democratizing government. This direct participation is important, considering that the people's representative system through parliament can never be relied upon as the only channel for people's aspirations. This is what is now known as participatory democracy. The principle of "representation in ideas" must be distinguished from "representation in presence", because physical representation alone does not necessarily reflect the representation of ideas or aspirations. In the context of a more effective democratization, special institutions which are semi-legislative, regulative, administrative and semi-judicative are formed, such as:[5]

- a) General Election Commission;
- b) Corruption Eradication Commission;
- c) Judicial Commission;
- d) Ombudsman Commission;
- e) National Human Rights Commission;
- f) Business Competition Supervisory Commission;
- g) Public Information Commission;
- h) Prosecutors' Commission;
- i) Women's National Commission;
- j) National Law Commission;
- k) Indonesian Broadcasting Commission;
- l) Indonesian Child Protection Commission;

- m) Commission for Witness and Victim Protection; etc.

In carrying out their duties independently, they should not be subject to regulative arrangements made by the government in the form of government regulations or presidential regulations. To guarantee its independence, the appointment and termination of membership is not entirely in the hands of the chief executive.

However, with the development of the growing number of commissions whose numbers have reached the thirties, need to be evaluated and consolidated so that they do not develop without clear direction. These commissions indeed resemble those in the United States, for example the Federal Trade Commission (FTC), the Federal Communication Commission (FCC), and others. Although administratively within the executive sphere, the appointment and dismissal of its members is determined by Congress.

From the description of the Indonesian case study, it has been pointed out that globalization is pushing for demands towards transnational democracy throughout the world.[6]

Likewise the demands for equal rights and welfare of life, equality of degrees, and insistence on the formation of a more equitable world order are increasingly voiced. Globalization has made the world more open, and gave birth to various demands for greater participation and empowerment of the people. As a product of modernity, globalization not only introduces scientific and technological advances, but also introduces the culture of modernity, such as democratic values, pluralism, tolerance and human rights.

Development And Recognition Of Human Rights

Protection of human rights is a pillar in democratization, so that human rights with democratization have a reciprocal relationship. In the concept of the rule of law (material), human rights are recognized and their enforcement guaranteed. In its universal concept, theoretically there has been a development. From the literature search, at first there were two understandings, consisting of:

- 1) Natural Right: Human rights are rights that belong to mankind at all times and in all places where he was born;
- 2) Cultural relativism: Human rights in humans as creatures that always produce a different culture and social culture, serasta civilization in which there are also different views.

Finally, now the concept of universal human rights holds that human rights are natural rights, in which it is possessed by humans have from birth. It is this universality which in turn gives birth to the uniformity of human rights views, with various international convention standards.

Meanwhile in the course of history, the past was full of human rights violations, an inseparable part of the development of human rights in global politics. Since the

end of the Cold War in the 80s, the issue of human rights has been a hot debate in global politics. Past human rights violations received serious attention, especially in the form of "mass killing", torture, rape, kidnapping and detention without trial. It is a common symptom in a country hit by separatist or communal conflict. The practice of "ethnic cleansing" in Bosnia, Rwanda, Darfur, Kurdistan under Saddam Hussein's regime, Myanmar's events against the opposition of Aung San Sukyi and elsewhere, is a clear example of humanitarian crime that has "raised global concern".

Lately, Indonesia has also not been spared international scrutiny because various past human rights cases that have not yet been completed have caused Indonesia's credibility to be disrupted, such as: in East Timor after the 1999 opinion polls, Aceh and Papua, as well as Munir's murder. The current of globalization which provides open space for information, makes "the government can not hide human rights violations. Moreover, sanctions have been received, in the form of a military embargo due to human rights violations in East Timor.

It is this international pressure, which drives the government to build an institutional system that is sensitive to human rights. In line with the wave of democratization that is sweeping the world, demands for improvement of human rights come also in the internal environment, in which the people are increasingly aware of their basic rights as citizens. Its demands are supported and advocated by local and international Non-Government Organizations, known as the global civil society concept.

All of which contributed to the process of handling human rights violations, which have now been carried out, after the formation of the National Commission on Human Rights and the Human Rights Judiciary, the Indonesian Child Protection Commission, National Commission on Violence Against Women, following the establishment of the Truth and Reconciliation Commission.

The establishment of the KKR which was tasked with finding and revealing the truth of gross human rights violations and carrying out reconciliation, had the background of Indonesia's failure to resolve gross human rights violations that occurred before the entry into force of Law Number 26 of 2000 concerning Human Rights Courts. These conditions should not be protracted, can lead to serious problems, such as a strong political desire for the desire to separate from the unitary state of the Republic of Indonesia, its resolution also takes human casualties.

The KKR is expected to solve it by finding truth and reconciliation. Through this commission, perpetrators of gross violations of human rights are given the opportunity to submit amnesty on conditions, while victims receive compensation as compensation. In view of the work assigned, more focused on regulating the process and results in its decisions, then this settlement is more based on the principle of peace. But the Constitutional Court through Decree No. 06/PUU-IV/2006 ruled that Law

Number 27 of 2004 concerning the Truth and Reconciliation Commission did not obtain binding force. Thus, the existence of the TRC has been "finished". On the other hand, the human rights court did not proceed as expected.

Based on the understanding that human rights are the basic rights possessed by a person has from birth and are a gift from God, the denial of human rights is a humanitarian tragedy, which can lead to political and social unrest, as well as conflict and violence. On this basis it becomes increasingly important recognition of the human rights charter (UN Declaration of Human Rights 1948).

The state has responsibility for human rights violations, so it is not surprising that Nazi generals were tried in Nuremburg, Japanese generals in the Tokyo Court. This proves that the state has a legal and moral obligation to respect human rights through the legal process.

Each country can sue any country that violates the law as one of the legal obligations, especially gross violations of human rights. Mochtar Kusumaatmadja said, the meaning of sovereignty must be interpreted as limited, not as broad as Jean Bodin's view, where sovereignty (superanus, interpreted: original, highest, eternal, and not divided, so that the government becomes authoritarian) The existence of human rights violations is the entrance for interventions to hold accountable.[7]

The consequences of the Indonesian state in treating international human rights legal instruments can be demonstrated in the amendments to the 1945 Constitution, stated in Article 28 j paragraph (1): "That everyone must respect the human rights of others in the orderly life of society, nation and state", and paragraph (2) it states: "That in exercising their rights and freedoms, everyone is subject to the limitations stipulated by law.

This formulation of human rights does not give world satisfaction, which is still being debated. The concept of basic obligations is intended to provide a balance between the notion of freedom and responsibility. If the right will be closely related to freedom, then the obligation will be related to responsibility.[8]

However, it must be realized that freedom and responsibility are interdependent with each other. However, in the Declaration of Human Rights there is a legally binding force.

Obviously, the development of human rights in Indonesia can be shown from its legislation products, such as:

The inclusion of human rights principles in the amendments to the 1945 Constitution;

- 1) Law Number 39 of 1999 concerning Human Rights;
- 2) Law Number 26 of 2000 concerning Human Rights Courts;
- 3) Law Number 14 of 2008 concerning Openness of Public Information;
- 4) Ratification of various conventions, in addition to the International Covenant of Economic, social and cultural rights.

The progress achieved as stated above does not mean that there are currently no obstacles in its protection. There are still many laws and regulations that have great potential for human rights violations, such as:

- 1) Law 16/2004 concerning the Prosecutor's Office, in article 35 which states that the Attorney General has the duty and authority to compete cases in the public interest. Arrangements that are not accompanied by criteria and restrictions, can be used as a legal basis for impunity;
- 2) Law 2/2002 concerning the Police, in article 15 regulates the existence of forced efforts made by the police to bring order and upholding the law and the maintenance of public peace. Arrangements that do not explain or specify the conditions for carrying out forced efforts, may in their implementation violate human rights;
- 3) Law 8/1981 concerning the Criminal Procedure Code, in article 82 regulates pretrial being nullified, if the subject matter has begun to be examined in a court of law. This eliminates the opportunity to prosecute wrongdoing by the police in arrest and detention, because arrest and detention that is not based on law is a violation of human rights.

To overcome these obstacles, legal reform is needed, especially those that can provide opportunities for human rights violations. The influence of the quality of laws and regulations needs attention, because with unmeasured leeway so far, it has often been used negatively, so that human rights violations by law enforcement officers, are still massive.

Daily events, such as: SPDP (notification of commencement of investigation) was not immediately submitted even though the investigation had started a long time ago; Forced detention of a suspect, which is sometimes very subjective and unnecessary; Forced investigations that are not preceded by sufficient initial evidence, forced investigations which have been "ne bis in idem", and others.

This all provides evidence that the protection of human rights still faces a steep road. Although now there is a law on witness and victim protection. Finally, the commitment of state administrators is a hope. The state has the potential to be the strongest protector, as well as the potential to be the greatest violator of Human Rights. Therefore, the people whose memoranda of the state are expected to actively participate in giving the spirit of reform to the organizers of the state.

This spirit is important, remembering that too long a freeze sometimes causes reluctance to make changes. Especially with the old order that always provides benefits for his power. Various excuses or excuses usually become an exception for them to reject it.

Establishment Of Human Rights Court

International demands for the resolution of human rights violations have been accompanied by an embargo, which results in difficulties in international relations. So,

for developing countries like Indonesia, there is no other way but to promote and diplomate about the implementation of human rights protection, by the following methods:

- a) Settling cases which are internationally highlighted;
- b) Establishing a just law enforcement institution;
- c) Government commitment in the program is needed, especially in the content of laws and regulations, and activities to instill human rights values in the community;
- d) Providing opportunities for NGOs to participate in conducting human rights defense and defense, for this reason it is necessary to evaluate national legal provisions that threaten human rights defenders;
- e) Providing access and development of democratization, which is still in the stage of consolidation;
- f) Facilitating its application with efforts to codify human rights law and more effective protection mechanisms;
- g) Gradual strategic steps to arrive at legal politics to ratify human rights conventions on economic, social and cultural rights;

To resolve human rights violations, a human rights court is needed. Politically the formation of a human rights court in Indonesia avoids international intervention, because there are concerns that past human rights violations will be tried by an international human rights court, as already established, namely:

- 1) Nuremberg Trials (1946);
- 2) Tokyo Justice (1948);
- 3) The International Criminal Tribunal for The Former Yugoslavia / ICTY (1993);
- 4) International Criminal Court/ICC (1998).

Indeed, in the preamble it was not mentioned about the political reasons, but was stated starting from the development of the law, both in terms of national interests and international interests, then to resolve the problem of gross human rights violations and restore security and peace, a human rights court was formed.

Law Number 26 of 2000 concerning the Human Rights Court, the jurisdiction stipulates, that for past gross human rights violations prior to the enactment of the human rights law, it becomes the authority of the ad hoc Human Rights Court. As for human rights violations after the enactment of this law, the jurisdiction of the Human Rights Court has been established in Central Jakarta, Surabaya, Medan and Denpasar.

For the ad hoc Human Rights Court, the 1999 East Timor case and the Tanjung Priok case (1984) were examined and decided. This ad hoc court is not permanent like the Human Rights Court.

The procedural law used in conducting investigations, investigations and prosecutions, is the Criminal Procedure Code. It's just that the investigation was carried out specifically by the National Human Rights Commission,

then for investigation and prosecution by the Attorney General's Office.

Neither the ad hoc Court nor the Human Rights Court has the authority to try war crimes. In general, the existence of a human rights court has shown progress, but Indonesia still has homework that cannot be resolved, such as: the Munir case, the 1998 abduction of activists, the Talangsari case, the May Riots, the Semanggi case, the Poso case, the Ambon case. did not escape international attention.

The National Human Rights Commission has finished an investigation, so the institutional demands are now on the Attorney General's Office that has not yet come to conduct an investigation. The factor of political importance of power seems to be more visible than the evidence that must be gathered. It seems that the Attorney General's Office avoided the investigation more and seemed to provide an opportunity for the Truth and Reconciliation Commission to resolve it.

Thus, even though Indonesia has entered the era of democratization, the "human rights track record" is still problematic because of the many violations of human rights, the resolution of which is not complete. Therefore, under certain conditions there is no positive correlation between democratic practices and respect for human rights.

Meanwhile, the nation's dignity is also determined by the nation's treatment of each member of society regardless of ethnic, religious, cultural or socioeconomic background. Now the problem is, is Indonesia still able to resolve human rights violations that have become international demands? Here we are tested so as not to be called an "unwilling and unable" state, which risks being intervened by the international human rights court.

Given the human rights problem is no longer a state problem. If this is the case, the safest step is to settle as quickly as possible, in order to avoid foreign interference, which could bring about new chaos. In the future, for prevention, human rights education from an early age needs to be included in the curriculum, because the risk of violations of human rights always appears all the time and does not know the era.

On this basis, the UN has the authority to establish an international tribunal to convict humanitarian crimes in accordance with applicable international law, such as the ICTR (The International Criminal Tribunal for Rwanda), and ICTY (The International Criminal Tribunal for the Former Yugoslavia). Through a 2006 UN General Assembly resolution, the United Nations Commission on Human Rights was formed, to ensure the effectiveness of human rights protection throughout the world. This body will run well, as long as members are not involved in the interests of the state involved in human rights violations. The last attitude of the United States of America is not consistent with respect for human rights, which is that it first signed the International Criminal Court Treaty Agreement, but later George W Bush revoked/canceled on grounds of national interest, especially after the collapse of the WTC building in New York, which he said

was masterminded by Al Qaeda, under the leadership of Osama Bin Laden.

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