

## STAGNATION OF LAW ENFORCEMENT IN THE SETTLEMENT OF HUMAN RIGHTS VIOLATIONS IN THE 1998 BANYUWANGI MASS KILL

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### ABSTRACT

*Progressive law enforcement is carrying out the regulations in law not only according to the letter but also based on the spirit and deeper meaning of the law. Law enforcement in the settlement of cases of serious human rights violations in Banyuwangi 1998 has stagnated from law enforcement institutions such as the Law Government Office of the Republic of Indonesia (Kejagung RI) and the National Human Rights Commission (Komnas HAM) where no progressive values have been found even though Komnas HAM has carried out the results of the investigation and submitted the file to the Kejagung RI but the Kejagung RI returned it considering that there was not enough evidence. This research method uses doctrinal methods through legislation, legal documents and other secondary sources related to the rule of law from the 1998 Banyuwangi mass murder incident.*

Keywords: Law Enforcement, Human Right, Banyuwangi 1998

### INTRODUCTION

Indonesia has undergone four changes (amendments) in the 1945 Constitution of the Republic of Indonesia, they occurred in 1999, 2000, 2001 and 2002 where the entire process was part of strengthening the legitimacy of the Human Rights aspect. Furthermore, it has also experienced several phases of government since independence on August, 17th 1945 including the Old Order, New Order, Reformation governments and now moving to the Post-Reformation government phase. In the phase of the new order government, there was a major event in the middle and end of the year, namely the Banyuwangi mass murder in 1998 which killed 194 people as of October, 22th 1998. (Hapsara, 2020).

John Locke stated that human rights are natural rights given by God, and thus no form of power in the world can revoke the human rights of every human being. (Budiardjo, 2015), its development is further marked by thousands of years ago in the era of Moses from the liberation of slaves against the Jews in Egypt which was essentially driven by awareness for justice for the sake of equality of human rights. There is also a legal product of Hamurabi in the era of the Babylonian kingdom of 2000BC which contains provisions for guaranteeing justice for all Babylonians from the arbitrariness of power in a kingdom. In Athens, when the Solon era 600BC tried to make a breakthrough by compiling rules for guaranteeing justice and equality to guarantee inventions and the people found a court that acted as a guarantee for the implementation of Solon's rights and freedoms. Also in Athens, Perikles, a statesman who fights for guarantees of justice for the poor in the form that every citizen has the right to become a People's Assembly as long as he meets the requirements of being 18 years old. Still in Greece when Socrates was sentenced to death for drinking poisoned drinks for his thoughts that wisdom, justice, and virtue, must be considered so that people dare to criticize the rulers who do not see freedom and justice. Plato and Aristotle as Socrates' students continued the teachings of their teachers, in *Nomoi* (Plato's dialogue) they proposed a system of rulers elected by the people with a record of being able and capable. Meanwhile, Aristotle said that the state would be good if the power was for the public interest (society). Turning to England when the nobles demanded the King of England to sign a Charter containing 63 Articles with the aim of justice and the rights of the nobles against the arbitrariness of the King of England the event was called the Magna Charta Charter on July, 15th 1215 with the principle of limiting the power of the King and prioritizing human rights over the sovereignty and power of the King, the existence of tax agreements involving the nobles and no one of the citizens with the status of independence can be detained, exiled, deprived of their rights, their assets also confiscated except based on a legal decision. Equality of human dignity is also contained in the independence of the United States of America on July, 4th 1776 by stating that humans are created equal considering that humans have been awarded the right to life and independence, both their freedoms and rights cannot be revoked by anyone in any way. The French Revolution alluded to human rights on July, 14th 1789 against the background of the arbitrariness of King Louis XIV so that the revolution exploded for feelings, brotherhood, and freedom and became the foothold of the human rights struggle for France which was influenced by some of its predecessor scholars such as JJ Rousseau, Voltaire and Montesquieu. Abraham Lincoln spread the values of human rights with equality, and freedom for every citizen without distinction: colour, religion and gender (Wilujeng, nd). Next came the discourse on the four freedoms of human beings in the United States dated January, 6th 1941 which was proclaimed by the President of the United States, Theodore Roosevelt. The four rights are the right to freedom of speech and opinion, the right to freedom of religion and worship based on the teachings that one adheres to, the right to be free from poverty and the right to be free from fear.

Three years later, there was an international labour conference in Philadelphia, the United States produced a declaration of human rights called the Philadelphia Declaration 1944, the formulation of which concerns the importance of creating world peace based on social justice and the protection of all human beings in terms of race, belief, material (economic) needs and then used as a starting point. the formulation of the Universal Declaration of Human Rights (DUHAM) which was confirmed by the United Nations (UN) in the 1948 Declaration of Human Rights (Rozak, 2015).

Regarding law enforcement for international gross human rights crimes, Indonesia ratified or expressed support for the Rome Statute on 15-17 July 1998 until the law was passed, which had implications for the establishment of the International Criminal Court (ICC) even though in its position Indonesia did not sign the ratification Rome Statute. However, Indonesia does not reject the jurisdiction or existence of the ICC if it involves Indonesia in handling cases of gross human rights violations (Latifah, 2014).

This is certainly unique and raises a bit of ambiguity regarding Indonesia's role in handling serious human rights crimes when compared to developed countries which have clear characteristics of co-signing, ratifying, acceding and even abstaining. China, the United States and Israel are examples of countries that have chosen to abstention..

Indonesia has paid the attention to human rights values from a series of historical events in Indonesia for its resistance to all kinds of colonialism starting from the National Awakening event on May, 20th 1908, the Youth Pledge of October, 28th 1928, the Proclamation of August, 17th 1945, the session of the Preparatory Committee for Indonesian Independence. (PPKI) which to the 1945 Constitution where from a series of events on the basis that independence is the right of all nations, it is not surprising that Indonesia ratified the 1948 DUHAM on the existence of values that are in harmony with the human rights aspect so that through the 1945 Constitution and the 1948 DUHAM, it created derivative laws that specifically regulate human rights such as Presidential Decree (Kepres) No. 50 of 1993 on the establishment of Komnas HAM, Outline of State Policy (GBHN) 1998, a decree of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR No. XVII/MPR/1998 concerning the Indonesian Nation's Views and Attitudes towards Human Rights, Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning the Human Rights Court.

Based on the contextual aspect, Indonesia up to 2002 has not been sufficiently capable in terms of fulfilment, protection and settlement of human rights cases that occurred during the Old Order, New Order and Reformation eras. There are several cases of human rights violations, one of which is the 1998 Banyuwangi mass murder. Human Rights Watch conducted a world report in 2001 on its research in Indonesia with the following notes:

*"During the year, Indonesia moved closer to democracy, but serious regional conflicts, a weak legal system, and a delicate civil-military relationship posed ongoing challenges to human rights protection. While the vast majority of the country continued to benefit from expanded civil and political liberties."*(Abrahams, 2001)

This note considers that conflict both horizontal and vertical flourished at that time due to the existence of the legal system and the very fragile relationship between civilians and the military, making Indonesia's challenges and obstacles to justice through the completion of human rights cases in the civil-political group (civil servant).

The examples of horizontal and vertical conflicts referred to at that time apart from the 1998 Banyuwangi mass killings were Moslem mobs attacked five churches in Purworejo, Central Java in June 1998, Chinese ethnic shops in Jember along with residential areas and rice quarries were burned and looted, then several thousand fishermen were involved in anti-Chinese riots in Cilacap in August (Ricklefs, 2005). Those heartbreaking events did not appear without causes, considering that in 1998 Indonesia was affected by the global monetary crisis, which had implications for such a thigh gap. Dragging back the legal events above does not mean recalling sad events that have arisen in society or reopening old wounds, but as a large nation, incidents of human rights violations can be used as lessons for all parties to implement the human rights values embedded in the constitution. both in protection, fulfilment and completion so that laws or statutory regulations do not automatically become rules or empty files that are not enforced for the sake of strengthening the rule of law in Indonesia.

## RESULT AND DISCUSSION

Human rights are divided into two; positive and negative rights. Positive rights are all rights based on economic, social and cultural rights so the state must play an active role in maintaining the provision and protection of rights for citizens. As an example of positive rights in the article of 28H paragraph (1) of the 1945 Constitution:

*Everyone has the right to physical and spiritual well-being, to live in a safe and healthy environment, and to receive health care.*

Furthermore, the negative rights are all rights based on civil and political rights, making the state prohibited from interfering or intervening in all matters that are the choices and attitudes of civilians related to civil and political choices. The state's obligation to negative rights is enough to protect the form of a sense of security for citizens in determining their civil and political rights so it can also be concluded that the less the state interferes or intervenes, the more rights and freedoms are fulfilled for each citizen. (Tim Imparsial, n.d.). Positive rights and negative rights can also be said to be public rights and private rights with all the fulfilment, protection and guarantees of the state for citizens.

What happened in the 1998 Banyuwangi mass murder, the state has not fully protected a sense of security and peace, especially guarantees for the right to the rule of law for citizens. Based on the analysis of the results of Komnas HAM's records, the 1998 Banyuwangi mass killings occurred in February-October 1998 with the target of expanding to several areas in East Java. There are two phases of the murders, the first is the phase of labour and the killing of witch doctors and the second phase of labour and the killing of "ninjas" and madmen. The phase of killing and labouring witch doctors started with residents' concerns about certain issues. Before the violence targeting witch doctors, residents had carried out violence and looted many shops, which were previously motivated by many demonstrations to reduce basic needs due to the economic crisis in 1998. On 15 January 1998 there was violence by security forces that caused riots in the Purwoharjo district. The looting of shops or warehouses for the hoarding of basic needs makes residents very sensitive to everything. Purnomo Sidik as the Regent of Banyuwangi in 1998 issued instructions to the subdistrict head and to the Village to collect data for psychics, traditional healers and sorcerers to get protection, handling and prevention from all things that are not desirable, but there were allegations of data leaking from unscrupulous persons which were unknown, results in a list of citizens who must be killed who were previously protected, handled and prevented as well

as listed in the radiogram (Hapsara, 2020). Furthermore, it can be seen from the data leak that there was no finding or even no effective government action to deal with the killings amid the killings and even the state's omission.

The first murder occurred on February, 4th 1998 which killed five to eight people, in July many suspicious people or vagabonds were found, then after the phenomenal madness and vagrants passed, there were many ninjas (as the community called them) for reliable, structured, black-clothed killings with Covered face and fast-moving, the death toll soared in September to eighty fatalities and continued every night from September-October 1998. In order to protect themselves from widespread public fear, the public formed security forces on their own with sharp weapons and batons. as personal equipment (Hapsara, 2020).

In this case, legal certainty must be the main demand that must be fulfilled by applicable law (*ius constituendum*) for the sake of justice and benefit. Gustav Radbruch explained that "*nicht dargetan ist der unbedingte vorrang der durch das positive recht erfüllten forderung der rechtssicherheit vor den von ihm vielleicht unerfüllt Kacasenen forderungan der gerechtigkeit und der zweckmabigkeit*" (Radbruch, 1975) which means that justice and expediency will not arise if there is no certainty for the supremacy of the performance of law enforcers. Meanwhile, according to Satjipto Rahardjo, law enforcement is an effort to carry out the law not only according to the letter but also needs to involve the spirit and deeper meaning of the legal or law.

Based on Article 7 of Law no. 26 of 2000 concerning the Human Rights Court, it is stated that:

"Grave human rights violations include:

- a. The crime of genocide;
- b. Crimes against humanity.

The presence of humanitarian elements in the 1998 Banyuwangi mass killings is an indicator that this event is part of the gross human rights violations that occurred in Indonesia. The supporting elements of the 1998 Banyuwangi mass killings consisted of widespread, systematic and structured attacks or terrors based on the chronology of events produced through the Komnas HAM investigation in 2019, which was later confirmed by Article 9 of Law no. 26 of 2000 concerning the Human Rights Court which reads:

"A crime against humanity as referred to in Article 7 letter b is one of the acts committed as part of a widespread or systemic attack where it is known that the attack was directed against the civilian population in the form of:

- a. Murder;
- b. extermination;
- c. Slavery;
- d. Forced expulsion or displacement of the population;
- e. Deprivation of liberty or deprivation of other physical freedoms arbitrarily violates the basic principles of international law;
- f. Torture;
- g. Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence;
- h. Persecution of a particular group or association on the basis of political equality, race, nationality, ethnicity, culture, religion, gender, or other reasons universally recognized as illegal under international law; enforced disappearance of persons;
- i. Apartheid crime.

The existence of widespread and systemic attacks regarding the mass killings that occurred made Article 9 inseparable from the contextual context that occurred in the Banyuwangi 1998 incident that the incident was a classification of gross human rights violations reinforced by Komnas HAM from the list of serious human rights violations in Indonesia that had not been resolved.

Cited from the official site of Komnas HAM Indonesia, there are eleven cases listing gross human rights violations that have not been resolved including the 1965-1966 Tragedy, Talangsari Case, Mysterious Shooting (Petrus), May 1998 Riot, Disappearance of Activists, Waisor Wamena, Simpang Kaka'a, Simpang Gajah, Rumah Gedong, Bener Meriah and Banyuwangi 1998 (Sedana, 2019). The existence of this determination implies that the 1998 Banyuwangi mass murder did not have an expiration date of 18 years because of the Komnas HAM determination that the 1998 Banyuwangi mass murder was classified as a serious human rights violation.

In addition to gross human rights violations, there are subsidiary alternatives for the perpetrators of criminal acts in the 1998 Banyuwangi murder, more precisely in Article 304 (omission), 340 (premeditated murder) and 351 (persecution) in the Criminal Code (KUHP), there are:

Article 304

"Whoever intentionally places or leaves a person in a state of misery despite the fact that he is required by law or by agreement to provide life, care, or maintenance to that person faces up to two years and eight months in prison or a fine of four thousand five hundred rupiahs."

Article 340

"Whoever deliberately and with premeditated plans to take the lives of others faces the death penalty, life imprisonment, or a term of twenty years in prison."

#### Article 351

- (1) Massacre is punishable by a maximum imprisonment of twenty years and eight months or a maximum fine of four thousand five hundred rupiahs.
- (2) If the act causes serious injury, the guilty person faces up to five years in prison;
- (3) if the act causes death, the guilty person faces up to seven years in prison.
- (4) Persecution is equated with intentionally endangering one's health.

Although violations have been described based on the normative aspects of positive Indonesian law, the legal status of the 1998 Banyuwangi mass murder has stagnated or there is no bright spot as of the end of 2022, the things that are a factor of course are the investigation files produced by Komnas HAM as the authorities based on Article 18 Law No. 26 of 2000 concerning the Human Rights Court that the investigation into gross human rights violations was carried out by Komnas HAM by forming an *ad hoc* team consisting of Komnas HAM commissioners and elements of the community, it is considered that it is still not complete to complete the investigation file so that the Attorney General returns the results of the file before raising its legal status to immediately carry out the 1998 Banyuwangi mass murder case.

Before the *ad hoc* team was formed, Komnas HAM in its efforts to handle cases of gross human rights violations in Banyuwangi 1998 had carried out various phases of the series, including the review team in 2014-2015 and continued by forming a monitoring team for the 1998 Banyuwangi case. The monitoring team found an alleged pattern of gross human rights violations so Komnas HAM formed an *ad hoc* team to investigate gross human rights violations in Banyuwangi 1998 dated 1 February 2016 based on decree of the Chairman of Komnas HAM No. 006C/Komnas HAM/II/2016 was then extended on May 31, 2018, based on decree of the Chairman of Komnas HAM No. 009A/Komnas HAM/V/2018 (Kommasham, 2019).

Komnas HAM formed an *ad hoc* team which is chaired directly by the Komnas HAM commissioner namely Beka Ulung Hapsara and was completed in 2019 but incomplete files such as a list of victims, distribution of domiciles of victims, witnesses and so on were not included in the description of the results of the investigation making the investigation file carried out Komnas HAM is ambiguous, biased and vague in its reporting of results, resulting in the stagnation of the rule of law and human rights based on the 1998 Banyuwangi mass murder case.

The presence of laws and regulations that must be enforced is one of the consequences of the rule of law; Article 1 paragraph (3) of the 1945 Constitution, which confirms that Indonesia is a legal state, has an impact on the role of law as an instrument, tool, institution, value, and basic framework in the normative state apparatus for economic, social, cultural, political, and educational support or stability. (Marzuki, 2016). This has been discussed by previous experts related to the meaning of law such as Max Weber, Galanter and Charles Sampord although it is not fully relevant in Indonesia because the concept of the rule of law in Western countries generally has different characteristics, styles, and legal cultures that can affect a place contextually. (Isharyanto, 2016b).

Krabbe explained that the highest power of the state is not in the leader and government apparatus but in the legal aspect resulting from the awareness of each subject, therefore about human rights, the state is prohibited from acting outside the legal corridor and can maintain the rule of law (Isharyanto, 2016a). The importance of the existence or existence of law enforcement or supremacy of a state against society for the sake of creating peace, order and order on the contrary if the enforcement or rule of law is not implemented, the state situation only describes chaos, noise, inequality due to social injustice.

## CONCLUSION

Indonesia based on ideology, constitution and derivative arrangements highly uphold the values of human rights, especially in terms of content for honour, and protection of human dignity, this is part of the formal aspects of the state in the context of law enforcement and human rights. However, concerning material matters, it is still necessary to improve supremacy for the sake of consistent law enforcement. There is no continuity between the structure and substance of the law, which is the main cause of the weak face of law enforcement in Indonesia. The 1998 Banyuwangi mass murder incident became a symbol that the state had not been able to protect civil, social and cultural rights given the state's incompetence in resolving the Banyuwangi mass murder that occurred in 1998. The presence of finding that the state had allowed the perpetrators and masterminds of the killings to take place during the events that took place in February, July, September and October resulted in a widespread death toll with a total of 309 deaths, Banyuwangi was became the area with the most casualties with 194 victims, followed by Jember with 108 victims and Malang with 7 victims. Apart from that, it also seems that there is no recovery from the state for the victims.

Some institutions or law enforcement agencies such as Government Law Office (Kejagung RI) and Komnas HAM have not seen their role in solving serious human rights violations in the 1998 Banyuwangi mass murder incident. Police institutions cannot carry out their duties, principles and functions in terms of protecting the security to society. Furthermore, Government Law Office (Kejagung RI) is not able to carry out the obligation to establish and carry out an investigation from the prosecutor's office on the crime that occurred. This also applies to Komnas HAM considering that it did not make any effort in terms of completing the investigation file mandated by Government Law Office, resulting in the 1998 Banyuwangi mass murder case stagnating the case with P19 status or creating a status quo. Therefore, law enforcers must have concern, empathy and courage to uphold the rule of law in Indonesia to realize values, concepts, ideas and ideals to achieve measurable justice based on the constitution and Pancasila. However, if the cases remain unresolved, the International Criminal Court (ICC) mechanism is a possible next step for investigation based on the applicable mechanism.

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