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Executorial Strength of Community Communication Services Recommendations in Settlement of Case Assumptions of Human Rights Violations

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Abstract

The research goal was to analyze the executive power of a recommendation for public communications services to protect human rights. This type of research is normative legal research with a conceptual, legal and historical approach, using primary, secondary and tertiary legal material. The legal material obtained was processed and analyzed normatively. Based on the results of the study, it is concluded that the regulation of the executive of a recommendation for community communication services is regulated in No. 32 of 2016, as an attempt by the government to encourage the resolution of alleged human rights violations as a form of protection and compliance with human rights. The existence of community communication services in resolving allegations of human rights violations has no permanent legal force (enforceable title), but rather the power of coordination and communication in bridging the reported party and authorities suspected of committing human rights violations, which to be resolved in stages, as set out in the Flow Guidelines Dealing with human rights issues by the Yankomas Implementation Team in the regions.

Keywords: *Executive Power; Community Communication Service Recommendations; Human Rights Abuses*

Introduction

Human rights are born together with humans, meaning that since humans have existed human rights problems have arisen (D. Lestari, 2007). Human rights are closely related to the rights and obligations of humans as social beings (Mukhoyyaroh, 2019). Humans as social beings, interact with other humans, and have rights and obligations, especially in the field of protecting and fulfilling Human Rights (Aminullah, 2018); (Mukhoyyaroh, 2019). The concept of rights, is not only protected by law, but also has the concept of recognition which is closely related to obligations, so that in its development a set of regulations that declare human rights was born such as Magna Charta (1215), Bill of Rights (1689), Declaration Des Droit De L'home et du Cutoyen (1789), Declaration of Independent (1976), and Declaration Universal of Human Rights (1945).

In Indonesia, efforts to protect human rights, both legally, politically, economically, socially and morally, are to protect, enforce, and advance for the sake of enhancing human dignity by the government in line with what is mandated in the Constitution of the Republic of Indonesia. 1945 (UUD NRI Year 1945) both in the Preamble, Article 28 I Paragraph (4), then the regulations are applied in Law No. 39 of 1999 concerning Human Rights, particularly in the provisions of Article 8, Article 71, and Article 72 which emphasize that the Government is obliged and responsible for respecting, protecting, upholding and advancing Human Rights.

In the social life of the community and the state, of course, it is not uncommon to find fundamental problems related to human rights violations, both among members of society and by the State (Supriyanto, 2014). The government as the bearer of the obligations is sometimes considered to have violated the rights of people or groups of citizens as rights holders, the reaction of the community as rights holders is to report human rights violations experienced by them in order to obtain a solution or solution. Public awareness of understanding, protecting and upholding human rights also contributed to human rights violations (L. E. Lestari & Arifin, 2019).

The regulation of the implementation of community communication services is regulated by the Regulation of the Minister of Law and Human Rights (Permenkumham) No. 32 of 2016, the strengthening of a recommendation given does not have a binding force for the parties to be implemented, especially for the party being communicated, this can be observed in Article 14 to Article 17, recommendations given so that arrangements regarding the binding strength of a recommendation are given This Permenkumham has not been regulated or there is a vacuum of legal norms.

From the background description, the problem is formulated: how to regulate the executive power of a community communication service recommendation.

Method

The type of research used is normative legal research, with a conceptual approach, a statutory approach, and a historical approach. The legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials obtained were processed and analyzed in a normative prescriptive manner.

Result and Discussion

The government through the Ministry of Law and Human Rights of the Republic of Indonesia (Directorate General of Human Rights, Division of Human Rights in the field of Community Communication Services) is a bridge in providing protection and enforcement of human rights through the activities of Community communication services (Yankomas). Statistically, over the past 3 years (2017 to 2019) based on data from the Sipkumham Research and Development Agency for Law and Human Rights, the Ministry of Law and Human Rights of the Republic of Indonesia, that the number of cases handled by the Yankomas Team of the Regional Office of the Ministry of Law and Rights West Nusa Tenggara Human Rights totaling 16 (sixteen) cases were communicated (Balitbangkumham Ministry of Law and Human Rights Balitbangkumham Ministry of Law and Human Rights, 2020). In 2017, there were 9 cases in process, 2 cases that have been resolved, namely; cases of delayed payment of salaries and benefits, abuse of authority in the detention of the Damai Indah Perdana expedition truck. In 2018, there were no cases entered. In 2019, there were 7 cases submitted, 5 cases in process, 2 cases already resolved, namely; neglect by her husband, and expulsion of her uncle by her nephew from the inherited land.

There are cases that are still in the process of being resolved, it becomes a record of how cases that are suspected of being violations of human rights are resolved through Yankomas itself. Another thing that becomes a problem in itself is the neglect of recommendations given by Yankomas for parties which are communicated to be a separate problem for Yankomas implementers, in this case the Directorate General of Human Rights of the Ministry of Law and Human Rights of the Republic of Indonesia at the Center, as well as the Regional Office of the Ministry of Law and Human Rights in the area.

Explanation of the recommendation (in the form of a letter) given by the Yankomas Executive as an effort to request clarification and / or encourage the resolution of cases that are suspected of constituting human rights violations. Yankomas' position is only limited to providing recommendations without having the power to bind and force problem parties by heeding, applying, and making legal references in resolving cases that are reasonably suspected of being a violation of human rights.

Indonesia as a rule of law is stated in Article 3 of the 1945 Constitution of the Republic of Indonesia, the consequence as a rule of law is that the implementation of its government must be based on the rule of law, in order to guarantee the protection of the rights of citizens. According to Ilmar, a government based on law will guarantee the protection of the basic rights of society, so that the side of interests between the government that exercises power and the people as the subject of the owner of the state can always be compatible or in line (Ilmar, 2016). If referring to the definition of a rule of law, the state exists to protect the human rights of its citizens, according to Johan Nasution, the central idea of the concept of "rechtstaat" or rule of law is the recognition and protection of human rights which is based on the principles of freedom and equality, based on the criteria as following (Nasution, 2011):

1. The existence of a constitution which will provide constitutional guarantees for citizens of the principles of freedom and equality.
2. The separation of powers aims to avoid the accumulation of power in one hand, because this accumulation of power tends to lead to abuse of power which means rape of freedom and equality.
3. The existence of making laws linked to parliament, is intended to ensure that the law made is based on the will of the people, thus the law will not rape the people's rights, and if it is linked to the principle of majority, the will of the people is interpreted as the will of the majority group.
4. The principle of "wetmig bestuur" so that government actions are based on statutory provisions and do not rape freedom and equality (heerschappij van de wet).

The relationship between the rule of law and human rights is evident and is implemented by normalizing these rights in statutory regulations, in an effort to fulfill, promote the basic rights of individuals to respect human rights, so that everyone, according to Johan Nasution, can sue or file a lawsuit. to the state, if the state commits an act against the law (onrechtmaatigadaad), that someone can file a lawsuit against the ruler, if the decision of the competent official is deemed unfair (Nasution, 2011).

Indonesia has adopted 3 state obligations according to the UN Treaty Bodies, which include (KontraS dan OAK Foundation, 2014):

1. The obligation to protect human rights (obligation to protetct): The state, in this case the government, must guarantee protection and prevent all forms of violations of human rights, whether committed by the state or perpetrators from non-state elements, including intolerant masses, militias and/companies.
2. The obligation to respect and promote human rights (obligation to promote): the state must issue regulations, policies or regulations that do not conflict with the values, norms and rules of human rights.

3. The obligation to fulfill human rights (obligation to fulfill) The state must take concrete actions, namely by allocating budgets, formulating programs, and making policies in the context of ensuring that the fulfillment of the human rights of every citizen can run smoothly without interference and threats from any party.

According to Sri Soemantri, in addition to the principles of democracy which are used in the life of the nation and the state, the principles of a rule of law are also used which are implemented in the national legal system, there are four important elements of a rule of law, namely (Nasution, 2011):

1. That the government in carrying out its duties and obligations must be based on laws or statutory regulations;
2. There is a guarantee of human rights;
3. There is a division of power within the state;
4. There is oversight from government agencies.

As a consequence of adhering to the principle of a rule of law and the existence of a hierarchical structure of legal order, then in an orderly order of laws and regulations there must be constitutional supremacy, where every applicable statutory regulation must be based on and sourced firmly from higher regulations. In other words, the principles of a rule of law must contain the principle of legality, that is, all forms of limitation on the freedom of citizens by the government must be found in laws which are general regulations (Nasution, 2011). The implementation of state protection for the human rights of its citizens is formed by Yankomnas both at the central and regional levels.

The regulations regarding the implementation of Yankomnas are as follows:

1. National Action Plan for Human Rights (Called RANHAM)

The concept of the RANHAM is the result of ratification of the 1993 Vienna Conference. The draft RANHAM is a guideline for the implementation of respect, promotion, fulfillment and protection of human rights in Indonesia. The implementation of the RANHAM aims to increase the respect, promotion, fulfillment, protection and enforcement of human rights in Indonesia (Article 1 Point 2 of the Presidential Regulation of the Republic of Indonesia Number 23 of 2011 Concerning the National Action Plan for Indonesian Human Rights 2011-201, 2011), taking into account the existence of the values of religion, morals, customs, culture, and security that apply in Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Article 1 Point 2 of Presidential Regulation of the Republic of Indonesia Number 23 of 2011 concerning the National Action Plan for Indonesian Human Rights of 2011 -201, 2011).

In general, the implementation of RANHAM in Indonesia has been carried out in several periods, including:

a. RANHAM Period I (1998-2003)

The implementation of the first period of RANHAM has the main programs which include: Preparation for the ratification of the international human rights apparatus; Dissemination of information and education in the field of human rights; Determining priorities for the implementation of human rights; and Implementation of the content of the legalized international instruments in the field of human rights.

b. RANHAM Period II (2004-2009)

The implementation of the second period of the RANHAM is a form or effort of the Government to perfect the previous RANHAM, this period RANHAM was carried out as an effort of the government to solve the problem of human rights violations, especially for vulnerable groups, such as women, children, formal and informal laborers, elderly people, community refugees adat, as well as people with disabilities, and minority groups.

c. RANHAM Period III (2011- 2014)

In the implementation of the third period of RANHAM, as a real effort by the government to realize respect, fulfillment, protection, upholding and advancement of Human Rights, is the passing of Presidential Regulation No.23 of 2011, then strengthened by Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 23 of 2013 concerning Guidelines for Community Communication Services National Action Plan for Human Rights. This concrete effort is a follow-up step in providing guidelines for the government at the central and regional levels in resolving problems that are suspected of constituting human rights violations.

There is a difference in understanding of the duties and functions of the RANHAM itself between the members of the RANHAM Committee and with institutions / institutions outside the RANHAM Committee, especially those related to the duties and functions of the RANHAM Committee in carrying out community communication services, which refers to the norms and standards of human rights. which is then tried to be resolved by increasing the coordination of the implementation of the RANHAM both at the central and regional levels by the formation of a Working Group or abbreviated as a Pokja as the coordinator that implements the RANHAM together with its members, in addition to this, this working group is formed based on regional needs and conditions.

2. Regulation of the Minister of Law and Human Rights Number 32 of 2016 concerning Community Communication Services against Human Rights Issues.

The existence of regulations regarding the protection of the basic rights of citizens in positive law in Indonesia, as stated, both implied and express, starting from Pancasila and its points, the Preamble of the 1945 Constitution of the Republic of Indonesia, Law no. 39 of 199 concerning Human Rights and its derivative regulations do not necessarily reduce violations of human rights either by individuals or by the state and/or government officials against individuals or groups of people. This could be due to, among other things, the lack of understanding of what basic rights are in Human Rights and how the program to fulfill these rights, the understanding that is obtained is still partial and not comprehensive.

In line with the times, the implementation of Regulation of the Minister of Law and Human Rights Number 23 of 2013 is deemed no longer in line with the times and the legal needs of society in respecting, protecting and fulfilling human rights, so that it is renewed through a Regulation of the Minister of Law and Human Rights Human Number 32 of 2016 concerning Community Communication Services. The issuance of this regulation is a form of protection, respect and fulfillment of human rights itself, in other words this Permenkumham is a means of overcoming problems when the community has a problem or a case where human rights violations are suspected, both cases or problems that are communicated or that has not been communicated by the public.

The main points of regulation regarding Yankomas which are contained in the Regulation of the Minister of Law and Human Rights Number 32 of 2016, include:

1. General provisions (covering the Scope of Yankomas, Implementing Yankomas);
2. Community Communication Service Procedures;
3. How is the review process;
4. Letter of Recommendation; and
5. Procedure for reporting.

If you look at the substance that this Ministerial Regulation wants to regulate, it is related to how the regulation regarding the strength of the recommendation letter issued by the Yankomas implementation team. This is also the main point of discussion in this CHAPTER, while Yankomas' recommendation letter is regulated in CHAPTER IV concerning Recommendation Letters, these provisions are regulated in Article 14 through Article 17 Regulation of the Minister of Law and Human Rights Number 32 of 2016, covering (Ministerial Regulation Law and Human Rights Number 32 of 2016 concerning Community Communication Services Against Human Rights Issues, 2016):

1. Letter of Recommendation is addressed to government agencies / institutions that are reasonably suspected of violating Human Rights with a copy to the Communication Provider. (Article 14)

2. Letters of Recommendation, monitored by Yankomas Implementers within 30 (thirty) Days since the Recommendation Letter is sent. In the event that government agencies/institutions follow up on the Recommendation Letter, the Yankomas Implementer notifies the Communication Provider. In the event that government agencies/institutions do not follow up on the Recommendation Letter, the Yankomas Implementer shall carry out Coordination and Consultation with government agencies/institutions. (Article 15)

3. In the event that the results of coordination and consultation are followed up, the Yankomas Executive will notify the results of the settlement to the Communication Provider. In the event that the results of the Coordination and Consultation are not followed up within a period of 15 (fifteen) days, the Implementer of Yankomas shall make a Letter of Recommendation to government agencies / institutions of a higher level. (Article 16)

4. In the event that agencies/institutions in the regions do not follow up on the resolution of Human Rights Problems, the Regional Office of the Ministry of Law and Human Rights submits a Letter of Recommendation to the Director General of Human Rights for further resolution. Based on the Letter of Recommendation, the Directorate General of Human Rights forwards the Letter of Recommendation to government agencies/institutions at a higher level. In the event that government agencies/institutions at a higher level do not follow up on the Recommendation Letter, the Minister submits a Recommendation Letter to the President. (Article 17)

In terms of legal aspects, Regulation of the Minister of Law and Human Rights No. 32 of 2016 concerning Community Communication Services Against Human Rights Problems encountered an obstacle, because it did not have the strength in implementing recommendations (executorial), in solving the communication of human rights problems delivered by the communicator to the Yankomas implementers, this was because Yankomas only completed communications. Based on a letter of recommendation, and a letter of recommendation is not coercive. So with the nature of the recommendation letter issued that does not provide legal certainty, this is also in line with the results of the interview (Puspa, 2020):

> "The strength of recommendations in the implementation of Yankomas is only coordinated, and the position of recommendation letters in Permenkuham is not clear and explicit about Yankomas, and the position of recommendation letters does not have the power of final decisions as court decisions"

Based on the results of the interview, it was confirmed that the Regulation of the Minister of Law and Human Rights Number 32 of 2016 concerning Community Communication Services on the Resolution of Human Rights Problems, has not been able to provide answers to legal certainty in resolving a problem or case that should be suspected of violating Human Rights , because Yankomas can only make recommendations for consultation and coordination regarding the resolution of alleged human rights violations from the parties if they are not heeded.

If we examine Article 13 of the Ministry of Law and Human Rights, it provides an illustration that in the end the law did not give the Yankomas executor authority to resolve communication of alleged human rights violations, because the authority of the Yankomas executor could not force the reported to be based on the results of the Yankomas Executive's review. If consultation and coordination with the parties is not heeded, the Yankomas executor will only make another recommendation letter to a higher institution.

Thus the existence of Community Communication Services (Yankomas) is the government's effort in carrying out its obligations as protection and fulfillment of human rights. and also the existence of Yankomas as a government effort to encourage the settlement of alleged human rights violations as a form of protection and fulfillment of human rights in ratio legis cannot be realized effectively without the voluntaryness of the parties being communicated, so the existence of Permenkuham No. 32/2016 on the implementation of Yankomas is not an effort to resolve allegations of human rights violations, but only as a bridge between parties to resolve the problem of alleged human rights violations. This is as the results of the interview (Sizi, 2020):

> "In the implementation Yankomas does not have executive power, but only the strength of coordination and communication between the Ministry of Law and Human Rights and agencies suspected of committing human rights violations".

Based on the results of the interview, it was explained that Yankomas' existence in resolving alleged human rights violations did not have permanent legal force (executorial), but rather the power of coordination and communication in bridging the reported party and agencies suspected of committing human rights violations to be resolved through stages as stipulated in the Guidelines for the Handling of Human Rights Problems by the Yankomas Implementation Team in the regions, which is limited to providing encouragement to related agencies / institutions in the form of letters of coordination to letters of recommendation to seek solutions to human rights violations that have occurred, has no power permanent law (executive), but more on the strength of coordination and communication in bridging the reported party and agencies suspected of committing violations of human rights to provide protection and legal certainty for the community

Conclusion

Arrangement of executorial power of a recommendation of public communication services regulated in No. 32 of 2016, as a government effort to encourage the resolution of alleged human rights violations as a form of protection and fulfillment of human rights, Yankomas' existence in resolving alleged human rights violations does not have permanent legal force (executorial), but rather the power of coordination and communication in bridging the reported and agencies suspected of committing human rights violations to be resolved through the stages as stipulated in the Guidelines for the Handling of Human Rights Issues by the Yankomas Implementation Team in the Regions.

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