



Legal Analysis of Serious Human Rights Violations Resolution in Indonesia (Semanggi I Case)

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Abstract

Many cases of serious human rights violations in Indonesia have yet to be resolved completely. Every change in the presidency and vice presidency, issues regarding serious human rights violations are always brought up, especially the Semanggi I case; however, until now, there has been no concrete resolution undertaken by the government. This research will discuss the issue using a normative juridical research method. The research concludes that the resolution of the Semanggi I case as a serious human rights violation, although designed through a National Human Rights Commission (Komnas HAM) investigation team (KKR), the resolution process has not been completed and can be seen as "stuck in place".

Keywords: *Resolution; Serious Human Rights Violations; Semanggi I*

Introduction

Basically, Human Rights (HR) can be understood as rights inherent to all human beings (Sibarani, 2016:9), due to the nature and inherent dignity of human birth itself as a human being (Nugroho, 2018:134). Human rights are also interpreted as fundamental human rights, without which a person cannot be considered fully human, even if those rights are diminished or violated, the quality as a creation of God also decreases (Rahayu, 2015:4). Therefore, everyone is entitled to have their rights respected in everyday life regardless of nationality, gender, ethnicity, religion, race, and other statuses.

Currently, the enforcement of human rights (HR) has become a major issue in various countries, including Indonesia, as it concerns the fundamental rights and freedoms of all individuals (Azzahra, 2020:104). However, unfortunately, human rights violations cases still frequently occur to this day in the practice of human rights. Indonesia, which has specific legal regulations regarding human rights in Law Number 39 of 1999, considers, based on Article 1 paragraph (6) of this Law, that what is meant by Human Rights Violations are:

"Every violation by an individual or a group of individuals, including state authorities, whether intentional or unintentional, or negligence that unlawfully diminishes, obstructs, restricts, and/or revokes the human rights of an individual or group of individuals guaranteed by this Law, and does not receive, or is concerned will not receive a fair and proper legal resolution, based on the applicable legal mechanisms."

In addition to Law Number 39 of 1999 concerning Human Rights, Indonesia also has regulations regarding human rights courts stipulated in Law Number 26 of 2000 as the basis for adjudicating human rights violations. According to the Law on Human Rights Courts, what is meant by a Human Rights Court is a special court for serious human rights violations. This law does not provide a definition for the term "serious human rights violations", but only mentions in Article 7 that the categories of crimes that constitute serious human rights violations include crimes against humanity and genocide (Pangaribuan, 2017:27). Based on this law as well, the Human Rights Court only adjudicates serious human rights violations after the law is enacted. For human rights violations that occurred before the law came into effect, they will be tried by an *Ad Hoc* Human Rights Court established by Presidential Decree upon the recommendation of the DPR (People's Consultative Assembly) (Nugroh, 2006:136).

Generally, serious human rights violations are committed by perpetrators with clear intent and purpose to attack and destroy specific individuals or groups of people, resulting in broad consequences or impacts (Prantiasih, 2016:12). Crimes of serious human rights violations are usually widespread or systematic in nature. Elements of serious human rights violations include the seriousness of the acts or actions committed and the large number of victims involved. There are several past events related to serious human rights violations that remain unresolved to this day, one of which is the Semanggi I Tragedy in Indonesia. On November 13, 1998, riots occurred in the Semanggi area, South Jakarta, carried out by students protesting against the government of Bacharuddin Jusuf Habibie. According to data from the Humanitarian Volunteer Team, the number of fatalities reached 17 civilians from various backgrounds, and hundreds of others were injured by gunfire or blunt objects (Pelupessy, 2014: 72).

With the legal framework stating that the resolution of serious human rights violation cases can be pursued through *ad hoc* court proceedings, as mandated by Law Number 26 of 2000, the fact remains that, after several changes in government during the Reformasi era, this has yet to be implemented. This is due to the reason that the investigation files conducted by the National Commission on Human Rights (Komnas HAM) were returned by the Attorney General's Office because they were deemed to not meet the requirements for investigation. The special team for resolving allegations of serious human rights violations, or Timsus HAM, formed by the Attorney General's Office, also did not bring about any changes in resolving human rights violation cases. The Attorney General's Office stated that there were no cases that could be pursued through legal proceedings because Komnas HAM did not meet the instructions provided by the Attorney General's Office, both formal and material requirements. In fact, the Coordinator of Timsus HAM, who is also the Director of Serious Human Rights Violations at the Attorney General's Office, Yuspar, proposed to the government to resolve the matter through non-judicial means. Based on the description above, this research will focus on discussing legal issues related to serious human rights violations in the Semanggi I case. Firstly, this research will outline the position of the Semanggi I case. Subsequently, this research will analyze the legal resolution of serious human rights violations in the Semanggi I case in Indonesia.

Research Methodology

This research uses a normative juridical method (Efendi, 2018:52). This is a legal research method that examines legal issues based on the regulations governing them. This research uses secondary legal data obtained through literature review. The analytical approach used is descriptive-analytical, which involves describing the legal issues analyzed to then seek answers to the research problems (Juanda, 2016:157).

Research Findings and Discussion

1. Semanggi I Case Position

The Semanggi I case indeed involved numerous human rights violations, but the primary legal violation was the crime against humanity, regulated under Indonesian national law in Article 7 letter b and Article 9 of Law No. 26 of 2000. This article stipulates that the condition for the occurrence of crimes against humanity is the presence of systematic and widespread attacks. The systematic attack in this case, based on the available facts, meets the criteria of systematicity. During the investigation, there was evidence of orders given to security forces on the ground to obstruct demonstrations with a line of leg barriers, as well as verbal statements instructing the authorities not to hesitate to take firm action against demonstrators. Additionally, the element of widespreadness is also fulfilled, as there were cases both before and after Semanggi I where indiscriminate shootings and beatings of students and civilians occurred repeatedly.

In the Semanggi I case, the police and military, in their efforts to disperse and suppress the crowd, engaged in violent dispersals and appeared to be heavy-handed, even resorting to storming nearby campuses. The military and police also used tear gas, water cannons, and salvo shots inappropriately, and more egregiously, they employed firearms with rubber or live ammunition. In international law, the right to humane treatment is enshrined in UDHR Article 5, ICCPR Article 7, CRC Article 37 (a), and CMW Article 17 (1). Meanwhile, in national law, it is stipulated in the 1945 Constitution of the Republic of Indonesia Article 28G paragraph (2) and Law No. 9 of 1999 concerning Human Rights.

In the Semanggi I case, violations of the right to be free from torture are also prominent. According to Article 28G paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the right to be free from torture is regulated, which is also governed by international law in UDHR Article 5, ICCPR Article 7, CRC Article 37 (a), CAT Article 2 paragraph (2), Article 2 paragraph (3), Article 13, Article 16, CRPD Article 15 paragraph (1), and CMW Article 10. However, as occurred in Semanggi I, many students and even members of the general public were physically attacked or abused. In fact, in this case, there were instances of abuse leading to fatalities, as these acts were carried out to control the demonstrations by the crowd control forces.

2. Legal Analysis of Resolving Serious Human Rights Violations in the Semanggi I Case in Indonesia

There are various strategies used in different countries around the world to address past serious human rights violations, ranging from mass trials of past regime supporters to unconditional closure (Prantiasih, 2016:13). In France, for example, there was a "People's Tribunal" against the royal family of Louis XIV in the late 20th century. The central issue that commonly haunts the idea of uncovering past serious human rights violations is the shadow of failure (Marzuki, 2005:51). Indonesia also faced this issue in resolving serious human rights violations in the Semanggi I case.

After facing a dead-end due to the continuous back-and-forth of the Semanggi I case files between the National Commission on Human Rights (Komnas HAM) and the Attorney General's Office, and the differing statements between Komnas HAM through the Human Rights Violations Investigation Team (KKP HAM) stating that the Semanggi I Case constitutes a serious human rights violation that must be resolved through the courts, while the Attorney General stated the opposite. Therefore, in April 2015, Attorney General HM Prasetyo announced that the government decided to establish a Truth and Reconciliation Commission (KKR) to resolve the human rights violation cases. This decision was partly driven by the difficulty faced by the Attorney General's Office in finding evidence during the investigation of the Semanggi I Case. Consequently, it can be concluded that the serious human rights

violations in the Semanggi I Case can only be resolved through non-judicial or reconciliation pathways. This is based on Article 47 paragraph (1), which states:

"Serious human rights violations that occurred before the enactment of this Law do not preclude the possibility of their resolution being carried out by the Truth and Reconciliation Commission"

The opening opportunity for resolving past serious human rights violations through the mechanism of the Truth and Reconciliation Commission (KKR) is another option besides Human Rights Courts. Chairman of the National Commission on Human Rights (Komnas HAM), Imdadun Rahmat, emphasized that the reconciliation decision was made based on the government's political stance. Additionally, another consideration is the absence of ad hoc judiciary specifically dealing with human rights violators. However, to date, the government has not found the right reconciliation concept to resolve the Semanggi I case.

Basically, the Truth and Reconciliation Commission (KKR) no longer has a legal basis, but as emphasized by the Constitutional Court in Constitutional Court Decision Number 006/PUU-IV/2006, this does not preclude efforts to resolve past serious human rights violations through reconciliation in other ways. To develop an alternative reconciliation concept, President Joko Widodo will form a drafting team involving community figures and human rights activists. Chairman of the National Commission on Human Rights (Komnas HAM), Imdadun Rahmat, admitted that it is difficult to enforce the resolution of the Semanggi I case through the ad hoc Human Rights Court route. According to Imdadun, besides the government's political choices, the Attorney General's Office has also not been able to cooperate in following up on Komnas HAM's investigation results (Erdianto, 2017). Based on the description above, it can be concluded that although the government has decided that the Semanggi I case will be resolved through the Truth and Reconciliation Commission (KKR), the resolution of the Semanggi I Case is still at a standstill. In reality, the government has yet to determine the new and appropriate mechanism for the KKR to resolve this case.

Conclusion

The research findings conclude that despite the design of the Truth and Reconciliation Commission (KKR) for resolving the Semanggi I case as a serious human rights violation, the resolution process remains incomplete and can be seen as "stuck in place". In reality, the government has yet to determine the new and appropriate mechanism for the KKR to resolve the Semanggi I case. A suggestion that can be given to the government regarding the resolution of serious human rights violations in the Semanggi I case is to establish a KKR mechanism specifically designed to resolve the Semanggi I case.

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