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Settlement Of Cases Of Serious Human Rights Violations From The Perspective Of Local Wisdom In Indonesia

Hendro Dewanto

Jenderal Soedirman University, Indonesia.

Abstract

This aims of the article to discusss settlement of cases of serious human rights violations from the Perspective of local wisdom in Indonesia. This paper is a normative legal research that is more directed to research on legal principles. Where the focus of the author is what are the obstacles in handling cases of gross human rights violations in Indonesia and how the concept of resolving cases of serious human rights violations in the perspective of local wisdom is. In this perspective, law enforcement by investigators and investigators of gross human rights violations is directed at law enforcement that pays attention to local wisdom. Where the results of the study show that the obstacles in the settlement of gross human rights, one of which is that the investigative agency and the investigator are two different institutions, often the investigator's conclusion is different from the investigator's conclusion regarding the presence or absence of serious human rights crimes in an incident and Law no. 26/2000 concerning the Serious Human Rights Court does not contain provisions governing the settlement of possible differences of opinion between investigators and investigators. Settlement of gross human rights violations can be resolved with local wisdom which leads to benefits in law enforcement.

Keywords: Serious Human Rights Violations, Local Wisdom.

Introduction

Indonesia is a state of law, where all problems are resolved through applicable legal mechanisms, including the completion of cases of gross human rights violations. Whereas serious human rights crimes are one of the special forms of political crimes that have a special nuance, namely abuse of power in the sense that the perpetrators act in the context of government and are facilitated by government power [1]. This crime contains an element of "state action or policy" which in terms of the nature of the crime which has a fairly wide range of victims, such as in crimes against humanity (one of the serious human rights crimes) which requires elements that the act is "committed as part of a wiespread or systematic attack". directed against any civilian population".

In Law no. 39 of 1999 concerning Human Rights, regulations regarding human rights are determined by referring to the United Nations Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention on the Rights of the Child, and various instruments. other international law that regulates human rights.

In essence, human rights are universal, because these rights are inherent in humans [2]. And because humans are basically not the same, there should be no difference in the provision of guarantees or protection of human rights [3]. Judging from the concept of human rights, as reviewed by [4] the basic concept of human rights enforcement is constantly changing from time to time. This is greatly influenced by international socio-political developments, as well as from the priority aspect of enforcement of gross human rights violations.

The issue of delays in the settlement of gross human rights violations cannot be separated from the differences between investigative institutions and investigative institutions as well as the division of their powers. This can be seen in the handling of cases of gross human rights violations that have been tried and have been decided by the court as well as cases that are still going back and forth between investigators and investigators.

Cases of gross human rights violations that have been declared complete by investigators and proceed to trial are [5]; (1) East Timor's gross human rights violations; (2) Tanjung Priok gross human rights violations; (3) Abepura's gross human rights violations.

Even though in the end, based on court decisions that have obtained legal force, the cases of gross human rights violations are still acquitted at various levels of the judiciary [6]. Meanwhile, those that are still in the coordination process, namely cases of gross human rights violations that are still in the process of being investigated and pre-investigated, can be categorized into 2 (two) groups, namely:

Allegations of Serious Human Rights Violations that occurred before the enactment of Law Number 26 of 2000.

For allegations of serious human rights violations that occurred in Indonesia prior to the promulgation of Law No. 26 of 2000, according to data from the Directorate of Serious Human Rights Violations, the Deputy Attorney General for Special Crimes, there are 6 (six) files resulting from the investigation by KOMNAS HAM which have been received. at this time there is still no formulation of the most appropriate settlement, considering that the Attorney General R.I. as the Investigator, in his instructions, concluded that the dossier of the results of the KOMNAS HAM investigation was not complete, meaning that it did not meet the formal and material requirements for an investigation.

The alleged incidents of gross human rights violations are as follows; (1) The events of 1965/1966; (2) The Mysterious Shooting Incident 1982-1985; (3) the 1989 Talangsari incident; (4) Incidents of Enforced Disappearances 1998/1999; (5) May 1998 riots; (6) The Trisakti, Semanggi I and Semanggi II events 1999; (7) KKA Intersection Incident in 1999; (8) Geodong Romah Incident in 1989 – 1998; (9) Incident of Shaman Witches, Ninjas and Crazy People in Banyuwangi in 1998 – 1999;

Allegations of Serious Human Rights Violations that occurred after the enactment of Law Number 26 of 2000.

(1) The 2003 Keupok Jamboe incident; (2) 2001 Wasior Incident (3) 2003 Wamena Incident. The unresolved handling of gross human rights raises various basic questions, especially the concept of separation of institutions and the authority of investigators and investigators of gross human rights violations, whether the integration of investigators and investigators in serious human rights cases is a good solution, or giving more authority to investigators or to investigators.

In addition to solving the problem of serious human rights violations on a penal basis, there are several opinions that direct the resolution of gross human rights violations by paying attention to local wisdom. As is well known, local wisdom is a view of life and knowledge as well as various life strategies in the form of activities carried out by local communities in responding to various problems in meeting their needs. This paper wants to discuss the relationship between local wisdom and the resolution of cases of gross human rights violations.

Methods

This paper is a normative legal research that is more directed to research on legal principles. Where the focus of the author is What are the obstacles in resolving gross human rights violations and law enforcement by investigators of gross human rights violations directed at law enforcement that pays attention to local wisdom.

The writer who is a prosecutor who has served in the field of handling gross human rights violations makes it easier to dig in depth and be directly involved in activities as investigators of gross human rights violations. Here there is almost no distance between the researcher and the object under study. With the qualitative method, the experience of the researcher becomes the main basis for detailing the problems of investigating gross human rights violations in detail and in depth, especially in the context of local wisdom.

Results and Discussion

Obstacles in Handling Cases of Gross Human Rights Violations in Indonesia

In law enforcement against gross human rights violations, Law no. 39 of 1999 concerning Human Rights discusses the Human Rights Court in Indonesia, which is in article 104 (1) which reads "To try gross violations of Human Rights in the form of a Human Rights Court in a general court environment". The specialty of the Indonesian Human Rights Court is that it adheres to the “retroactive” principle, namely adjudicating serious human rights violations, which were committed before Law No. 26 of 2000, this was made possible by the proposal of the House of Representatives and a presidential decree. This retroactive Human Rights Court is called the Ad

Hoc Human Rights Court.

Regarding the trial of gross human rights violations, it cannot be separated from the existence of the National Human Rights Commission (Komnas HAM), which was born with Presidential Decree Number 50 of 1993 concerning the National Human Rights Commission. Since 1999 the existence of Komnas HAM has been based on a law, namely Law Number 39 of 1999 which also stipulates the existence, purpose of function, membership, the principle of completeness, as well as the duties and authorities of Komnas HAM.

In addition to the authority according to Law Number 39 of 1999, it is also authorized to conduct investigations into gross human rights violations with the issuance of Law no. 26 of 2000 concerning the Human Rights Court. Komnas HAM is the institution authorized to investigate gross human rights violations, where in conducting this investigation the National Human Rights Commission can form an ad hoc team consisting of Komnas HAM and community elements.

While the authority to investigate gross human rights violations is the Attorney General based on Law Number 26 of 2000 concerning the Serious Human Rights Court (Law on the Serious Human Rights Court), has several powers, namely to make arrests for the purpose of investigating someone who is strongly suspected of committing gross human rights violations based on preliminary evidence. sufficient". Other authorities also carry out detention as investigators and public prosecutors. it is regulated in Article 21 (1) which confirms: (1) Investigation of cases of serious human rights violations is carried out by the Attorney General; (2) The investigation as referred to in paragraph (1) does not include the authority to receive reports or complaints; (3) In carrying out the duties as referred to in paragraph (1), the Attorney General may appoint ad hoc investigators consisting of elements of the government and or the community.

The definition of investigation itself is regulated in Article 1 number 5 of the Law on the Serious Human Rights Court which states "investigation" as "a series of investigators' actions to seek and find out whether or not an event is suspected of being a serious human rights crime to be followed up with an investigation in accordance with the provisions stipulated in the law. this law". This definition is an adaptation of Article 1 number 5 of the Criminal Procedure Code (KUHAP). The target of the action called "investigation" is the same, namely "event".

The target of "investigation" is "event" which is stated again in Article 19 paragraph (1) letter a, which states that "in carrying out investigations and examinations of events that arise in society, based on their nature or scope, it is reasonable to suspect that serious human rights crimes have occurred. Furthermore, the determination that the incident is the object of the investigation is reaffirmed in the provisions of Article 20 paragraph (1) which states that "In the event that the National Human Rights Commission is of the opinion that there is sufficient preliminary evidence that a serious human rights crime has occurred, the conclusion of the investigation is submitted to investigators. The clear formulation of Article 20 paragraph (1) is very easy to understand, namely that what investigators must obtain is sufficient preliminary evidence regarding the occurrence of "events" (serious human rights crimes).

This interpretation has caused problems between investigators and investigators in relation to the results of the investigation of a number of events that have been resolved by investigators. The investigator, by adhering to the notion of "investigation" as stipulated in the body which must be a role model and guide, is of the opinion that the task and authority of the investigator is limited to discovering whether or not an event is suspected of being a serious human rights crime. So the results of the investigation do not include finding people who should be suspected as perpetrators, which means suspects, because the latter is the task and authority of investigators, while investigators are of the opinion that it is also the duty of investigators to find suspects in human rights crimes.

In the Academic Papers changes have also been proposed for a coercive effort by Komnas HAM. In this case, it should be stated that the authority to carry out coercive measures is an inherent authority of Komnas HAM. It should also be stated that coercion also includes not only summons but other things, for example those who are not willing to submit evidence. In this case, the proposed procedure is for forced summons to be carried out in the event that the summons has been made three times in a row but is still not willing to come or officials, institutions and related parties are not willing to submit documents or evidence. The implementation of coercive measures is proposed to be carried out by requesting the assistance of the Indonesian National Police. This illustrates that so far the authority for coercion is not owned by Komnas HAM.

The difference in interpretation between investigators and investigators is the issue of the absence of a time limit for investigators to return the results of the investigation to the investigator. Article 20 paragraph (3) of the Law on the Serious Human Rights Court stipulates that, in the event that an investigator is of the opinion that the results of the investigation are "incomplete", the investigator "immediately" returns the results of the investigation to the investigator with instructions to be completed and "within 30 (thirty) days from the date of receipt of the investigation. the results of the investigation and the "mandatory" investigator completes these deficiencies. The Law on the Serious Human Rights Court only stipulates the time limit for the completion and submission of the results of the investigation to the investigator by the investigator, which is 30 (thirty) days. This is considered a legal uncertainty in handling cases of gross human rights violations. However, if you look at the instructions given by investigators to investigators and the return of case files from investigators to investigators, the time is not long if you consider the complexity of cases of gross human rights violations. This means that investigators of gross human rights violations, in this case the Prosecutor, will return them as soon as the results of the investigation are received.

Return of the results of investigations of all incidents of serious human rights crimes that have been investigated on the grounds that the results of the investigations are "incomplete", either not sufficient to meet the elements of serious human rights crimes to proceed to the investigation stage" or involve other procedural or administrative matters. . If viewed objectively, it is difficult to prove his material actions because the witnesses presented are witnesses who have not directly heard and seen themselves. This is understood because the incident took a long time. This has often been criticized by Komnas HAM regarding these instructions, even though these instructions are intended to seek the material truth of cases of gross human rights violations.

Another problem is the limited time for investigation as regulated in Article 22 paragraph (1), paragraph (2), and paragraph (3) of the Law on Serious Human Rights Violations which stipulates the time limit for the completion of an investigation, which is 90 (ninety) days. The extension of the investigation is also determined to be 90 (ninety) days for the first extension, and 60 (sixty) days for the second and final extension. Overall, the investigation time is 240 (two hundred and forty) days, or 8 (eight) months. It was also seen from the complexity of the case that it was still considered less than optimal, but in the serious human rights investigations that had been carried out, the prosecutor as the investigator completed it in a timely manner.

Another thing that becomes a problem is the Law on the Serious Human Rights Court which does not stipulate a time limit for the start of the investigation after the results of the investigation are considered complete. In the settlement of cases of gross human rights violations, the start of the investigation after the results of the investigation have been declared complete is not too long.

The absence of provisions governing the settlement of differences of opinion between investigators and investigators in the Law on the Serious Human Rights Court which separates the investigating agency and investigators with the consideration that the results of the investigation can be guaranteed objectivity. Thus, the Law on the Serious Human Rights Court does not adhere to the traditional concept that applies to the settlement of ordinary crimes regulated by the Criminal Code and the procedural law is regulated by the Criminal Procedure Code, and the investigation is a subsystem of investigation. Since the Law on the Serious Human Rights Court is lex specialis and, based on considerations and with a special purpose, the investigation and the investigation are carried out by two different institutions, the investigation according to the Law on the Serious Human Rights Court cannot be viewed as a subsystem of the investigation.

As a result, a situation may arise where the investigator's conclusion is different from the investigator's conclusion regarding the presence or absence of serious human rights crimes in an incident. UU no. 26/2000 does not contain provisions governing the settlement of possible differences of opinion between investigators and investigators as described above. Such a situation will cause the process of resolving human rights crimes to be halted. Therefore, differences of opinion between investigators and investigators must be resolved through the Court for Serious Human Rights Crimes. In this case, investigators and investigators can submit a written application to the Court. The court then examines the difference of opinion and provides its opinion in the form of a binding and final determination. This is a solution that is offered in the Academic text of the amendment to the Law on the Serious Human Rights Court, but what is more important is the

spirit of togetherness between the two investigative institutions and investigators to jointly resolve serious human rights cases without egocentricity and suspicion without reason.

The obstacles mentioned above cause the settlement of cases of gross human rights violations to be protracted, causing legal certainty to be difficult to achieve.

Settlement of Handling Cases of Gross Human Rights Violations from the perspective of local wisdom

Etymologically, local wisdom consists of two words, namely wisdom (wisdom) and local. Other names for local wisdom include local policy (local wisdom), local knowledge and local intelligence. According to the Big Indonesian Dictionary, wisdom means wisdom, intelligence as something that is needed in interacting. The word local, which means a place or in a place or in a place where there is growth, there is life, something that may be different from other places or is in a place of value which may apply locally or may also apply universally.

In the national legal system, as is well known, most of the customary law and local wisdom are unwritten laws, so their development or development efforts are somewhat different from the development of written law, in the form of statutory regulations. However, after all, of course, because customary law is part of national law, if there is customary law which is still living law or law that lives and is preserved in people's lives, efforts to foster it must still be carried out. Talking about local wisdom, we will be very closely related to indigenous, local, or indigenous peoples. In the Indonesian context, customary law is actually a typical Indonesian folk law system as an embodiment of the living law that grows and develops side by side with other legal systems that live in the Indonesian state. Even though it is realized that state law tends to dominate and in certain circumstances it also occurs, state law displaces, ignores, or marginalizes the existence of the rights of local communities and the people's (customary) legal system in the order of implementation and enforcement of state law.

In the past, the legal politics adopted seemed to want to abolish legal pluralism, so that it seemed as if it would not provide space for customary law or religious (Islamic) law. Because the elements of customary law and Islamic law, as well as relevant local wisdom will be transformed or become part of the fields in the national legal system.

In indigenous peoples in Indonesia the term "customary law" is not known and people only know the word "custom" or habit. The term "customary law" was first proposed by Cristian Snouck Hurgronye in his book entitled "De Acheers" (the Acehnese), which was then followed by Cornelis van Vollen Hoven in his book entitled "Het Adat Recht van Nederland Indie". The Dutch colonial government then used the term customary law officially at the end of 1929 in Dutch legislation.

Local wisdom exists in society, communities, and individuals. Thus, local wisdom is a traditional view and knowledge that becomes a reference in behavior and has been practiced from generation to generation to meet the needs and challenges in the life of a society. Local wisdom functions and is meaningful in society both in preserving natural and human resources, customs and culture, and is useful for life. Starting from a common understanding that efforts to realize the enforcement of human rights (HAM) for indigenous peoples carried out by the State is to provide legal protection for indigenous peoples as mandated in the constitution, as regulated in the 1945 Constitution Article 18B paragraph (2) which states "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia. Indonesia, which is regulated by law".

Local wisdom is an ancestral heritage in the values of life that are integrated in the form of religion, culture, and customs. Since Indonesia was established as a sovereign state, customary law has played its own role and in its development, customary law has a special place in the development of national law. In recent years, even in the formation of state law, habits (often called local wisdom) that live in society have become one of the important considerations in the formation of state law, both in the formation of laws and in the formation of regional regulations. The concept of legal pluralism is no longer developing in the realm of the dichotomy between the state law system (state law) on the one hand and the people's law system (folk law) and religious law (religious law) on the other.

The concept of law enforcement using a local wisdom approach should be able to be applied in handling cases of gross human rights violations that are not ordinary crimes. Identified the differences between gross human rights violations and ordinary crimes as follows [10]; (1) Serious

human rights violations are universal, while in ordinary crimes, local content is more dominant; (2) Serious human rights violations are systematic, widespread, and collective in nature with victims who are collective, while ordinary crimes are spontaneous, premeditated, and casuistic with victims who are generally individual; (3) Serious human rights violations can be prosecuted and tried in any country, while crimes are usually prosecuted and punished in the country where the crime was committed (locus delicti). Suspects/defendants are prosecuted and tried in other countries depending on the bilateral agreement agreed by each country; (4) For gross human rights violations, the principle of "ne bis in idem" can be deviated, while for ordinary crimes the principle of "ne bis in idem" can be deviated; (5) Serious human rights violations are international crimes while ordinary crimes are "local crimes" or "national crimes" and are not universally recognized, and; (6) Human rights violations apply in addition to national standards as well as international standards, while for ordinary crimes only national legal standards apply.

Seeing the various differences of opinion between investigators and investigators of gross human rights violations, it is necessary to think about the concept of law enforcement that is oriented towards local wisdom. Local wisdom is a view of life and knowledge as well as various life strategies in the form of activities carried out by local communities in responding to various problems in meeting their needs. Local wisdom is all forms of wisdom based on good values that are believed, implemented and continuously maintained for a long period of time (from generation to generation) by a group of people in a certain environment or area where they live. Etymologically, local wisdom consists of two words, namely wisdom and local.

Other names for local wisdom include local policy (local wisdom), local knowledge (local knowledge) and local intelligence (local genious). According to the Big Indonesian Dictionary, wisdom means wisdom, intelligence as something that is needed in interacting. The word local, which means a place or in a place or in a place where there is growth, there is life, something that may be different from other places or is in a place of value which may apply locally or may also apply universally.

While the notion of Local Wisdom according to Law no. 32 of 2009 are noble values that apply in the order of people's lives which aim to protect and manage the environment in a sustainable manner. [7] Local wisdom is defined as wisdom in the traditional culture of ethnic groups. Wisdom in a broad sense is not only in the form of cultural norms and values, but also all elements of ideas, including those that have implications for health care technology, and aesthetics. With this understanding, what is included as the elaboration of local wisdom is the various patterns of action and the results of its material culture.

The term local wisdom is the result of the translation of local genius which was first introduced by Quaritch Wales in 1948-1949 which means the ability of local culture to deal with foreign cultural influences when the two cultures are related [8].

Various approaches known in the social sciences, sociology, and legal anthropology can be used to explain the problem of dispute resolution based on local potential. However, to find out where the differences in these approaches are, especially with a normative legal approach, below is the normative legal theory from Roscoe Pound which states that law can be used as a social engineering tool. This theory arises based on the assumption that social relations between individuals or groups that occur in society are very sensitive to the arrival of human control. Of course, what this human means is people who use formal legal instruments as a means of controlling. This is different from the sociological approach, for example the theory from Cochrane that the community itself controls social relations. This means that basically, the community itself is active in finding, choosing, and determining its own laws. The latter view becomes important when there are disputes over family, land, environment, natural resources of the same type which are resolved through a sociological-inductive approach.

Based on this theory, it is very possible that local customs and culture can be an alternative for the basis of consideration in making policies, as well as solving problems that arise both criminal and civil matters, especially problems that are minor crimes, so that not all criminal matters must be processed through court.

The crisis resulting from the break in the continuity of social relations and customs can lead to conflicts in society, one of which manifests in gross violations of human rights [9]. The emergence of serious human rights violations can

result in the division of the unity of the Indonesian nation. This is where it is necessary to resolve gross violations of human rights in two ways. First, through formal courts is one of the institutions for resolving conflicts in society. However, formal justice has the following weaknesses; (1) The judicial process takes place on the basis of hostility or conflict between the disputing parties, considering that one party is positioned as the opposite party to the other party; (2) The judicial process runs on the basis of formal, static, rigid and standard legal rails; (3) The judicial process is often unable to capture the socio-cultural values that arise in dispute cases due to the judges referring to standard formal rules; (4) The judicial process is tiered from district courts, high courts, and cassation institutions. If the judge's decision is felt to be unsatisfactory for the disputing parties, the disputing parties may submit a re-review by bringing a novum (new evidence).

The weaknesses above are what cause dispute resolution through formal courts to be protracted. Therefore, alternative solutions are needed by using conflict resolution institutions that involve the parties directly involved to organize and find their own decisions with or without involving third parties. This dispute resolution path is common in the community, which uses local potential because it is seen as efficient, sufficient to satisfy the disputing parties. Likewise, cases of gross human rights violations in Indonesia must be resolved by an institution that adopts the values of local wisdom of the community.

A real example of the influence of local wisdom on reconciliation can be seen in the reconciliation that took place between victims/families of PKI victims in South Blitar and Nahdlatul Ulama. There was a new awareness among the Nahdiyin there that they were used by the military to destroy the PKI. The old kyai are upset, on the one hand, they agree with the idea of “making up again” with the former PKI/BTI and their families; on the other hand there is a sense of regret that is not easily removed. That is why they support reconciliation, but not explicitly stated. On the other hand, former PKI/BTI and their families were more enthusiastic about welcoming this social reconciliation. They feel again “diuwongke” (humanized).

There is an impression, as stated by Budiawan, that the psychological burden of the past is actually stronger among the “perpetrators” than the “victims”. With the psychological burden among (some) old kyai, reconciliation is not in the format of forgiveness such as Eid al-Fitr, or "public confessions" like in South Africa, but is packaged in a joint art performance, to commemorate the Maulud of the Prophet Muhammad SAW with a joint committee. Planning, financing and carrying out activities are discussed and worked on together. The choice of joint art performances (kentrung among NU, and mixed-ups from ex-tapol families) is a tactic of young NU activists to facilitate the approval of local authorities (Danramil, Kapolsek and Camat).

So that the message of reconciliation is not blurred because it is still difficult to express verbally, a joint art performance was deliberately held on the platform of the Trisula Monument. By being held in the courtyard of the monument, the two groups, who are now sitting side by side, were reminded of their opposing positions in 1968: the PKI/BTI as the target of the military operation, while the NU as the support/back for the operation. So far, both parties have viewed the moment with traumatic feelings. But now through joint art performances and in different psychological situations, the meaning of "historical sites" has changed. The monument has become a witness for social reconciliation. Thus, a new event is created to neutralize the bitter memories of the past and at the same time this new event is recorded as a collective collective memory. There is no public testimony like in South Africa, but the truth has been revealed. Regarding reconstruction among the people of South Blitar, it can be said that this form of reconciliation takes the values of local wisdom without using a third mediation. This is what distinguishes between the reconciliation that is built by the community itself with local wisdom in it and the reconciliation that the Indonesian Government wants to build in the form of a law

Conclusion

One of the obstacles in resolving serious human rights is that the investigative agency and the investigator are two different institutions, often the investigator's conclusion is different from the investigator's conclusion regarding the presence or absence of serious human rights crimes in an incident and Law no. 26/2000 concerning the Serious Human Rights Court does not contain provisions governing the settlement of possible differences of opinion between investigators and investigators. Settlement of gross human rights violations can be resolved with local wisdom which leads to benefits in law enforcement.

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