



Political and Legal Configurations Emergence of Laws Concerning Human Rights After the Fall of the Orde Baru Regime

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ABSTRACT

This research was conducted using a legal sociology approach because it wanted to open a dialectical perspective from the political and legal constellation that occurred in Indonesia, both in the New Order regime era and in the transitional era towards democracy so that the Law on human rights emerged. Data collection was carried out using a literature study in the form of a literature review and a documentation study. While the data analysis was carried out in a qualitative descriptive manner (content analysis). The results of this study indicate that the existence of Law No. 39 of 1999 concerning Human Rights did not appear suddenly and from a critical awareness of the government, but was the result of a long struggle from the dynamics and political and legal struggles that existed in Indonesia during the authoritarian regime. the new order, pressure from the international community, as well as influencing the political and legal configuration after the fall of the New Order regime. The political and legal configurations of the New Order era were hegemonic, tyrannical and centralistic. The state becomes a terror power (state terrorism), a corporate state (state corporatism), a patron client state (state clientelism) and becomes a state that rules public opinion (state discourse). Systemic violations of human rights led to demands for total reform from the people which were very massive and demanded Suharto step down from the presidency. Meanwhile, politics and law in the post-New Order regime era were marked by a spirit of respect for human rights. The political configuration experienced liberalization and the law required reforms to be based on the universal values of human rights. Departing from the sociological facts of the political and legal configuration of the New Order and its destruction towards a democratic transition (reform), the DPR/MPR political decree was realized in the form of TAP MPR No.XVII/MPR/1998 concerning Human Rights. This political decree is the soul of the emergence of the Act. No. 39 of 1999 concerning Human Rights, Law No. 26 of 2000 concerning the Human Rights Court, and other laws with dimensions of human rights in the reform era.

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1. INTRODUCTION

Talking about human rights is interesting and even today it is still an actual topic. The discussion of human rights became an important discussion after the occurrence of World War II and the formation of the United Nations in 1945. The term human rights is associated with the debate over the concept of natural law where the existence of human rights is seen as a social reality necessity that is universal. The implementation in the field has undergone significant changes in accordance with the needs and conditions that developed in the field.

Discourses about human rights initially emerged and developed in developed countries, with the rituals of globalization being so fast and the flow of information that was no longer bound by distance and time, the discussion of human rights eventually expanded and became an interesting study in world countries, especially in country that had just released from colonialization. Including one of them is the country of Indonesia where in its history Indonesia has just experienced independence from colonialism, namely in 1945 it was able to escape colonialization and become independent.

As a developing country and being a member of the United Nations, it is imperative that the Indonesian people be involved in and support the United Nations agenda, including agreements concerning human rights. So that in this context requires the Indonesian state to ratify international human rights instruments in accordance with the philosophy of Pancasila and the 1945 Constitution and the culture of the Indonesian nation.

Significant developments in the promotion of human rights at the international level where conceptually the dichotomy between civil and political rights as well as economic, social and cultural rights on the other hand stipulated in the two 1966 international covenants has been resolved by agreeing on the recognition of the right to development (Right to Development) as stated in declaration on the right to development (Declaration on the Right Development) and was accepted by the General Assembly of the United Nations (MUPBB) in 1986.

Although the 1986 declaration is not a legal instrument, it outlines a very basic concept, namely the concept of the main obligation of the state to create favorable national and international conditions for the realization of the right to development.

When human rights discourse becomes an international and global issue, this often creates conflicts between western countries and third world countries. The concept of cultural diversity between countries is used as the main reason by developing countries to stem human rights issues whose standards are made by the west.

The strong reflexivity of the Soeharto government towards human rights gave birth to criticism from various parties and more or less influenced the existence of the Soeharto government. As an international community, Indonesia necessitates following international conventions, especially in this context is the issue of human rights. Finally, in 1993 the Indonesian government established the National Human Rights Commission (KOMNAS HAM). The establishment of a national human rights commission was at least influenced by the strengthening of the issue of human rights violations in Irian Jaya and East Timor which was increasingly becoming an international issue and at the same time the world political constellation confirmed the end point of the destruction of communism.

The authoritarian New Order regime which was overthrown by student forces and pro-democracy forces left many problems of human rights violations. The Indonesian nation experienced forms of injustice in the New Order regime, especially the existence of human rights and that is what urged pro-democracy forces and the people who directly experienced the violence of the New Order authoritarian regime and became victims of tyranny to demand justice and be resolved legally. However, it is in the context of this settlement that a very complicated problem is encountered, where the political power of the New Order regime is still very strong and defeats the forces of civil society and pro-democracy and there are still questions about the existence of legal instruments that provide instruments that protect human rights and in what court the settlement is.

In the perspective of universal values, crimes or violations of human rights are nothing new. Human rights values are basic rights that are naturally inherent in every human being, are universal and lasting so that they must be protected, respected and must not be ignored, diminished or seized by anyone.

2. RESEARCH METHOD

2.1 Object of research

The object of this study is the political and legal configurations both in Indonesia and in the international world which have colored the emergence of Law no. 39 of 1999 concerning Human Rights and including Law no. 26 of 2000 concerning the Human Rights Court where both appeared after the fall of the New Order regime.

2.2 Data source

The data used in this research is secondary data in the form of legal materials. The legal materials used consist of:

a. Primary Legal Materials

The primary legal materials that researchers use include: the 1945 Constitution; Law No. 39 of 1999 concerning Human Rights; Law No. 26 of 2000 concerning the Human Rights Court; MPR Decree No. XVII/MPR/1998 concerning Human Rights.

b. Secondary Legal Materials

The secondary legal materials that the author uses in this research include: Scientific books, encyclopedias, collections of writings, papers of newspapers, magazines, journals, articles and internet home pages.

c. Legal Materials

Tertiary Tertiary legal material, namely legal material that provides instructions and explanations of primary and secondary legal materials. The tertiary legal materials that the authors use in this study include: Legal Dictionary; English dictionary; Indonesian dictionary.

2.3 Data collection technique

a. Literature study, namely by collecting literature related to this research, then analyzed and conclusions drawn.

b. Documentation Study, namely by collecting official institutional documents in the form of minutes of meetings and others related to political and legal configurations or constellations both in Indonesia and internationally which directly or indirectly encourage the existence of Law no. 39 of 1999 concerning Human Rights and including Law no. 26 of 2000 concerning the Human Rights Court to then be analyzed in depth and draw conclusions.

2.4 Approach Method

The approach method used in this study is the legal sociology approach, which is a method that reviews and analyzes research objects with an emphasis on sociological aspects which incidentally encourage and influence the objects in research. In this case, it examines and analyzes the political and legal constellation that led to the emergence of Law no. 39 of 1999 concerning Human Rights and including the emergence of Law no. 26 of 2000 concerning the Human Rights Court. While other aspects are complementary aspects.

2.5 Data analysis

It is done with descriptive qualitative, namely the data obtained is presented descriptively or the data is described through parsing sentences and analyzed qualitatively (content analysis) with the following steps: research data is classified according to the research problem, results are classified again and after that it is systematized for later data analyzed to form the basis for drawing conclusions.

3. RESULTS AND DISCUSSIONS

3.1 Configuration of Politics and Law in the New Order Era

The political configuration in general of the New Order regime is single (homogeneous) and monolithic. Based on the theory of division of entities in modern state forms as expressed by Alfred Stepan that this single and monolithic character occurs at the state and society levels.¹

At the state level, this can be seen from the relatively solidity of all the elements in the state entity. This condition will systemically bring the country to a hegemonic, single and monolithic character. Meanwhile, at the level of society with hegemony, single and monolithic, it is certain that society can be controlled, subdued and systemically directed. Political conditions like this then

¹Alfred Stepan, *Military and Democratization: The Experience of Brazil and Several Latin Countries*, Graffiti Main Library, Jakarta, 1996. pp. 13-14

encourage the form and format of singleness and monolith in society, both in the framework of community relations with the community (society-society), as well as in the form or format of public relations with the state (state-society).

The political configuration of the new order which was hegemonic, single and monolithic was built through the solidity of the existing elements in the country both vertically and horizontally. Horizontally, the state is very strongly consolidated with the support of the military (army), bureaucracy and political parties which are manifested by the existence of the Golkar party. Meanwhile, vertically, the state carries out systemic engineering by building centralization and domination of the central government within the framework of the relationship between the central government and regional governments. This condition is clarified by the statement that the state is the personification of the army, bureaucracy, Golkar and the central government.

The politicization of elections and the misunderstanding of democracy in the context of elections ultimately sterilize the existing representative (legislative) institutions. Where this institution should have become a representative media for the people to channel their aspirations, in the end it only became a justification for the policies made by the New Order regime. The function of control and check and balance which is the duty of the legislature does not function at all. To maintain legislative loyalty to Suharto (executive), a policy of control and submission was carried out which was manifested by the Special Research mechanism (Litsus) and the recalling system for those who tried to oppose Suharto's (executive) policies.

The hegemonic character can also be seen from a vertical perspective relating to the administration of regional government. The threat of national disintegration reflected in the dissatisfaction of several regions in the 1950s and 1960s, as happened in West Sumatra, South Sulawesi and Aceh, made the New Order regime very confident that by using the principle of centralization it would be able to solve the problem of disintegration. But ironically, the New Order's centralized conception was often accompanied by repressive mechanisms and violence, as was done to the people of Papua and Aceh. This condition in its journey has implications for the small role of the regions and continues to be overshadowed by the hegemony of the central government.²

The politicization of power with a very systemic strategy of control and submission ultimately gave birth to the character of societies (Societies) to be peaceful, orderly and secure. However, if you analyze it and feel it, it feels very artificial and hypocritical because behind it all there is violence, silencing, intimidation, confinement and the increasing wealth of the Cendana family and their retainers. Meanwhile, in the context of the relationship between society and the state (Society-State), the state has become a formidable, powerful, repressive, frightening and authoritarian force and society is getting smaller, powerless and oppressed. Related to this view, Anderson explicitly stated that the New Order regime must be understood as the revival of the state and its victory vis a vis the people and nation.³

The configuration of the New Order regime which carried out systemic engineering to carry out the politics of control and submission at the community and state level. This context certainly encourages legal products as part of the political duties of people's representative institutions (legislatures) to devote and secure all policies and missions to control and submit to the power of the New Order regime. So that the law that should be enforced, sacred and must be obeyed by all elements of society, eventually becomes a product that is meaningless, bombastic, oppressive and necessitates deconstruction.

In Jakarta during May 1998 it was recorded that at least 1,200 people died as a result of the burning of a number of shopping centers and shootings by security forces who 'duffed' the riots. In addition, dozens of student, labor and youth activists were killed by gunshots by security forces in various demonstrations between 1998-2000, while those who were injured either seriously or lightly were countless.

²Colin MacAndrews and Ihsanul Amal (editors), Center-Regional Relations in Development, Raja Grafindo Persada, Jakarta, 2000, Chapter III

³Benedict RO'G Anderson, Old State, New Society : Indonesia's New Order In Comparative Historical Perspective, Journal of Asian Studies, Vo. VLII, No 3, 1983 in Cornelis Lay and Pratikno, Komnas HAMop.cit., page 33

In Banyuwangi in 1998 there was a pursuit and killing of a number of religious teachers and students who were accused of being 'witchcraft'. The most violent acts occurred in September-October, ahead of the MPR Special Session in Jakarta, and resulted in at least 250 deaths.

In Ambon, violence began to explode in January 1999 and 177 incidents were recorded within one year. The government recorded 2,573 people died while 3,475 others were seriously and lightly injured. During January-June there were a number of incidents which again claimed hundreds of lives and serious injuries.

The tragic incident of violence which was the heinous behavior of the New Order forced more than a million people to leave their homes, looking for and not always succeeding in finding a safer place. Some refugees are accommodated in government buildings such as military headquarters, football stadiums or large meeting places, as happened in Pontianak, Kupang, Ambon and Buton. However, a significant number fled to other areas, living in places of worship or residents' houses, and sometimes in open fields with plastic tents. Humanitarian agencies such as the UNHCR or USCR usually only record 'legalized refugees' who are housed together in the open or have been previously counted by government officials, but are unable to track mass movement flows in rural and mountainous areas,

3.2 Attitudes of the International Community Against the New Order Regime

Globalization is a new phenomenon and its meaning is very universal. Some people see it as a social process, a natural process and a historical process which conditions one environment to be interdependent, integrative and correlative. One of the characteristics of globalization can be seen from the relationship between countries which causes the loss of national boundaries (borderless world). Globalization has the effect of eliminating barriers between countries, everyone can know up to what concerns the existence of a country's honor. This confirms that countries are actually in a world village and each other pays attention to each other and is involved in continuous (sustainable) communication.

In a global society, one of the issues that receive sharp attention is political frenzy, violence, and dehumanism. So that in the end these issues agglomerate and give birth to collective solidarity at the global community level, this is what we usually know as international civil society solidarity to unite together against injustice and violence perpetrated by the state, and even capitalism in the current era.⁴

In the context of the condition of Indonesian society, which during the New Order government was led by a centralized, hegemonic and tyrannical regime, it experienced a significant deadlock in global civil society communication. Communication and interaction was closed and maintained systemically by the forces of the New Order regime. This is very evident from the lack of upheavals such as demonstrations, issues of media resistance or books exposing the rottenness and violence of the New Order, if any were to be banned on the grounds of subversion. Everything has been systematically set up and engineered so that all existing elements of society are submissive and well conditioned not to fight against the policies of the New Order. At that time the New Order regime and its networks to silence and subdue critics were very strong and systemic. Even the people in general in Indonesia do not realize that they have actually been trapped in the New Order's hegemonic engineering. To see these facts in general, we have described the political and legal configurations in the New Order era above.

In terms of pressure from the international world, it was also recognized by BJ. Habibie said that he had been contacted and received input from world leaders regarding issues in Indonesia, especially the cases that occurred in East Timor, UN Secretary General Kofi Annan, British Prime Minister Tony Blair, President Nelson Mandela from South Africa and even met and wrote letters. by Australian PM John Howard, as well as the urging of the international human rights community. So he came to a conclusion and adopted a policy, firstly, East Timor was not an Indonesian colony and the reason for the MPR in 1978 to accept East Timor was for reasons of equality of fate. Second, the

⁴Regarding the consolidation of international civil society, see Andi Widjajanto. Dikk, *Transnationalization of Civil Society*, LkiS, Yogyakarta, 2007, page 37

prolonged resolution of the problem at the United Nations regarding East Timor could hinder the course of reform. And third,⁵.

3.3 Changes in Political and Legal Configurations After the Fall of the New Order Regime

It is undeniable that Soeharto's resignation from the position of President on May 21, 1998 after experiencing enormous pressure from the national community or from the international community, had a significant impact on changes in political and legal configurations in the following era.

In the political context, this change was marked by the occurrence of political liberalization which at the same time became the beginning of the transition to democracy in Indonesia. Even though it is well understood that existing political liberalization does not necessarily lead to democracy, what is important is that when the change is rolled out, various political actors will emerge and involve themselves in the process of interaction between political forces.³² Where this political liberalization is very visible from the various policies implemented taken by the Habibie government such as the policy of easing the mass media in its reporting, the establishment of political parties, the recognition of differences of opinion, the repeal of the subversion law, the release of political prisoners and other policies.

In its development, this political liberalization has affected many things, including, first, the party system has changed, marked by the emergence of political parties participating in elections. Where no less than 150 political parties were born and hoped to take part in the elections in 1999, but after the selection was carried out by the KPU, only 48 political parties were finally determined. This is completely different from the previous election which was only attended by 3 political parties namely Golkar, PPP and PDI. And ironically, it is certain that the Golkar party will win.

Second, political liberalization is also marked by the emergence of various ideological currents such as Islam, nationalism, socialism, Confucianism and so on with various variants. This was completely different at the time of the New Order regime which only allowed Pancasila ideology as a political principle and all institutions for reasons of stability and development, which therefore led to very systemic discrimination against human rights in the New Order era.

Third, there is a shift in power relations between power institutions and government institutions both at the local and national levels. This happens when strengthening the role of political parties in its development also continues to strengthen people's representative institutions. The dominance of the people's representative institutions, the MPR, DPR and DPRD, in the governance process has become very prominent. It is not uncommon for very sharp friction to occur between the legislature and the executive branch⁶. An example that is still fresh in our minds is the dismissal of Abdurrahman Wahid as President on the grounds of Bullogate and Bruneigate which turned out to be unproven and fraudulent, and at the local level as in Sampang and Buleleng Regencies, the DPRD is able to demand and decide on the dismissal or appointment of local regional heads. This is very different from the order regime, whose representative body, quoting Iwan Fals' song, is only a "choral institution that only sings songs of agreement" by order of the executive.

Fourth, the government system that was previously centralized, after the fall of the New Order regime, became decentralized. Even the choice of this decentralization system is the only answer to the strengthening discourse on national disintegration due to the central government's tyranny towards regional governments in the New Order era.

3.4 Dialectic and Dilemma of Social Politics of Reform

The authoritarianism and violence of the New Order were finally revealed to the public and found their momentum in 1998. Nothing could stop the people's anger from covering up the sins of the New Order. Various media that were confined during the New Order era showed their objectivity by releasing data on violence and lists of manipulations by the New Order. The people who had been "imprisoned and silenced" finally took to the streets to cry out for liberation from the New Order's tyranny. Intellectuals who were wronged during the New Order regime finally spoke up and rebelled. Elements of the nation screamed and voiced the injustices and lies of the New Order regime,

⁵Baharuddin Jusuf Habibie, *Decisive Moments, Indonesia's Long Road Towards Democracy*, THC Mandiri, Jakarta, 2006, p. 237.

⁶Max Boli Sabon, *Congruence of the Right to Development, Article 33 of the 1945 Constitution, and Types of Rule of Law and Its Implications for Types of Material Rule of Law*, Dissertation, Bandung: Graduate Program, Padjadjaran University, 2006, p. 513

occasionally "cursing" and "rotting" the behavior of the regime which was tyrannical and did not side with humanity and justice.

Hatred accompanied by hopes for change, the people continued to raise their voices, even jostling amidst the arrogance of the military apparatus which were lined up with a guardrail. This enthusiasm was mixed with high euphoria that they had never felt during the New Order regime's hegemony. This euphoric spirit eventually pushed some people to commit violence and deprivation, such as looting shops, vandalizing, throwing stones and so on. This incident is a regret in itself and a question that is constantly present, why? Is this how modern Indonesian society was, which was previously known as a friendly society?

When studied scientifically, this context is consistent with Hannah Arendt's research in the era of the authoritarian Nazi regime Hitler (Germany) on the Holocaust event "the atrocities of Eichmann, a chief architect and executor in the final solution in the mass slaughter of Jews"⁷. Theoretically, the state violence perpetrated by the New Order for 32 years in power with its hegemonic, centralistic, militaristic and authoritarian system had an intensive effect on the psychological, structural and cultural aspects of society to behave the same as the New Order "militarism" system.

The New Order is a history of violence, manipulative and full of human rights violations, so that a Fein observer, as quoted by Rieke Diah Pitaloka, revealed that the history of New Order violence was almost as massive as that carried out by the Pol-Pot regime in Cambodia. The record of New Order violence which began with the 1965-1966 massacre of people accused of being the PKI became one of the most horrific events of the 20th century. Without wanting to continue to describe the sins of the New Order totalitarian regime, the researcher wants to emphasize that the New Order is a dark history of "tyrant" rule that can be compared to the regimes of Hitler, Stalin, and Khmer Rouge in Cambodia.

Even though objectively the New Order was an actor of violence and committed human rights violations, hopes for better changes were made possible by many obstacles and it cannot be denied that this reform was just a short break from the New Order regime, to then revive. We can see this from the political constellation of the push for reform itself, which was also motivated by internal conflict and necessitated a reorientation and internal reform of the new order to adapt to the reality after the failure of centralized leadership. So that with the long experience of the hegemonic practice of the leadership of the New Order regime, it is very likely that there will be a revival of the New Order regime volume II and will obscure the mistakes of the New Order regime.

3.5 General Map of the Constellation of Changes in the Attitude of the New Order Regime and After its Fall Against Human Rights Legal Norms

In order to facilitate the mapping of the constellation of changes in attitude by the state towards human rights norms, the following will present an approach written by Thomas Risse and Kathryn Sikkink known as the spiral model approach. This spiral model approach describes the stages of interaction, the state and the international community in accepting universal international human rights norms and transforming them into the national legal system. These stages consist of the repression and activation of network stages, the denial stage, the tactical concession stage, the prescriptive status stage, and the consistent rule compliance stage.). However, to examine the New Order regime, it will only be stated important stages including the stages of repression and formation of networks, the stages of denial, and the stages of tactical concessions.

4. CONCLUSION

In general, the political and legal configuration of the emergence of Law no. 39 of 1999 concerning Human Rights is mapped in two eras, namely:

First, the era of the New Order regime, where politics and law were transformed into a centralized, hegemonic and tyrannical power. Politics was controlled systemically by the New Order with the formation of the Golkar party with its various devices. Meanwhile, law is politicized and used as a tool to manipulate the public to submit to and obey the power of the New Order regime and is obliged to justify all of its policies. In the end, the state was transformed into a terror power (state terrorism), became a corporate state (state corporatism), became a patron client state (state

⁷Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, Penguin, New York, 1994, p. 83. See also Rieke Diah Pitaloka, *State Violence Spreads to Society*, Galang Press, Yogyakarta, 2004, p. 45

clientelism) and engineered public opinion (state discourse). The New Order state became very strong (state strong) and committed human rights violations.

Second, is the era of democratic transition which was marked by the resignation of Suharto and replaced by BJ. Habibie as President. This change is one of the climaxes of the people's demands for total reform. In general, the political and legal configuration in the era after the fall of the New Order regime was marked by a spirit of respect for human rights. Politics underwent liberalization in the form of the opening of democratic faucets such as the policy of easing the mass media in their reporting, the establishment of political parties, the recognition of differences of opinion, the revocation of subversion laws, the release of political prisoners. Meanwhile, in the legal context, reorientation and demolition take place in the form of legal reforms that must be based on universal human rights values.

The two eras above between the New Order regime and the transitional era towards democracy (reform) were two dialectical, confrontational and constellational eras and events, giving birth to political and legal reforms and forcing the DPR/MPR institutions to make political decisions in the form of TAP MPR No. VII/MPR/1998 concerning Human Rights, as well as the GBHN directives stipulated in TAP MPR No. IV/MPR/1999. This political decree is the spirit of Indonesian reform and is the spirit of the emergence of Law no. 39 of 1999 concerning Human Rights, Law No. 26 of 2000 concerning the Human Rights Court and several other laws which have dimensions of human rights after the fall of the New Order regime.

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