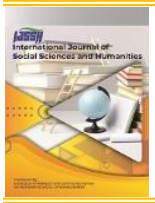

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The Concept of The Principle of Non Retroactive In Crime Human Rights In Indonesia

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Abstract

This research analyzes how human rights cases are ressolved in Indonesia from the perspective of the concept of the non-retroactive principle. So far, regulations regarding the application of the concept of the non-retroactive principle have given rise to debate and views of the pros and cons. The method used is normative legal research. The approach take in this research uses a conceptual approach, cases, and legislation. Data collection in this research was carried out using library research to search for primary, secondary, tertiary legal materials. The results of this search indicate that the exception to the non-retroactive principle in cases of crimes against human rights in Indonesia is still insufficient. Many of the perpetrators of these crimes use the constitution or laws as a legal shield. At the another side, the slow court process in trying criminal cases that occured in the past is the result of factors in the legal system that were not developed seriously. This proves that the government works not based on awareness, but because of pressure from the public.

Contents

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Introduction

Human rights crimes are a serious threat and are of international concern. Adhering to several juridical instruments such as national and international instruments, every country is obliged to resolve and prosecute perpetrators of human rights crimes, especially cases of extra ordinary human rights crimes that occurred in the past. This is because human rights crimes that occurred in the past have the nature of jus cogens, which means that serious human rights crimes are capable of having legal implications for states to carry out their responsibilities in the form of prosecuting and punishing the perpetrators towards the international commuunity as a whole (Rawung, 2017).

In Indonesia, the applicable laws in handling cases of crimes against human rights are unlimited in their application, both from respectable circles to civilians, are must remain subject to the applicable laws. However despite this, the enforcement and punishment of cases of crimes against human rights in Indonesia which have been stated in positive law and a number of statutory regulations, in fact there are still many obstacles to the implementation of human rights principles and concepts (Q.C 2002). Many perpetrators who are involved and responsible for several cases of human rights crimes are still able to live freely from prosecution, which has resulted in the perception that legal justice is not upheld in these cases because the authorities act as tools of power, not as tools of the state. If the problem of human rights crimes is not resolved immediately, it could result in prolonged stigmatization of the authoritarian regime and could ignite at any time into horizontal conflict. This leads to the fact that there are still many cases of human rights crimes in the past which have resulted in stigma for the victims without any clarity as to when these cases will be resolved soon.

In connection with the issues of human rights crimes cases in the past, especially before the enactment of the Law regulating the Human Rights Court, several efforts were made to uncover this case, namely by enforcing the law retroactively. This is in accordance with the contents of Article 43 paragraph (1) of Law No. 26/2000 concerning the Human Rights Court which reads : “serious human rights violations that occured before the promulgation of this Law, shall be examined and decided by an Ad Hoc Human Rights Court “. And explanation of Article 4 of Law No.39/1999 which states :” the right not to be prosecuted on the basis of retroactive laws can be excluded in cases of serious violations of human rights which are classified as crimes against humanity”.

The provisions in the Article above are considered by some people to violate the principle of non-retroactivity as contained in the provisions of Article 28 I paragraph (1) of the 1945 Constitution (UUD 1945), which contains :” the right to life, the right not to be tortured, the right to freedom of mind and heart conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under anything”.

In Indonesia criminal law, there are several controversies arising from deviations from the non-retroactive principle which are considered to be contrary to Article 1 paragraph (1) of the Criminal Code (KUHP), which reads :”no act can be punished before there is a law that regulates this act”. This provisions is a manifestation of the main pillar of criminal law, namely the principle of legality which rejects the application of law retroactively (Ali and Nurhidayat, 2011).

Even though the legal prohibition applies retroactively, it is not possible that there are no restrictions or exceptions to its application. Exceptions to the non-retroactive principle can still be applied if justified by Internasional Law, as in Article 15 paragraph (2) of the ICCPR which clearly regulates limitations on this principle. In practice, Internasional Law shows that serious human rights crimes in the past can be applied retroactively (Bagir Manan, 2006).

In the enactment of Law No. 30/1999 and Law No. 26/2000 there were events that were the background to the formation of this law, namely the opinion poll in the case of Timor-Timur in 1999 which according to some people in this case included the International community views that crimes against humanity have occured. The International pressure by the United Nations (UN) to immediately establish an Ad Hoc Court such as the ICTY and ICTR was thwarted by the Indonesian government. This happened because the Indonesian government stated that is was still able to prosecute and punish perpetrators of human rights crimes based on Indonesian national law. Due to this, the Indonesian government issued Law No.39/1999 and Law No.26/2000 (Parthiana, 2004).

The two act above were respectively enacted and promulgated on Sept 23th, 1999 and Nov 23th, 2000 following which the Ad Hoc Human Rights Court was established. With this, Indonesia trying the alleged

perpetrators in the East Timor case, can apply this law in resolving the case. If we look at the time it came into force and its implementation, namely in case of violations that occured before this law came into force, it clear that this has violated the principle of non-retroactivity in practice.

Deviations from this non-retroactive principle still give rise to a lot of pro and cons. Several groups reject the implementation of the non-retroactive principle based on their view that this principle is contrary to the main principle in Indonesia criminal law, namely the principle of legality. Meanwhile, the group that supports the implementation of the non-retroactive principle is based on the Indonesia criminal law as positive law which has not been able to reach human human rights crimes which are categorized as serious human rights crimes, especially those that occurred in the past. Therefore, through this article, the authors wants to study in more depth to find out and understand deviations from this non-retroactive principle in view of Indonesian human rights law, as well as how it is implemented in handling cases of human rights crimes in Indonesia.

Materials and Methods

The type of research used in this research is normative legal seacrh, namely legal research to find legal regulations, principles and doctrines to answer relevant legal questions. This normative legal research was carried out to answer current legal problems. The approach metod used in this research is a statutory approaach. This legislative approach is carried out to examine laws and regulations related to the legal issues being handled. The legal materials used in this research consist of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials come from statutory regulations. Secondary legal materials come from books and journals related to this research problem. Tertiary legal materials are sourced from KBBI, Encyclopedia, and Black Law's Dictionary.

Results and Discussions

Non-Retroactive Principle Concept

In national and International law there are principles that apply universally, one of these principles is the principle of non-retroactivity. The non-retroactive principle has existed and been a general principle since the 19th century because it applies to all areas of law. The non-retroactive principle is said to apply universally because it can be applied anytime and anywhere without time and place restrictions. The history of the non-retroactive principle begins in ancient Roman times. At that time, most of the criminal law was not written, until Marsilius with his conception stated that the law was a forced order which was a will, and only Caesar had the right to make laws at that time because he was the only one in power. So with his absolute power, the king is able to administer justice arbitrarily. The residents at that time did not know for sure which actions were prohibited and which actions were not prohibited. The judiciary at that time proceeded with an unfair process. This caused thinkers such as Montesquieu and Jean Jacques Rousseau to demand that the king's power be limited by the establishment of written laws.

The rules regarding the enactment of a law according to time in the Indonesian legal system are very fundamental rules. The meaning of the world fundamental in this case is that the rules in this provisions determine whether or not a criminal rule applies to a criminal act comiited at a certain time. Therefore, in the Indonesian legal system, this principle is regulated in Article 1 paragraph (1) of the Criminal Code (KUHP). Which reads:" no act can be criminalized unless it is based on the strength of criminal regulations in existing legislation, before the act is done".

Article 1 paragraph (1) of the Criminal Code (KUHP) states that an act is only a criminal act, if it is regulated first in statutory regulations or in Latin it is called "nullum delictum, nulla poena, sine praevia, legi pounali (no crime, no criminal punishment without prior criminal law legislation) (Khasan 2017). Legal rules cannot apply retroactively. This is called the non-retroactive principle. The non-retroactive principle prohibits retroactive application of something, to maintain legal certainty in order to create legal benefits in society. Another articulation of the meaning of the non-retroactive principle is contained in several aspects including:

1. Nullum crimen sine praevia lege (nothing is a crime except by previously declared law);
2. Nullum poena sine praevia lege (no punishment may be imposed except by a previously declared law);
3. Nullum poena sine crimen (no punishment except for a crime);
4. Nullum crimen sine poena legali (nothing is a crime without a legal penalty) (Schaffmeister, Keijzer, and Sutorus 1995);

5. Nullum crimen nulla poena sine lege scripta (nothing is a crime and nothing is punishable except by a writen law);
6. Nullum crimen nulla poena sine praevia lege scripta (nothing is a crime and nothing is punishable except by a previously declared writen law).

The non-retroactive principle still persists in the Indonesian legal system even though its application is only limited to certain criminal acts. This is of course results in this principle becoming relatively more open to debate considering that as time goes by, the role of law in the Indonesian legal system becomes wider. In Indonesia, there have been regulations governing the non-retroactive principle, namely during the Dutch East Indies era which was contained in article 3 of the Algemene Bepalingen van Wetgeving (AB) which means:"law are only binding for the future and have no retroactive force". Regarding the contents of this article, Prof. Purnadi Purbacaraka and Prof. Dr. Soerjono Soekanto in his book entitled "Legislation and Jurisprudence" means that this principle is that the law is only permitted to be used in events mentioned in the law and these events occur after this law is declared effective.

The concept of non-retroactivity in Indonesian Constitution is defined as the right not to be sued on the basis of retroactive law as stated in Article 28 I of the 1945 Constitution of the Republic of Indonesia (UUD 1945) as a non-derogable right (Kantrey Sugiarto and Susanti 2017). Based on the International Convenant on Civil and Political Rights (ICCPR), non-derogable rights that cannot be reduced under any circumstances because they are essential and absolut rights (Thielbörger 2019).

Apart from being recognized in national law, the non-retroactive principle is also recognized in International law, some of which are contained in Article 11 of the 1948 Universal Declaration of Human Rights (UDHR), Article 15 paragraph (1) of the 1996 International Convention on Civil and Political Rights (ICCPR), as well as Article 11 paragraph (1) and Article 22 paragraph (1) of the 1998 International Criminal Court (ICC).

In the current era, Indonesia has 2 (two) regulations that are closely related to the non-retroactive principle, namely in Article 28 I of the 1945 Constitution of the Republic Indonesia (UUD 1945) which reads:" and the right not to be prosecute on the basis of laws that apply retroactively is a human right that cannot be reduced under any circumstances". From the provisions of Article 28 I of the 1945 Constitution of the Republic Indonesia (UUD 1945) and the Alegemene Bepalingen van Wetgeving (AB), it can be seen that the non-retroactive principle contains 2 important things, namely statutory regulations and the application of a norm from a statutory regulation. A statutory regulation can be said to violate the principle of non-retroactivity if the rule in it states that the regulated norm applies to events that occurred before the rule came into effect. This retroactive application is generally found in the closing provisions of a law that the rules apply retroactively. However, it does not rule out the possibility that this retroactive application is not clearly stated, but this can still be seen by the backward difference between the date of enactment of a statutory regulation and the date of its ratification.

The Concept of Non-Retroactive Principle in Criminal La in Indonesia

Basically the purpose of law is to ensure the emergence of several positive aspects that are able to inhibit negative aspects of humanity and ensure the realization of justice for all citizens without distinguishing between one human being and another, including in this case differences in social class, religion, race, ethnicity or gender. Laws that are properly obeyed are able to create maximum order and prosperity of basic rights for society. In the current era, there are several challenges in realizing an ideal national legal system, namely realizing a legal system that can ensure the upholding of the supremacy of law and human rights. This is in line with the goals of the Indonesian national and state in accordance with one of the contents of the Preamble to the 1945 Constitution of the Republic Indonesia (UUD 1945), namely to protect the entire Indonesian nation.

In Indonesian criminal law, the principle of non-retroactivity is better known as the principle of legality. Where are the application of this principle still raises pros and cons, especially for the perpetrators and victim's family. This is because criminal law is a positive law which is considered capable of covering crimes that are classified as serious crimes against human rights. The principle of legality (non-retroactive) is said to be the main basis for implementing statutory regulations in criminal law in Indonesia. In accordance with the contents of the Criminal Code (KUHP) Article 1 paragraph (1), which reads:"an act cannot be punished unless it is based on the provisions of existing criminal legislation".

Referring to the provisions of this non-retroactive principle, an act can be categorized as a criminal act if it fulfills elements such as:

1. Listed in written laws and regulations. This means that a person's actions that are not listed in the laws and regulations as a criminal act cannot be punished. With this principle, unwritten laws do not have binding legal force.
2. Legislation must exist before the criminal act occurs. This means that the law cannot apply retroactively. In other words, someone who commits a criminal act before there is valid legislation regulating it, cannot be charged with a law that was issued after the act was committed (Sudarto 1990).

In the rules of the non-retroactive principle, there are several prohibitions, namely: 1) it is prohibited to have retroactive laws, 2) it is prohibited to use analogy, 3) the law must be writte. Judging from several prohibitions and provisions of this principle, its seems that retroactive enforcement is not permitted. However, Article 1 paragraph (2) of the Criminal Code (KUHP) states: "if there is a change in the legislations after the act has been committed, then the provisions that are most favorable to the accused are applied to the defendant", where are contents of this article provide a gap for change. Based on the provisions the law after a crimes has occurred with the condition that the punishment given is lighter.

Apart from Article 1 paragraph (2) of Criminal Code (KUHP), Article 103 of the Criminal Code also regulated more clearly the loopholes for retroactive enforcement, the contents of which read:" that chapters I – chapters VIII of the Criminal Code will also apply to regulatory actions-other criminal law regulatios, unless other provisions state otherwise". By using this principle of lex specialis derogate lex generalis or with more specific statutory requirements regulating these provisions, the provisions can be apply retroactively.

However, another reason for allowinv retroactive enforcement is also due to the limitations of the non-retroactive principle, namely:

1. The non-retroactive principle is only used if it is implemented by good for appropriate laws (good penal laws), which means it is a manifestation of human rational abilities, a sense of justice, the will and public interest and the sovereighnty of the people. However on the onther hand, the non-retroactive principle cannot be used if it is implemented by inappropriate or bad criminal law (bad penal laws), which are the will of the ruler and the realization of the political interest of the ruler to protect and maintain his power;
2. The non-retroactive principle does not have the power to prosecute "extra ordinary crimes", even though the consequence of this act cause great losses to the victim;
3. Given the limited reach of this "extra ordinary crimes", the non-retroactive principle has no function in protecting the rights and interest of victim. In this way, what will happen is that the interest and rights of the victim will be sacrificed in order to protect the interests and rights of the perpetrators.

Seeing te shortcomings and weaknesses of the non-retroactive principle in handling crime cases that are classified as extra ordinary crimes, a retroactive principle is needed to resolve these cases. So that the objectives and legal certainty in the form of justice can be achieved.

The Concept of The Non-Retroactive Principle in The Perspective of Indonesian Human Rights Law

Human rights in foreign terms are known as "rights of man". The term of "rights of man" replace the term of "natural right". Eleanor Roosevelt then changed it to "human rights", on the grounds that this term could be seen as more neutral and universal (Muladi 2009). Freedom of opinion is a right inherent in every person which is then called a human right and is one of the signs of a democratic state (Suryadinata and Michael 2023).

The Constitution of 1945 of the Republic Indonesia (UUD 1945) has regulated the law regarding human rights as a guarantee. Article 1 paragraph (1) of Law No.39/1999 concerning Human Rights reads: "A set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts which must be respected, upheld and protected by the State, law, government and every person for the sake of honor and protection of human dignity".

There are several kinds of human rights guaranteed in the Indonesian legal system which are contained in Article 28 I of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which reads: "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on laws that apply retroactively are human rights that are not can be reduced under any circumstances".

In international legal practice, the application of the non-retroactive principle is excluded for criminal acts of serious human rights violations as stated in IMTN (International Military Tribunal Nurembreg 1946), ICTR (International Criminal Tribunal For Rwanda) and ICTY (International Criminal Tribunal For Rormer

Yugoslavia)). International Law excludes the limited principle of non-retroactivity in cases of serious human rights violations which are classified as crimes against humanity by applying the following grounds:

1. The application of the non-retroactive principle (legality principle) only applies to ordinary crimes that occur in a country. Meanwhile, for violations of human rights that are classified as serious violations or extra ordinary crimes, the retroactive principle is applied.
2. The retroactive principle cannot be applied to perpetrators of serious human rights violations or extra ordinary crimes if there are international humanitarian law regulations that have been accepted by law in a country or there are existing laws and regulations that regulate them before the occurrence of a criminal act.
3. There had previously been jurisprudence in the IMTN (International Military Tribunal Nurembreg 1946), ICTR (International Criminal Tribunal For Rwanda 1994) and ICTY (International Criminal Tribunal For Former Yugoslavia 1993).

Crimes that fall into the Extra Ordinary Crime category are crimes against humanity and war crimes. The invalidity of the rule of law must not apply retroactively in the case of crimes against humanity and war crimes which have meaning and purpose considering that crimes against humanity and war crimes are one of the most serious crimes in the realm of international law. There is no declaration or convention regarding the prosecution and punishment of perpetrators of crimes against humanity and war crimes whose provisions are made within a limited period of time. In other cases, this convention states that there is no time limit that applies to perpetrators of crimes against humanity and war crimes.

According to Article 7 of the Human Rights Court Law, there are only 2 serious human rights violations, namely, 1. The crime of genocide and, 2. Crimes against humanity. The crime of genocide referred to in Article 8 of the Human Rights Court Law is:

1. Killing group members;
2. Causing serious physical and mental suffering to group members;
3. Creating living conditions for the group that will result in their physical destruction in whole or in part;
4. Imposing measures aimed at preventing births within the group; or
5. Forcibly moving children from certain groups to other groups.

Meanwhile, crimes against humanity are regulated in Article 9 of the Human Rights Court Law which regulates: The crime against humanity referred to in Article 7 letter b is one of the acts carried out as a widespread or systematic attack where this attack is directed directly against civilians, namely:

1. Murder;
2. Destruction, which includes actions that cause suffering carried out by someone intentionally, which can include actions that hinder the supply of goods, such as food and medicines, which can cause the destruction of some communities;
3. Slavery, including human trafficking that occurs in women and children;
4. Forced eviction or transfer of residents, namely the forced transfer of people by means of eviction or coercive measures from the place where they live to another area without reasons permitted by law;
5. Deprivation of liberty or other arbitrary deprivation of physical liberty which violates the basic principles of international law;
6. Torture is an act carried out intentionally and against the law that causes physical and mental suffering to a person;
7. Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence;
8. Persecution of a particular group or association based on similarities in political views, race, nationality, ethnicity, culture, religion, gender, or other reasons that have been universally recognized as prohibited according to international law;
9. Forced disappearance of people, in this case including the arrest, detention and kidnapping of a person with the support or approval of the state, followed by a refusal to recognize the deprivation of liberty with the intention of releasing them from legal protection for a long period of time;
10. The crime of apartheid, namely inhumane acts equivalent to the crime of genocide committed by a regime in the context of oppression and domination by one racial group over another racial group with the aim of maintaining that regime

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4. Imposing measures aimed at preventing births within the group; or
5. Forcibly moving children from certain groups to other groups.

Meanwhile, crimes against humanity are regulated in Article 9 of the Human Rights Court Law which regulates: The crime against humanity referred to in Article 7 letter b is one of the acts carried out as a widespread or systematic attack where this attack is directed directly against civilians, namely:

1. Murder;
2. Destruction, which includes actions that cause suffering carried out by someone intentionally, which can include actions that hinder the supply of goods, such as food and medicines, which can cause the destruction of some communities;
3. Slavery, including human trafficking that occurs in women and children;
4. Forced eviction or transfer of residents, namely the forced transfer of people by means of eviction or coercive measures from the place where they live to another area without reasons permitted by law;
5. Deprivation of liberty or other arbitrary deprivation of physical liberty which violates the basic principles of international law;
6. Torture is an act carried out intentionally and against the law that causes physical and mental suffering to a person;
7. Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence;
8. Persecution of a particular group or association based on similarities in political views, race, nationality, ethnicity, culture, religion, gender, or other reasons that have been universally recognized as prohibited according to international law;
9. Forced disappearance of people, in this case including the arrest, detention and kidnapping of a person with the support or approval of the state, followed by a refusal to recognize the deprivation of liberty with the intention of releasing them from legal protection for a long period of time;
10. The crime of apartheid, namely inhumane acts equivalent to the crime of genocide committed by a regime in the context of oppression and domination by one racial group over another racial group with the aim of maintaining that regime.

Implementation of The Non-Retroactive Principl in Handling Human Rights Crimes in Indonesia

Indonesia has experienced human rights crimes which caused the principle of non-retroactivity to be set aside, namely the case of East Timor. The case of East Timor began after the fall of the Soeharto government in May 1998, at which time the Habibie Government adopted several policies to resolve the East Timor case on Jan 27th, 1999 which gave rise to the idea of disengagement by East Timor which then resulted in 2 (two) important options. The two important options are: 1) granting special autonomy, and 2) separating East Timor from Indonesia. These two options were completed with an opinion poll on Aug 30th,1999 where the cause of this opinion poll occurred because 78.5% of poll participants chose East Timor to separate from Indonesia and efforts to win the effort to grant special autonomy failed miserably (Nevins 2008). As the announcement of the results of the opinion poll was accelerated, which was supposed to be Sept 7th, 1999, to Sept 4th, 1999, the

situation began to worsen and crimes against humanity began to spread, such as scorched earth, looting and massive displacement in the East Timor region. The cases of human rights crimes that occurred in East Timor essentially occurred after a discussion that occurred between pro-integration and integration groups which then led to clashes.

Several cases of human rights crimes that occurred in East Timor include:

1. Attack on Dili Diocese Occurred on Sept 5th,1999 when the situation in the city of Dili worsened, marked by several acts of violence such as shooting, arson and looting. During the violence, many residents were found fleeing and security forces were tasked with providing security and guarding. There were several militia groups wearing black clothes and red and white attributes, causing residents to take shelter and take refuge in the CamraEclesestica (Dioli Diocese) which was then attacked and the Dili Diocese Office was burned. This incident caused as many as 25 people to become victims.
2. Attack on Bishop Belo's House On Sept 6th,1999, a TNI officer with the rank of Lieutenant Colonel entered Bishop Belo's house and asked him for his family who were then evacuated to the Regional Police Headquarters. After Bishop Belo left his house, several militia groups wearing uniforms with the words Aitarak began attacking the 500 refugees who had taken refuge in the house. The refugees were forced out and this was followed by several acts of violence and arson, which in this incident resulted in at least 2 deaths.
3. Mass Murder at the Suai Church Complex On Sept 4th,1999 there was an attack by the Laksaur Militia and TNI officers in Debos Village, which resulted in the death of a high school student. The people who survived saved themselves by hiding in the Suai Church Complex following the refugees who had fled previously. Then on the evening of Sept 5th,1999, several militia members started burning down houses and government buildings in Suai City. On Sept 6th,1999 residents were asked to leave their homes and then at 14.30 attacks began on residents who had taken refuge in the Suai Church Complex. This attack was led by Covalima Regent Herman Sediono and Danramil Suai Lettu Sugito.

The strong pressure from the international community for Indonesia to immediately prosecute and resolve cases of crimes against human rights in East Timor is increasingly strong. Through the Dean of the United Nations (UNSC) in its resolution number 1264 dated Sept 15th,1999 which condemned human rights crimes in East Timor and urged the Indonesian Government to try the perpetrators of these crimes through the establishment of an Ad Hoc Court such as the ICTY (International Criminal Tribunal). For Former Yugoslavia) and ICTR (International Criminal Tribunal For Rwanda), however this resolution was successfully defeated by the Indonesian Government because the Indonesian Government considered it still capable of prosecuting and resolving the perpetrators of human rights crimes in East Timor based on Indonesian national law. On this basis, it had an impact on the Indonesian government forming Law No.30/1999 concerning Human Rights and Law No.26/2000 concerning Human Rights Courts. These two laws were respectively promulgated and enacted on Sept 23th,1999 and November 23th,2000, which in this case resulted in the establishment of the Ad Hoc Human Rights Court.

One of the cases of human rights crimes in East Timor that was tried in Indonesia was the case of Eurico Guterres. Eurico Guterres is the deputy commander of the Integration Fighters (PPI) who was given the task and mandate to fight for the acceptance of a special autonomous region in the East Timor region. In April 1999, Eurico Guterres held a grand ceremony to inaugurate PAM Swakarsa which was attended by several high-ranking East Timorese officials. At that time, the integration fighter group, which in this case were his subordinates, was provided with full weapons. Eurico Guterres finally delivered a speech which sparked several acts of violence at Manuel Carrascalao's house. Then in the end Eurico Guterres was tried at the Ad Hoc Human Rights Court by enforcing Law No.39/1999 concerning Human Rights and Law No.26/2000 concerning the Human Rights Court. Eurico Guterres is one of the defendants who was sentenced to a criminal sentence from the first level examination stage to the cassation level. In the case of the position and indictment of the Public Prosecutor, at the Ad Hoc Human Rights Court, Eurico Guterres was sentenced to 10 years in prison. Based on the results of this first level, Eurico Guterres received a reduction in the appeal examination from previously being sentenced to 10 years to 5 years in prison. Then at the cassation stage, the Supreme Court rejected the appeal and again sentenced him to 10 years in prison. In 2008, the Supreme Court acquitted Eurico Guterres after conducting a review at the Supreme Court with decision number 34 PK/PID.HAM.Ad Hoc/2007.

Another case being tried in Indonesia is one involving the former Governor of East Timor named Abilio Jose Osario Soares. Abilio is suspected of having committed crimes against humanity as charged by the Ad Hoc Public

Prosecutor. In the course of his case, Abilio has sufficiently fulfilled several elements that qualify as human rights crimes as stated in Article 42 paragraph (2) a and b in conjunction with Article 7 letter b, Article 9 letter h, and Article 40 of Law No.26/2000 concerning the Human Rights Court. Abilio was ultimately acquitted of his charges after a review of his human rights crimes was granted by the Supreme Court.

Conclusion

The application of the retroactive principle in Law No. 39/1999 and Law No. 26/2000 as a form of deviation from the non-retroactive principle has in fact found many obstacles in its implementation. Perpetrators involved in past cases of human rights crimes who should have been involved and responsible can still live free from prosecution. The Ad Hoc Human Right Court which is tasked with adjudicating cases of crimes against human rights in Timor-Timur has been deemed to have lost its orientation in processing legal justice and is trapped in the formal definition that the trial must take place. By continuing the legal process like this, it is feared that Indonesia will be embarrassed in International forums. This is because International forums will assume that the Indonesian judicial process tends to project perpetrators. Therfore, it is very important that there is cooperation between Indonesia and International institutions so that the judicial process can be heard fairly and honestly and avoid taking side on one side.

Apart from that, the appointment of Public Prosecutors (JPU) and Ad Hoc Court Judges is still felt to be insufficiently transparent, which is enough to prove that in the midst of holding Human Rights Court there are still efforts to include the interests of certain individuals in the process. This trial is either for the purposes of protecting the perpetrator or for political purposes. It is quite clear that accountability for cases of human rights crimes has been narrowed by the existence of court processes which should adhere to the principle of pro justutita.

Based on these obstacles, it seems that the Public Prosecutors (JPU) and Ad Hoc Judges must be brave enough to reform the law by using the perspective of upholding Human Rights in the trial. In this case, the Human Rights Court is expected to be able to become one of the conditions for achieving human rights justice, which in this case contains the elements of eliminating impunity, rehabilitating victim, and revealing the truth which can be used as a benchmark in efforts to reveal crime case of human rights, especially those that occurred in the past.

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