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PROCEEDING INTERNATIONAL CONFERENCE ON LAW & SOCIETY 2017

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YOGYAKARTA, 04 – 07 APRIL 2017

بسم الله الرحمن الرحيم

PROCEEDING

INTERNATIONAL CONFERENCE ON LAW AND SOCIETY

Yogyakarta, 04 – 07 April 2017

LP3M & Faculty of Law Universitas Muhammadiyah Yogyakarta
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Message from Chairman

Yordan Gunawan
Chairman, International Conference on Law and Society 6,
Universitas Muhammadiyah Yogyakarta

AssalaamuʼalaikumWarahmatullahiWabarakatuh,

In the Name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers multilateral tie among UniversitasMuhammadiyah Yogyakarta (UMY), International Islamic University Malaysia (IIUM), UniversitiIslam Sultan Sharif Ali (UNISSA), Universiti Sultan ZainalAbidin Malaysia (UNiSZA), Fatoni University, Istanbul University, Fatih Sultan Mehmet Vakif University and Istanbul Medeniyet University.

I believe that this is a great step to give more contribution the knowledge development and sharing not only for eight universities but also to the Muslim world. Improving academic quality and strengthening our position as the procedures of knowledge and wisdom will offer a meaningful contribution to the development of Islamic Civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this program will be a giant leap for all of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities. I sincerely wish you good luck and success in joining this program

I would also like to express my heartfeltthanks to the keynote speakers, committee, contributors, papers presenters and participants in this prestigious event.

This educational and cultural visit is not only and avenue to foster good relationship between organizations and individuals but also to learn as much from one another. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to us. Those comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

Looking forward to a fruitful meeting.

WassalamuʼalaikumWarahmatullahiWabarakatuh

Foreword

Trisno Raharjo
Dean, Faculty of Law, Universitas Muhammadiiyah Yogyakarta

Alhamdulillah all praise be to Allah SWT for his mercy and blessings that has enabled the FakultasHukum, UniversitasMuhammadiyah Yogyakarta in organizing this Inaugral International Conference on Law and Society 6 (ICLAS 6).

This Conference will be providing us with the much needed academic platform to discuss the role of law in the society, and in the context of our two universities, the need to identify the role of law in furthering the progress and development of the Muslims. Muslim in Indonesia and all over the world have to deal with the ubiquity of internet in our daily lives life which bring with it the adventages of easy access of global communication that brings us closer. However, internet also brings with it the depraved and corrupted contents posing serious challenges to the moral fabric of our society. Nevertheless, we should be encouraged to exploit the technology for the benefit of the academics in the Asia region to crat a platform to collaborate for propelling the renaissance of scholarship amongst the Muslims.

This Conference marks the beginning of a strategically planned collaboration that must not be a one off event but the beginning of a series of events to provide the much needed platform for networking for the young Muslim scholars to nurture the development of the Muslim society.

UMY aims to be a World Class Islamic University and intend to assume an important role in reaching out to the Muslim ummah by organising conferences hosting prominent scholars to enrich the develompment of knowledge. This plan will only materialise with the continous support and active participation of all of us. I would like to express sincere appreciation to the committee in organising and hosting this Conference.

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The Dynamics of Human Rights Enforcement In Indonesia: a Misconception and Political Consideration in the Formulation of Law Number 26 Year 2000 on Human Rights Court

MUHAMMAD IQBAL RACHMAN&SAHIDHADI
Faculty of Law Universitas Islam Indonesia

ABSTRACT

Grounded on the existing obligations, States are required to provide a guarantee its rights. However, in practical landscape not all countries do with their obligations should be, including Indonesia. One important issue related to guarantees human rights in Indonesia is the occurrence of human rights violations in the past, such as the mass slaughter of 1965 that killed about 1,500,000 people and mysterious shooter "Petrus" in 1982. Need to understand, though these human right violations occurred in the past, one of the principles of law enforcement of human rights is the principle of impunity. One of the Government's efforts to enforce the law against past human rights violations in Indonesia is to establish a law number 26 year 2000 on human right Courts. Although it has been enacted for 17 years before, law enforcement against human rights abuses in the past is far from the perfect words. As a result, some opinions are debated each other dialectically in responding to the existence of a human rights tribunal legislation. The Synthesis of this paper, concluding that the law number 26 year 2000 was wrong in legislation concept of human rights and in addition to the manufacturing process also dominated with political paraphernalia. Therefore, the effectiveness of the enforcement of the law against such violations still has no power to enforce the human rights totally. Therefore, the author recommends doing the reformulating and revision of law number 26 year 2000 on human rights court.

Key Words: Enforcement, Human Right, Misconception, Political, Violation

I. INTRODUCTION

The existence of human rights in Indonesia is not something new. The long debate about the existence of Indonesian human right is becoming a Classic Story which has been discussing by our founding fathers, before human rights enshrined in our constitution. The long debate on human rights and the dignity of this view not only appeared in the Sukarno's era and in the new regime which usually called it 'Orde Baru'. However, the long debate about the existence of human rights in Indonesia has existed in a long time before the proclamation of independence of this nation. In the mid-1950s, human rights began to emerge to the surface of society and started to be accepted and understood by few people. Basically, human rights are becoming a social contract between citizens and Stakeholder which obliged the stakeholder to protect the individual rights of every citizen.[1]Therefore, a concrete step that occurs today is done by the Government of Indonesia with the enactment human rights enforcement regulation by law number 26 of 2000 which showed that how important the role of the State in dealing with rights owned by accommodating its citizens. In addition, the emergence of new regulations which has been poured in law number 26 of 2000 is becoming the real evidence that related to the state responsibility in protecting and fulfill human rights through judicial mechanisms of human rights law.[2]

The emergence of the enactment of judicial human rights mechanism in Indonesia which has been poured in law No. 26 of 2000 that driven by Government concern was born towards the end of the Orde Baru which is judged very much left the problem concerning serious human rights issues has feel became the positive step. Serious violations of such massive slaughter in 1965 that killed about 1,500,000 people, the mysterious shooter "Petrus" in 1982 to 1985 that killed about 1,678 people, Marsinah Cases, and other cases make a serious homework for the Government after the Orde Baru era. The emergence of pressure from civil society and the international world in handling cases from serious human rights violations has forced the Government after the regime of Orde Baru does not have the option to make laws that is used as the legal basis to punish the perpetrators of serious human rights violations in Orde Baru era to be prosecuted on domestic trial, so politically the perpetrators of serious human rights violation could not be prosecuted on trial in an International Court. Politically, the reason above that encourages government post-Orde Baru to authorize law No. 26 of 2000 which in general has provide regarding a criminal offense as the human rights violation and the mechanisms of judicial human rights in Indonesia. But on the other hand, the enactment of law No. 26 of 2000 is a formulation which in general adoption the Rome Statute which proved the regulation is ineffective. Therefore, law No. 26 of 2000 on human rights court considered the judiciary do not have fangs to prosecute the perpetrators of serious human rights violators in the past, although clearly stated that one of the principles of human rights enforcement was using the principle of impunity whereby the enforcement of human rights it has no expiration time.[3]

Therefore, in the name of justice the author felt that need to study and discuss more the framework of the formulation of human rights through the enforcement of law No. 26 of 2000 on human rights court mechanism, based on that argumentation the author will examine this paper research uses two frameworks of thought. First, the theory of the concept of State Responsibility. basically, the human rights norm is automatically owned by everyone since in the womb, the human right also does not require any justification of the State, but to do the enforcement of human rights effectively remains required a positive law governing the mechanisms of enforcement and protection of human rights. Therefore, the importance of the existence of the State to protect any citizens is an absolute obligation. In the context of human rights enforcement, the existence of State powers as stakeholder had rights and obligations as subjects of law. The emergence of the idea of rights and obligation of the State to protect any citizens had been declared contained in the Universal Declaration of Human Right (UDHR) in 1948. In the Declaration stated that the state categorized as the main responsible entity to promote, fulfill, and protect human rights.[4]The basic arguments concerning the responsibility of the State towards the enforcement of human rights are also seen in preamble the opening of the International Covenant on Civil and Political Rights (ICCPR) which confirms the responsibility of the State in enforcing civil rights and politics as follows:

> "Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."
>
> Recognizing that these rights derive from the inherent dignity of the human person,
>
> Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,. Considering the obligation of States under the

Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant"[5]

Second, related to the context of an effectiveness of law enforcement, then Author refers to the theory presented by Soerjono Soekanto. Soejono Soekanto explained that there are five factors which influence the effectiveness of the law enforcement.[6] First, the substance of the law. The substance of the law in a legislation, in fact, become a guideline for the behavior of a human which give an option about which one is allowed to do or not allowed to do. In the other word, a substance of the law is one of the main element that gives a frame to a law enforcement. Second, law enforcement officers. By the theory and practice, the definition of law enforcement officers is a subject who has authority to enforce the law. In the other case, Friedman explained that actually the definition of law enforcement officers is divided into two definitions. The first one is a wide definition, which defines a law enforcement officers is a man, organ, or institution who has authority to maintain and make the law. But in the narrow definition, the law enforcement officers defined as a man, organ, or institution who has a duty to maintain an enforcement of a law. Third, the tools or facilities. The tools or facilities are a substitute aspect that will help the work of law enforcement officers. Fourth, the society. As a lot of sociologist's master explained that society was the strongest influence of an existing of a norm. We can refer to the philosophy question, "do the society determine the law? Or, do the law determine the society?". And fifth, the culture.[7] Culture become a factor that influences the law enforcement. Because in fact, a culture was a result of the behavior of human being. It means, among human (society), law, and the behavior of its human has a relation that could not separate. It will influence one with another.

II. DISCUSSION

1. Misconception on Law No.26 of 2000

a. The State Dimension in The Human Rights Conception

The existence of the society is an inevitability in a country. As regulated in the article 1 Montevideo Convention that "a permanent population" is a collective element over the position of a country.[8] Therefore, the people is one of the elements required in a country and between the both of them, absolutely there is a relationship which emerges the rights and obligations upon one party against the another party.

Historically, before there are any countries, public life is very chaotic. This is because everyone is free to do about anything based on his will, so that the life of the community at the time of being undisciplined. "homo homini lupus", according Thomas Hobbes which has been describing the condition of human life before the state formed, which is inevitably the people must behave like wolves towards other human beings in order to survive.[9] On the development of time, the consciousness to live safer, peaceful, justice, and prosperous then appears in the human mind. Starting from the awareness, according to Locke, firstly all individuals with another individual held a Community agreement to constitute a political community. The agreement on the first phase is called by Locke as pactum unionis. Afterward, the pactum unionis is not enough to provide security against the ideals of discipline in the life of the community landscape. Therefore, Locke added a pactum subjectionis as the second phase of the agreement. An agreement on the

community groups to provide and entrust the fundamental rights and freedom in order to be guaranteed by a few of individuals, with the scheme of granting authority against individuals given credibility.[10] The second phase of the agreement has two important implications. The first, State authority intrinsically limited and not absolute, basically limited based on the pretension of the citizens. Secondly, the human motivation to form the state which aims to guarantee fundamental rights, especially his self. Because of that purposed the people leaving their fundamental rights and freedom in the natural condition and belief on a subject which is called the State.

The emergence of the human rights conception basically cannot be released from the early history of the formation of the State. The distribution of basic rights and public freedom to the State is not without consequences at all. For the state, the inherent complexity of the authority then charged the duty to guarantee the fundamental rights and freedoms. On the other side the guarantee, in theory, and practice categorized into four kinds of guarantees. That is a guarantee to protect, to promote, to fulfill, and to respect. Therefore, historically-philosophical, basically a subject country is charged the duty to guarantee the fundamental rights and freedoms of people in it.

The philosophical value in its development has differentiated into a principle in the conception of human rights, namely State Responsibility principle. According to the principle, a country should not be either intentionally or unintentionally ignores the fundamental rights and freedoms of the citizens of the society.[11] On the opposite, the State assumed had a huge positive obligation for actively protecting and ensuring the correct fulfillment of the fundamental rights and freedoms of it. However, According to Hegel which has described on his dialectic,[12] Hegel substantially States that where there is a dynamics, it will be followed by a collided between the particles. Include the collided between the idealism and the reality of State obligations in guaranteeing the fundamental rights and freedom of society. In the practical level, not all countries realize these obligations properly. Of the inappropriate, in the context of human rights is referred to as "human rights violations".

What is meant by human rights violations? Until today there is no one concrete definition against that phrase. However, in General, human rights violations is meant as a violation of the State obligation in the guarantee of fundamental rights and freedoms of the people, between the act of commission or act omission. In the formulation above has seen clearly that the party who responsible is State, not an individual or other legal entity. So, the fact that a main point in this concept of human rights violations are the responsibility of the State.[13]

This is the element which distinguishes human rights violations with the violation of the law. Where violations of the law can be made of the individual as a subject in it. In addition to the state responsibility principle, the other principle which became the characteristic of the human rights conception is the presence of the principle of impunity. The principle of impunity is the principle by which substantially stated that against human rights violations, the human rights violation which conducted in the present and the past, the implementation of impunity principle does not reduce the obligation of the State to enforce the law against human rights cases.

b. The International Criminal Law Conception

International criminal law nowadays has to feel needed by the international community. This equal with the increasing quality and quantity of international criminal dimension which happened by transition and occurrence of globalization system at the social, economic, and cultural sector.[14] The establishment of the International Criminal Court Rome Statute at the end-1998 was

became one of the greatest achievements in law enforcement against international crime. Based on the substance in Rome statue 1988, international criminal law is containing into five basic principles, namely individuals accountability, non-retroactive, legality, the legality of punishment, and the jurisdiction principle. First, the principle of individual accountability. This principle is meant as a principle which can impose liability against an individual, not just State, for a crime that he did. The background of the concept of individual responsibility in international law is the idea of international law can be directly attributing responsibility towards the individual.[15] Second, the non-retroactive or should not be retroactive. This principle has oriented on legal certainty, where confirms and explain if a crime was conducted before but there is no regulation that regulated the act, automatically when there is an enactment which forbidding or prohibition that act, then it should not be imposed retroactively against acts that existed before the legal instrument over the deeds exists. Third, legality principle. Basically, legality principle is similar with the principle of non-retroactive principle. In the main idea, this principle ha stated that none of the actions that can be classified as a crime before there was the legal instrument declaring that the action is a crime. Fourth, the legality of the punishment. As the principle of non-retroactive and legality, this principle is a principle that synergized with the two principles mentioned earlier. It is a method and the type of punishment inflicted upon an act which significantly is defined as an international crime must be condemned and processed in accordance with the applicable legal rules. the fifth, jurisdiction principle that one of the characters of law enforcement against international crime is the enactment of the universal jurisdiction (jurisdiction borderless).

Based on the description above, then it looks clearly significant differences between the concepts of human rights and the concept of international criminal law, especially in terms of responsible parties and the impunity principle. Human rights conception basically stated that the only party which is legally charged to secure and responsible for human rights and human right violations is just state. However, in the concept of international criminal law (ICC-RS 1998), not only the State that can be charged the responsibility but also individuals became the subject of accountability charged. The existence of the principle of impunity on the concept of human rights with the principle of non-retroactive, legality, and the legality of the judgment on the concept of international criminal law also has the distinction of the concept. Human rights law enforcement can retroactive, but law enforcement against international criminal law can not be enforced in the non-retroactive.

c. Reveal the Misconception of Law No.26 of 2000

The worsening security situation and human rights in the governance regime of the past are a reason at the insistence of the international community, especially the United Nations (UN) to the Indonesian government which force to do law enforcement against human rights violations that happened, including massacre, torture and persecution, disappearances people, and others. The UN Security Council then passed a resolution Number 1264 year 1999 that denounced the human rights violations that occurred in Indonesia at the time. Therefore, the UN Security council requested that the perpetrators accountable for his actions in the face of Court. Departing from the insistence, then Indonesia Government initiative to establish a human rights court in order to prosecute human rights abuses not only in the present but also intended to prosecute the perpetrators of human rights violations in the past. The establishment of the human rights court through the enactment of law number 26 of 2000 on Human Rights Courts did not regardless of the pressure of the international community to the Government of Indonesia. It can be said, the establishment of this Court is one of Indonesia's government efforts to fulfill his international

obligations to maximize national legal mechanism to deal with human rights abuses in Indonesia.

Relate to the substance of the human rights court regulation, basically, the law of human rights court has adopted the substance of the Rome Statute 1998 as the material source of the law inside. The adoption of the law is not without considering the consequences. One of the consequences is the occurrence of a generalization of the concept of human rights violations. Mentioned in the law of human rights court that the definition of human rights is a set of rights that inherent in the nature of human beings and the existence of human being is created by God and it is responsible for being respected, protected and fulfil by the State, the law, Government, and any person as a honor and dignity of human being. On the other side, the words of each person are meant to individual people, groups of people, whether civilian, military or police which responsible as individually. Based on the provisions as defining above, it appears that the individual based on law also charged the obligation to protect human rights and accountable individually when negligent towards its obligations. The concepts are basically very contrary to the human rights conception, especially when it collided with the principle of State responsibility as the stakeholder and the concept of human rights violations as historically-philosophical and theoretical. The pure human rights conception basically stated that the only party which is charged by law to protect the human rights in the middle of society is the State, the consequences of the obligation that the only party that could become a subject of human rights violations and has the capacity to take responsibility is the state anyway. The kind of errors are basically due to the Indonesian government is very political decision to adoption the concept of Rome Statute 1998 that in the fact is a legal instrument within criminal law.

On the other side, The effect of misconception regulation does not achieve the effectiveness of law enforcement against human rights violations in Indonesia which occurred either in the present or occurred in the past. Soerjono Soekanto has been stated that there are any five factors that influence the effectiveness of the law enforcement power, one of the concern is closely related to the substance of the law. Soeakanto which has been stated, the substance of the law must be in accordance with the fundamental values and rules apply to any performance or action which became the objects of the legislation. inappropriate between the values, principles, and norms will have an impact on the effectiveness of the law enforcement itself. This is similar with the theoretical which formulated by Friedman, his stated that one of the essential elements that cannot be separated from a law enforcement is the substance of the law itself (the legal substance). Friedman basically also stated that on the complexity of the legal substance of a norm, synergy, alignment of values, principles, and norms is a necessity.

Based on the description above seems clear that substances the article of human rights court which is considered responsive to human rights abuses in the past have been basically wrong in terms of the concept. A law that forces to mix the concepts of criminal law with the concept of human rights that in the fact has the distinction of both historical, philosophical, and theoretical.

2. Political Considerations On the Formulation of law number 26 of 2000 on Human Rights Court

In Indonesia, the existence of the human rights Court is meant as a special court against serious violation of the human rights. Definition of human rights serious abuses can be seen in the explanation of article 104 Law No.39 of 1999 on human rights court regulation, which stated that the serious violations of human rights as follows:

"massacre, killings or outside the judicial decision, torture, disappearances of people, slavery,

or systematically conducted discrimination"

It realized or not, is precisely the human rights court regulation does not define the meant of the term "serious human rights violation". But only mention the categories of crimes which classify as the serious human rights violation, that is crimes against humanity and genocide. Citing the theory which has been presented by Mahfud MD related to legislation nowaday, he stated sometimes in the process of legislation, politics will always be the determination of the law.[16] It is meant, in the process of making regulation political, there is interference political interest in it, either aimed to maintain the existence of an interest, protect an interest, and many other things. In this occasion, the author will outline the political consideration in legislation refer to the law no.26 of 2000 by providing a qualitative analysis. First, the definition of both types of crime, crimes against humanity and genocide in the law of human rights court, basically the adoption of the crime it is refer to the jurisdiction of the International Criminal Court (ICC) which has been regulated in article 6 and 7 Romee Statute 1988, as the basis establishment of the ICC. On the other side, the definition of crimes against humanity in human rights court statute stated that "one of the acts committed as part of widespread and systematic attacks that he knew that such attacks are aimed directly at the civilian population that have been set up in the letters A to J in human rights court statute. Another definition of genocide according to the human rights court statute is "any acts committed with intent to destroy or destroy all or part of a group of Nations, races, ethnic groups and religious groups, conducted with the plan which has been mention in human rights statute. On the formulation, Rome statute is equipped with separate rules which regulated rules of Procedure and Evidence of the procedural law and the Elements of Crime about the explanation of the elements of crimes into the jurisdiction of the ICC. Afterward, the explanation of the elements of the crime is intended to provide a deeper understanding of the same understanding for judges in terms of classifying and give the limit on top of an act that would be classified as serious crimes.

In Indonesia, human rights court made without equipped with Elements of Crime as Rome Statute. So, often confusing law enforcers in particular especially judges when interpreting an act as a criminal offense or delict which classify as human rights violation. In some cases, especially in an Ad Hoc human rights court for East Timor proves there is a different understanding than judges when interpreting an act who are classified as crimes against humanity because of the references they use is different.

Secondly, related to the human rights court legislation which deliberately using equivalent Indonesian language isinnapropriate, the impact on the limits of the human rights court jurisdiction itself. For example, in the terms of Rome Statute has regulated "directed against the civilian population... " translates to " aimed directly against the civilian population... " The addition of the phrase "directly" clearly implies the difficulty of reaching the perpetrator not the perpetrator of the field (re: giver of commands). On the other side, the weakness in terms of usingIndonesian language which equivalent irregularities can be seen in article 42 based on human rights court statute on the responsibilities of command. The provisions of article 42 is a strategic and important provision in the human rights court statute. Because this article becomes the legal basis for a military commander or other individuals who are in the position of supervisor or holder of other powers position to be requested his responsibility as the criminal offense as negligence and failure to carry out the control of his lower rank. The Article 42 basically stated military commander or someone who is effectively acting as a military command and/or a supervisor, either police or other civil can be accounted against the criminal acts".

The Article 42 of this law uses the term of "could" and remove the phrase "criminally" on its formulation. Whereas, in the real script of Rome Statute 1998, in Article 28 alphabet A, firming "shall be criminally responsible" which is appropriate translated as "shall be criminally responsible" also, not "could be accounted to a criminal act". The consequence from its mistook could occur a multi-interpretative meaning around the law enforcement officers such as judge. It can be defined that the commander and/or an individual which has a higher level "not always have to" account criminally on their lower range's act. At least, the completion of Timor-Timur case, Tajung Priok case and Abepura case become a real evidence that showed the weakness of its regulation. At that time, almost all of the defendant in Ad Hoc Human Right Court and in a permanent court prosecuted based on this Article 42 because of mostly the doer was a person who has a higher range than the other, either civil or military. And with inappropriate translation, it will be not weird when most of them decided "free" by the court.

III. CLOSING

1. Basically law No. 26 of 2000 is an instrument that was adopted directly from the Rome statute 1988 which govern about the International Criminal Court (ICC) into a legal instrument that moves as Indonesian human rights court enforcement. There is a difference in historical-philosophy, juridical, principle, and theoritical of international criminal law with human rights. Mix up both of them in the context of the law proved ineffective because there is a difference characteristic in both them.
2. In accordance with the definition that the law No. 26 of 2000 which adopted from ICC basically should have the same substance with the ICC. But in the reality, there are some problem in the formulation of law No. 26 of 2000: First, based on the definition of world crime and genocide which transformation into a different meaning. Second, there is a differentiation word which influences the aims of law that adopted in ICC. The result of two misconceptions in the implementation of law No. 26 of 2000 on human rights enforcement has felt no power to catch the human rights offenders in the past which the majority of offenders is the apparatus Government.

Recomendation

1. To the government parties, it should immediately ammandement law no.26 of 2000 aims to make the regulation appropriate with the lanscape of historical-philosophy, juridical, principle, and theoritical
2. To the human rights activist have to always critical toward the human rights enforcement against human rights violation.
3. To the all of Indonesian society, refused to forget.

ENDNOTES

[1]Manfred Nowak, Introduction to The International Human Rights Regime, 2003, Leiden, Nijhoff Publisher, p. 9

[2]Rhona K.M. Smith, Christian Ranheim, dkk., HukumHakAsasiManusia, 2008, Yogyakarta, PUSHAM UII, p. XiX

[3]Eko Riyadi, *Bahan Ajar Mata Kuliah Hukum Hak Asasi Manusia*, 2015, Yogyakarta, Fakultas Hukum Universitas Islam Indonesia, p. 109

[4]Rhona K.M. Smith, Christian Ranheim, dkk., Opt.cit, p. 81

[5]**Preamble in International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49**

[6]SoerjonoSoekanto, *Faktor-Faktor yang MempengaruhiPenegakanHukum*, 2007, Jakarta, RajaGrafindoPersada, p. 5

[7]*Ibid.*, p.11-60

[8]Ni'matul Huda, *Ilmu Negara*, 2014, Jakarta, RajaGrafindoPersada, p.17

[9]*Ibid*,. p.40

[10]*Ibid.*, p.41-43

[11]Rhona K.M., *Op. Cit.*, p.40

[12] In the essence, Hegel explained that where there was a dynamic of a thing, then there was a clash also among the existing particle. At least, Hegel made a conclusion about Thesis, Anti-Thesis, and Synthesis also

[13]*Ibid.*, p. 68-69

[14]Sefriani, *PeranHukumInternasionaldalamHubunganInternasionalKontemporer*, 2016, RajaGrafindoPersada, Jakarta, p. 282

[15]KoalisiMasyarakatSipiluntukMahkamahPidanaInternasional, *Mengenal International Criminal Court. MahkamahPidanaInternasional*, 2009, Sentralisme Production, p. 15. See also, http://referensi.elsam.or.id/wp-content/uploads/2014/09/Hukum-Pidana-Internasional.pdf accessed in 10 March 2017 at 22.59 WIB

[16]Mahfud M.D., *PolitikHukum di Indonesia*, 2013, Jakarta, RajawaliPers, p. 36

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