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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Legal Analysis Of Racist Exams In Surabaya Papua Dormitory

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Abstract

Freedom of speech is not arbitrary. If it is not controlled, the utterance that is said will offend the other party. Must be avoided because the response given by the recipient of the utterance can be with verbal expressions, physical actions and even destructive. Legal analysis of racist utterances in Papuan dormitories in Surabaya includes: 1) Flag Abusers, 2). Officials Should Act Professionally, 3). Perpetrators of Racial Examination at the Time of the Event, 4). Flag Harassment with Racist Exams Two Different Things. As for his conclusion that the impact caused by the mass reaction in the Papuan hostel proved to have caused extraordinary social problems and the threat of national disintegration. Based on the matters that have been reviewed above, it is proven that legal instruments are sufficiently available to impose sanctions, both corporate criminal and fine. There must be sanctions that can accommodate people's sense of justice against those who are proven guilty so that similar actions do not occur again in the future.

Keywords: Speech, Racism, Dormitory, Papua, Surabaya

A.INTRODUCTION

In every utterance one should refer to ethics so that they do not get a negative response for those who receive the utterance. Freedom of speech for someone is not carried out arbitrarily because if it is not controlled, the utterance that is thrown will likely offend the other party. This must be avoided because the response given by the recipient of the utterance will vary. Can be responded to passively or quietly but can also with verbal expressions, physical actions and even destructive actions. The response given depends on how much disappointment experienced by the victim of the

adverse speech.

In the realm of democracy today speech is part of freedom of speech or opinion. But the freedom given must be implemented wisely. Don't be surprised if the speech is responded negatively by the masses, it will open up social conflict. Philosophically in the context of humanity, freedom of speech is delivered politely because basically humans are civilized. As a civilized human being, ethics is a guideline in social life. Such action in the life of the nation and state in Indonesia is referred to as Pancasila. Not surprisingly, the 1945 Constitution of the Republic of Indonesia as a state constitution guarantees freedom of expression.³ Because guaranteed by the constitution by itself

³ Pasal 28E Undang-Undang Dasar Negara Republik Indonesia Tahun

becomes a constitutional right of citizens.⁴

Examinations may be part of the submission of opinions, so from the aspect of Human Rights in Indonesia must comply with Law Number 39 of 1999 concerning Human Rights, where Article 23 paragraph (2) states:

“Everyone is free to have, issue and disseminate opinions according to his conscience, verbally and or in writing through print and electronic media by paying attention to religious values, decency, order, public interests, and national integrity. “

This freedom given by law is apparently not done wisely. An utterance that is brought up arbitrarily even tends to be beyond the control of the person concerned. This is the consequence, because the said utterances are spontaneous by those who utter then a negative response occurs for those who receive the utterance. Such conditions are evident if we read what is presented by the press this month. A racist utterance in Surabaya has taken place.⁵ An utterance that contained racism was made in front of the Papua student dormitory, Suarabaya City, East Java Province. In the provinces of Papua and West Papua Papuans who feel offended react with massive demonstrations and even tend to act destructively. Offices and public facilities were the target of mass anger. Buildings funded by a large state budget were damaged due to mass violence.

A saying that is either spoken spontaneously or emotionally if it is racist in nature will clearly provoke a reaction on the human side to those who are offended. It cannot be the local culture that considers spontaneous pitching to be tolerated even though it is racist. A person's human rights

are free to express utterances but they are also limited by the rights of others. It should not be arbitrary in speaking to other parties even though it is in their own area. A negative response is given because the statement is judged not appropriate, especially let alone before the public, and naturally those who feel aggrieved become offended.

A. DISCUSSION

The racism problem that was raised by the masses who came to the Papuan student hostel on Kalasan street number 10 Surabaya, East Java, Indonesia on Friday, August 16, 2019 was enough to grab the attention of the Indonesian people. For this incident people then turn to the law to the extent that its effectiveness reduces the problem of racist speech. This is important because it involves human rights inherent in every person. This alarming event should occur if the law is able to accommodate racism problems that arise in Indonesia.

The beginning of the incident began with news of the harassment of the national flag of the Republic of Indonesia red and white. Reportedly the flag was dumped in the front of the Papuan student dormitory on the Kalasan street number 10, Surabaya, East Java.

According to East Java Regional Police Public Relations, Senior Commissioner Pol Frans Barung Mangera,⁶ there were about 700 to 1000 people approaching the student dormitory. The crowd was provoked by news of the flag abuse. On the other hand students in the Papua dormitory put up certain attributes that make the masses even more provoked.

The police then evacuated 43 Papuan students because the situation was difficult to control at around 13:00 WIB.

⁴ Hak konstitusional adalah hak-hak yang dijamin oleh konstitusi atau undang-undang dasar, baik jaminan itu dinyatakan secara tegas maupun tersirat. Lihat, I Dewa Gede Palguna, *PENGADUAN KONSTITUSIONAL (CONSTITUTIONAL COMPLAINT) Upaya Hukum terhadap Pelanggaran Hak_hak Konstitusional Warga Negara*. Sinar Grafika, Jakarta, hlm.111

⁵ Hilda Meilisa Rinanda, *Soal Ucapan Rasis kepada Mahasiswa Papua, Staf Kecamatan Ngaku Spontan*, <https://news.detik.com/berita-jawa-timur/d-4691320/soal-ucapan-rasis-kepada-mahasiswa-papua-staf-kecamatan-ngaku-spontan>, diakses Jumat 6 September 2019

⁶ Dipublish oleh Metro News, 19 Agustus 2019, <https://www.youtube.com/watch?v=bgGvYeN2OI>, diakses Jumat 6 September 2019

Furthermore, in mass action on August 17, 2019, racial utterances emerged which were said to trigger riots in a number of areas in Papua and West Papua.⁷

Based on the things described above, it is interesting to conduct a legal analysis of the racist utterances in the Papua dormitory in Surabaya. The aspects that are trying to be analyzed include the following:

1. Flag Abusers

As is well known that this racism case was preceded by the issue that there had been harassment of the red and white flag state symbol. It is important to find out who the perpetrators of the flag abuse are. Without the start of the act of the perpetrators throwing flags in the gutter by themselves there was no act of siege to the masses in the Papuan student dormitory in Surabaya. Without the presence of a mass on the day of the incident, of course there would never have been racial speech among the crowd.

Legally the act of throwing a flag into a ditch is clearly an insult to the flag itself. For those who have high patriotism towards their people, of course they will react to the act of insulting the flag. Anticipating the turmoil that occurs, the authorities must move quickly to find the perpetrators because legal instruments to crack down on the perpetrators of insulting flags are sufficiently available.

Legal provisions for those who have tarnished the national flag of the Republic of Indonesia have been regulated as Article 154a of the Criminal Code (KUHP):

“Anyone who desecrates the National Flag of the Republic of Indonesia and the Republic of Indonesia’s National Symbol, is sentenced to a maximum of four years imprisonment or a maximum of three thousand rupiah in fines.”

If you further examine Article 154a of the Criminal Code, the perpetrators of

⁷ <https://www.tribunnews.com/regional/2019/08/29/terbaru-kasus-rasisme-mahasiswa-papua-di-surabaya-peran-tri-susanti-yang-membuatnya-jadi-tersangka?page=2>, diakses Jumat 6 September 2019.

the flag desecration shall apply to anyone indiscriminately. There should be no doubt about cracking down on the perpetrator.

Criminal provisions for the act of insulting the Indonesian national flag are also regulated in Law of the Republic of Indonesia Number 24 Year 2009 Concerning the Flag, Language and Coat of State, as well as the National Anthem, is a symbol of national sovereignty and honor (Law No.24 of 2009). According to the aforementioned provisions, those who act to throw the flag into the gutter can be charged with Article 57 letter a of Law No.24 of 2009:

“Everyone is prohibited from crossing out, writing, drawing, or damaging the symbol of the country with the intention of tarnishing, insulting, or demeaning the honor of the state symbol”

The act of throwing a red and white flag into a ditch is clearly an act of demeaning the honor of a nation’s flag as a symbol of the state. The legal sanctions for violators are further regulated by Article 68 of Law No.24 of 2009:

“Any person who deletes, writes, draws, or damages the National Symbols with the intention of tarnishing, insulting, or degrading the honor of the National Symbols as referred to in Article 57 letter a, shall be liable to a maximum imprisonment of 5 (five) years or a maximum fine of Rp500.000,000.00 (five hundred million rupiah), “

Efforts to uncover the perpetrators who threw the flag in the gutter in front of the Papuan student dormitory in Surabaya before the siege of the student dormitory in Papua were unsolved. If it is resolved, the siege by the masses in the Papua dormitory does not occur. The masses will at least hold the perpetrators responsible for their actions. Naturally, it is unlikely that racist utterances will surface to the public, triggering major riots in Papua and West Papua.

2. Officials Should Act Professionally

In the siege incident of Papuan student dormitories in Surabaya, the involvement of state officials must act professionally. In the command there are two parties that face each other. On the one hand, a crowd of 700 to 100 people were disturbed by the flag harassment incident, while on the other hand Papuan students who were about to be held accountable by the masses actually carried attributes that provoked emotions. Between the two parties that face each other the authorities should be neutral rather than provoked and act emotionally.

The apparatus present at this incident proved that neither civilian nor military proved to be professional. They actually dissolve in the situation so that some emotions even shout racists. The fact that happened was based on the statement of Kapendam V / Brawijaya, Lieutenant Colonel Imam Haryadi there were five TNI members who received temporary suspension, namely the Commander of the Tambaksari Koramil Major Inf. H. Irianto along with four other Koramil personnel.⁸ Not only from the military officers who were prosecuted, a subdistrict-level trantib, named Syamsul Arifin, was determined by the police as a racist speech suspect.⁹

Suspension for military personnel is a form of institutional discipline. This action is more related to professional ethics to the military personnel. This proves that the examination of the person has not found sufficient evidence to be prosecuted legally. As for the subdistrict's trantib apparatus, the police have at least two sufficient bouts of equipment for legal action. The fact is the trantib apparatus has been named as a suspect. Both the enforcement of professional ethics or the

law that applies to military and non-military forms of enforcement of the rules as part of the procedures for association in human society.¹⁰ This is important for the achievement of security and order in a community environment.

3. Perpetrators of Racial Examination at the Time of the Event

The racist utterance when the siege took place in the siege of Papuan student dormitories in Surabaya was a trigger for the reaction shown by the masses in Papua and West Papua. This is believed because the masses in Papua and West Papua reacted because one of them was racial speech. Without racial speech, no one feels insulted or despised. The racist attitude shown actually threatens Indonesia's diversity.

A racial expression naturally triggers animosity towards the party to whom the speech is intended. Such a statement must be addressed so as not to disturb public order and order. If referring to the Criminal Code, Article 156 states:

- (1) Anyone who publicly declares hostility, hatred or underestimation (min-acting) of one or several groups of the Indonesian people, is threatened with a maximum imprisonment of four (4) years or a maximum fine of four thousand five hundred rupiah.
- (2) What is meant by the groups for this article and the following article is that each part of the Indonesian population differs from other parts or parts because of ethnicity (race), customs, religion, area of origin, descent, nationality (nationality) or position according to State administration law. “

⁸ <https://www.tribunnews.com/regional/2019/08/29/terbaru-kasus-rasisme-mahasiswa-papua-di-surabaya-peran-tri-susanti-yang-membuatnya-jadi-tersangka?page=4>, diakses Sabtu 7 September 2019

⁹ <https://www.tribunnews.com/nasional/2019/09/04/sosok-syamsul-arifin-tersangka-kasus-rasisme-di-asrama-mahasiswa-papua-kini-ditahan-dan-minta-maaf>, diakses Sabtu 7 September 2019

¹⁰ Tata cara pergaulan dalam masyarakat manusia disebut aturan atau sering disebut kaidah atau norma. Aturan bertingkah laku ini diperlukan agar manusia yang harus hidup di tengah masyarakatnya itu mengetahui dengan tepat apa yang harus ia lakukan dengan sesamanya. Dengan begitu ia pun tidak akan merugikan dan/atau mencederai sesamanya. Lihat. Soetandyo Wignjosebroto, 2002, *Hukum: Paradigma, Metode dan Masalah*, ELSAM dan HUMA, Jakarta, hlm.171

Criminal snares for racists are not only found in the Criminal Code, only. Provisions in Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, also provide criminal and fine threats, wherein there is Article 16 which states:

“Everyone who intentionally shows hatred or hatred towards others based on racial and ethnic discrimination as referred to in Article 4 letter b number 1, number 2 or number 3, shall be liable to a maximum imprisonment of 5 (five) years and / or a fine Rp. 500,000,000.00 (five hundred million rupiah). “

However racial utterances are not only done in the real world as the person in Surabaya did. Hate speech turns out in the modern world today can be done in cyberspace. This does not mean that hate speech in cyberspace does not cause problems in the real world. It must be recognized that utterance in cyberspace is a form of communication that is not bound by distance and time. When cyberspace communication takes place in the form of racial utterances it provokes anger, of course it will be acted out in the real world.

Racial exams in cyberspace must be interpreted as information intended to cause hatred or hostility. Such information is very vulnerable to trigger unrest in the community, which in turn has the potential to cause material and non-material losses in the real world. Therefore, in connection with information intended to incite hatred or hostility, there is a legal instrument namely the Information Act and Electronic Transactions. Related to information intended to incite hatred or hostility, Article 28 paragraph (2) and Article 45 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions:

Article 28 paragraph (2):

Everyone intentionally and without the

right to disseminate information intended to incite hatred or enmity of individuals and / or groups of people based on ethnicity, religion, race and intergroup (SARA).

Article 45 paragraph (2):

Every person who fulfills the elements referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). “

This is what happened when the siege incident of Papuan hostel in Surabaya was uploaded in cyberspace, so the people in Papua and West Papua showed their reaction. As a result, mass riots ensued in Papua and West Papua even though not as a whole. The riots caused billions of lives and materials. Racial speech that is triggered in cyberspace should also get legal action

4. Flag Harassment with Racist Exams Two Different Things

What is unfortunate is that racial speech has caused adverse reactions morally and materially. Even more alarming is actually causing disintegration of the nation. The reaction of the masses from local residents who came to the Papuan student dormitory seemed emotional. The police officers who are now handling this problem consider that there are acts of provocation. What is clear is whether or not the provocation is, in fact there are racist utterances of this sound and be seen clearly in the videos uploaded on social media.

What is unfortunate is the mass recruitment over the issue of flag harassment by shouting racist issues. This indicates that the masses who came to the Papua dormitory in Surabaya were already overwhelmed with emotional feelings so that they acted irrationally. If they are not overwhelmed by emotions, they will act logically so that flag harassment is not confronted with racist attitudes. With a clear mind, of course we are able to sort out that the issue of flag abuse

and racist speech are two different things.

It was understood then that flag harassment and racist speech were regulated under different laws. If the flag harassment is regulated in Article 154a of the Indonesian Criminal Code (KUHP) and the Republic of Indonesia Law No. 24/2009 concerning the Flag, Language and State Symbol, and the National Anthem the flag is a symbol of national sovereignty and honor. On the other hand the racial utterances of the legislation include, Article 156 of the Criminal Law Act, Article 16 of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, then in Article 28 paragraph (2) and Article 45 paragraph (2) of the Law Law Number 19 Year 2016 concerning Amendment to Law Number 11 Year 2008 concerning Information and Electronic Transactions. This law must be interpreted as a law that functions to maintain and maintain social relations.¹¹

Responding to two different problems in the case in Surabaya, it requires an unemotional attitude accompanied by legal awareness for every citizen. Unemotionally opens up space to think clearly. Likewise with having high legal awareness, the reaction given to a problem will always follow the applicable legal guidelines.

C. CONCLUSIONS

The impact caused by the mass reaction in the Papua dormitory proved to have caused extraordinary social problems and the threat of disintegration of the nation. Based on the matters that have been reviewed above, it is proven that legal instruments are sufficiently available to impose sanctions, both corporate criminal and fine. There must be sanctions that can accommodate people's sense of justice against those who are proven guilty so that similar actions do not occur again in the future.

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