



Analysis of Criminal Sanctions for Serious Human Rights Violations with an Aspect of Abuse

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Abstract

The investigation into the abuse case of Mario Dandy Satriyo cs against Cristalino David Ozora is still being carried out by the authorities. Several new facts were revealed in the reconstruction process that was held by investigators from the Sub Directorate of Renakta of the Ditreskrim Polda Metro Jaya. Including, about the celebration in the style of Cristiano Ronaldo which was carried out by Mario after abusing David. In the visible reconstruction, Mario celebrated after kicking David precisely on the left side of the head. Before kicking, Mario first takes a square while running. After kicking, Mario first circled David's body and then celebrated the goal. The police have named Mario Dandy and Shane Lukas as suspects in this abuse case. Both have been detained at Polda Metro Jaya Detention Center. Mario was charged with Article 355 of the Criminal Code paragraph 1, subsidiary to Article 354 paragraph 1 of the Criminal Code, subsidiary 535 paragraph 2 of the Criminal Code, subsidiary 351 paragraph 2 of the Criminal Code. Investigators also charged Mario Article 76c Jo 80 of the Child Protection Act. While Shane was charged with Article 355 paragraph 1 in conjunction with article 56 of the Criminal Code, subsidiary 354 paragraph 1 in conjunction with 56 of the Criminal Code, subsidiary 353 paragraph 2 in conjunction with 56 of the Criminal Code, subsidiary 351 paragraph 2 in conjunction with 76c of the Child Protection Act. Apart from that, a woman with the initials AG has also been raised to the status of a perpetrator or a child in conflict with the law. AG was charged with Article 76c in conjunction with Article 80 of the PPA Law and/or Article 355 8paragraph 1 in conjunction with Article 56 of the Subsidiary Criminal Code Article 354 paragraph 1 in conjunction with 56 of the Subsidiary Criminal Code 353 paragraph 2 in conjunction with Article 56 of the Criminal Code. By looking at the above, it can be said that it is a serious violation, in which crimes against humanity are: one of the acts committed as part of a widespread or systemic attack, knowing that the attack was directed directly against the civilian population in the form of torture.

Keywords: *Criminal Sanctions; Gross Human Rights Violations; Persecution*

Introduction

Human rights violations occurred recently in this March. Due to widespread human rights violations, neglect should not be an option, even if efforts to resolve the past are not simple. In this situation, settlement through the legal process is a key word for eliminating the practice of impunity. Putting on trial the perpetrators involved in gross human rights violations is a prerequisite for a country towards a democratic government that protects and respects the implementation of human rights. Efforts to advance the protection of human rights cannot be separated from the social and political conditions of Indonesia (Ufran, 2019).

Attention to advancing the protection of human rights is stated explicitly in several laws and regulations such as Law Number 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture and Other Cruel Treatment or Punishment, No. Humane, or Degrading Human Dignity). Law Number 29 of 1999 concerning Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (International Convention on the Elimination of All Forms of Racial Discrimination 1965). Law Number 29 of 1999 concerning Ratification of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (International Convention on the Elimination of All Forms of Racial Discrimination) (Gunarto, 2007).

Government Regulation Number 2 of 2002 concerning Procedures for the Protection of Witnesses and Victims in Serious Human Rights Violations and Government Regulation Number 3 of 2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations. One legal institution that has an important role in the context of implementing human rights is Law Number 26 of 2000. (Audina, 2020). These laws and regulations are to resolve gross human rights violations in accordance with the provisions of Article 104 paragraph (1) of Law Number 39 of 1999 concerning Human Rights. In addition, the birth of this law is a substitute for and at the same time revokes the Government Regulation in Lieu of Law Number 1 of 1999 concerning the Human Rights Court which is deemed inadequate. (Undang-undang Republik Indonesia, 1999).

The investigation into the abuse case of Mario Dandy Satriyo cs against Cristalino David Ozora is still being carried out by the authorities. Several new facts were revealed in the reconstruction process that was held by investigators from the Sub Directorate of Renakta of the Ditreskrim Polda Metro Jaya. Including, about the celebration in the style of Cristiano Ronaldo which was carried out by Mario after abusing David. In the visible reconstruction, Mario celebrated after kicking David precisely on the left side of the head. Before kicking, Mario first takes a square while running. After kicking, Mario first circled David's body and then celebrated the goal. During the reconstruction, investigators reprimanded Mario because they were deemed not to have performed the celebration scene. When asked to demonstrate the celebration scene, Mario ran to David's right and stopped on the right side of his head. Investigators also reprimanded Mario and gave instructions to demonstrate according to the BAP and CCTV footage owned by the police.

Thus, in this case, the police have named Mario Dandy and Shane Lukas as suspects in this abuse case. Both have been detained at Polda Metro Jaya Detention Center. Mario was charged with Article 355 of the Criminal Code paragraph 1, subsidiary to Article 354 paragraph 1 of the Criminal Code, subsidiary 535 paragraph 2 of the Criminal Code, subsidiary 351 paragraph 2 of the Criminal Code. Investigators also charged Mario Article 76c Jo 80 of the Child Protection Act. While Shane was charged with Article 355 paragraph 1 in conjunction with article 56 of the Criminal Code, subsidiary 354 paragraph 1 in conjunction with 56 of the Criminal Code, subsidiary 353 paragraph 2 in conjunction with 56 of the Criminal Code, subsidiary 351 paragraph 2 in conjunction with 76c of the Child Protection Act. Apart from that, a woman with the initials AG has also been raised to the status of a perpetrator or a child in

conflict with the law. AG was charged with Article 76c in conjunction with Article 80 of the PPA Law and/or Article 355 8paragraph 1 in conjunction with Article 56 of the Subsidiary Criminal Code Article 354 paragraph 1 in conjunction with 56 of the Subsidiary Criminal Code 353 paragraph 2 in conjunction with Article 56 of the Criminal Code.

What has been seen above has provided certainty in the aspect of law enforcement, however, it has not provided values of serious human rights violations when it comes to the aspect of persecution. This is important because the National Commission on Human Rights until the arrangement of the panel of judges, where the composition is different from ordinary criminal courts (Asrullah et al., 2020). In this Human Rights Court, the composition of judges is five people which requires that three of them are ad hoc judges, however, even though there are specificities in handling them, the procedural law used still uses criminal procedural law, especially the evidentiary procedure.

The Human Rights Court also regulates the specificity of handling crimes which include gross violations of human rights by using the norms in international law. (Tumbo, 2020). Among the adopted norms is regarding the principle of individual responsibility (Individual Criminal Responsibility) which is elaborated in the provisions in Law no. 26 of 2000 in article 1 paragraph (4). This individual responsibility is emphasized that responsibility is imposed on everyone but cannot be imposed on perpetrators under the age of 18 years.

The results of the investigation, if evidence is found that there are allegations of gross human rights violations, it will be delegated to the Attorney General's Office to proceed to the investigation stage Attorney General (Santoso, 2019). Based on the evidence and prosecution embodied in the indictment, a human rights court was then held based on the relative competence of the court. The location of this court is in the district court, where the locus and tempos delictie are gross violations of human rights.

On the one hand, this case has fulfilled the locus and tempos delictie of gross human rights violations, because the attorney general stated that the case of the persecution of Cristalino David Ozora Latumahina did not meet the requirements to be resolved through a restorative justice mechanism. According to the Head of the Attorney General's Legal Information Center, Ketut Sumedana, this was because of the persecution committed by Mario Dandy Satrio and Shane Lukas, the threat of punishment exceeding the restorative justice rules issued by the Attorney General.

Therefore, the two suspects do not deserve restorative justice. This is because the threat of imprisonment for exceeding the limit stipulated in the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020. In addition, the actions of Mario Dandy and Shane Lukas are considered heinous and have far-reaching impacts on society. The actions committed by the suspect were heinous and had a wide impact on both the media and society, so strict action and punishment were needed for the perpetrators. (Yusuf Putra et al., 2018).

Regulations concerning the juvenile criminal justice system oblige law enforcement officials to make peace efforts at every level of handling cases of child offenders. This is in order to protect the future of children in conflict with the law, namely diversion, not restorative justice. Even so, diversion can only be carried out if there is peace and forgiveness from David Ozora and the victim's family. If there is no word of apology, then the child perpetrator's case must be continued until court.

Research Method

The research used in this research process uses a type of normative legal research (Soekanto & Mamudji, 2015). By using library materials or secondary materials that have been collected. Legal research is also a process to determine legal rules, legal principles, and legal doctrines in order to answer the legal issues faced.

Result and Discussion

In Indonesia, upholding and protecting human rights is very important and also beneficial to society, because the dignity and worth of the whole person is closely related to human rights. In Indonesia it is closely related to the formation of Pancasila in Indonesia. In Indonesia, human rights are highly respected, because they are part of Indonesia's characteristics, because the rule of law will always exist and uphold the dignity of the people. (Lahera & Dewi, 2021).

The realization of the Pancasila precepts of just and civilized humanity is the upholding of human rights which provides equal treatment and dignity to all Indonesian people without exception, regardless of rank, skin color, religion, and much more. This is included in the principle of Unity in Diversity, which is different but one. Upholding human rights can strengthen national character as an important factor in upholding human rights in Indonesia with the values of the Pancasila precepts (Anindita, 2020). If we examine more deeply human rights can be reflected in the many values of the Pancasila precepts. Starting from the freedom to embrace religion, the right to get respect from other human beings, the right to participate in uniting the nation, the right to freedom of expression and also the right to get justice without exception. Chaos will occur everywhere if the enforcement of human rights law in Indonesia is not upheld, and humanity must be upheld by the Indonesian nation and must exist. Chairman of the National Human Rights Commission (Komnas HAM) Atnike Nova Sigiro explained that the case of the persecution of Crystalino David Ozora was not included in the category of human rights violations, however, this case could be a human rights violation if the legal process did not proceed. Not included (category of human rights violations). Because this case of persecution was carried out by the community against the community. One inter-community crime cannot be called a human rights violation. Human rights violations are committed by the state against the community, not actions committed between communities. It's just that, when the legal process doesn't work in the case of David's persecution, it means that the state has committed human rights violations (Fauzi, 2015).

Komnas HAM will continue to monitor law enforcement and developments in the case of David's persecution. He ensured that Komnas HAM would intervene and provide views if one day, during this legal process, there were problems. The legal process of David's persecution case continues. The police have named Mario Dandy Satrio and Shane Lukas as suspects, while a 15-year-old girl with the initials AG has been named as the perpetrator or child in conflict with the law. Polda Metro Jaya held a reconstruction of the David abuse case. This reconstruction was attended by all the actors, the legal team from LBH Ansor and David's family. Investigators also presented the mother of David's friend with the initials N, who became a witness and managed to eliminate the persecution.

Serious Human Rights Violations include: Crimes of Mass Murder (Genocida), Crimes Against Humanity, War Crimes, and The Crime of Aggression. 2. Whereas the protection of suspects or defendants who commit crimes of serious human rights violations according to the Criminal Procedure Code starts from the time the suspect is in the process of investigation and proceedings at the Attorney General's Office, the trial process until the suspect is while in detention which includes the right to be tried without delay for clear reasons; the right to have witnesses examined, the right to be tried by an honest and fair and impartial judge and the right to use legal remedies both at the national level and in

international forums which include ordinary legal remedies and extraordinary legal remedies (Ham, 2018).

Article 44 of the Human Rights Charter stipulates that in order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations. On the basis of the provisions contained in Article 44 of the Human Rights Charter, Law Number 39 of 1999 concerning Human Rights was born.

The general explanation of Law Number 39 of 1999 is mentioned, among others (Winarti, 2021) :

- a. Regulations regarding human rights are determined by referring to the UN-HAM Declaration, the UN Convention on the Elimination of All Forms of Discrimination Against Women, the UN Convention on the Rights of the Child, and various other international instruments that regulate human rights.
- b. Law Number 39 of 1999 is the umbrella for all laws and regulations governing human rights, so that violations, either directly or indirectly, of human rights are subject to criminal, civil and administrative sanctions in accordance with statutory provisions.

Articles 4 and 5 of Law Number 26 of 2000, the Human Rights Court has the duty and authority to examine and decide cases of gross human rights violations and has the authority to examine and decide on cases of gross human rights violations that are outside the territorial boundaries of the Republic of Indonesia by Indonesian citizens. Serious human rights violations include:

- a. The crime of genocide is: any act committed with the intent to destroy or annihilate all or part of a national, racial, ethnic or religious group by: killing group members, causing serious physical or mental suffering to group members, creating living conditions a group resulting in its physical destruction in whole or in part, imposing measures to prevent births within the group, or forcibly removing children from a particular group
- b. Crimes against humanity, namely: one of the acts committed as part of a widespread or systemic attack which he knows that the attack is directed directly against the civilian population in the form of: murder, extermination, enslavement, expulsion or forcible transfer of population, deprivation of liberty or deprivation of physical freedom others arbitrarily violating (principles) of the main provisions of international law, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other forms of sexual violence that are equivalent, Persecution of a particular group or association based on political equality, race, nationality, ethnicity, culture, religion, gender or other reasons that have been universally recognized as something that is prohibited under international law, enforced disappearances, crimes of apartheid (acts of inhumane acts perpetrated in the context of an institutional regime of oppression and domination by a member of a racial group over another racial group or groups committed with the intent of maintaining that regime.

Not all cases of gross human rights violations fall within the scope of absolute authority or absolute competence of the Human Rights Court, because Article 6 stipulates that the Human Rights Court does not have the authority to examine and decide on cases of gross human rights violations committed by a person under the age of 18 (eighteen) years at the time the crime was committed, namely a provision similar to that contained in Article 26 of the Rome Statute.

Investigation according to Law Number 26 of 2000 is contained in Article 1 paragraph (5) which stipulates that what is meant by an investigation is a series of investigative actions to seek and discover whether there was an event suspected of being a gross human rights violation to be followed up with an

investigation in accordance with the provisions regulated in Law Number 26 of 2000 (Lahera & Dewi, 2021). Investigations into gross violations of human rights are carried out by the National Commission on Human Rights and in the case of conducting such investigations the National Commission on Human Rights. may form an Ad Hoc Team consisting of the National Commission on Human Rights and elements of society in accordance with the provisions of Article 18 (2) of the Law on Human Rights Courts (Sumigar, 2020).

The fundamental difference between an investigation and an investigation, if an investigation aims to determine whether or not there was an incident of gross human rights violations, while an investigation aims to determine who is a suspect who can be suspected of committing such gross human rights violations. The authority to conduct investigations into cases of gross violations of human rights rests with the Attorney General but does not include the authority to receive reports and complaints as stipulated in Article 21. According to Article 21 (3), the Attorney General can also appoint ad hoc investigators consisting of elements of government and elements of society.

Cases of gross violations of human rights are examined and decided by the Human Rights Court within a maximum period of 180 days from the time the case is transferred to the Human Rights Court (Article 31). If a case of gross violation of human rights is appealed to the High Court, the case is examined and decided within 90 days from the time the case is transferred to the High Court (Article 32 (2)). In the event that a case of gross violation of Human Rights is appealed to the Supreme Court, the case is examined and decided within a maximum period of 90 days from the time the case is transferred to the Supreme Court (Article 33 (1)).

Every victim of gross human rights violations and/or their heirs can obtain compensation, restitution and rehabilitation as stated in the verdict of the Human Rights Court (Article 35 (1) and (2)). Compensation is compensation provided by the state because the perpetrator is unable to provide full compensation which is his responsibility. Restitution is compensation given to victims or their families by perpetrators or third parties, which can be in the form of returning property, paying compensation for loss or suffering or reimbursing costs for certain actions. Rehabilitation is restoration to its original position, for example honor, good name, position or certain rights. Compensation, restitution and or rehabilitation is given to the victim or the victim's family who is the heir (Article 1, Article 2 (1) Government Regulation Number 3 of 2002 concerning Procedures for the Protection of Victims and Witnesses in Serious Human Rights Violations)

The Witness and Victim Protection Agency (LPSK) will officially provide protection for victims of abuse, Cristalino David Ozora alias David Latumahina (17). The decision was made when the LPSK assessed that all of David's formal requirements had been fulfilled. The protection that David will get is the fulfillment of procedural rights, medical assistance and psychological rehabilitation. Regarding David's psychological rehabilitation, Hasto said that at this time his party could not provide services because they had to do an assessment first. Meanwhile, David's condition is still lying in the hospital.

Conclusion

To ensure the recognition and protection of human rights, Indonesia has several legal instruments related to human rights. Specifically, to try gross human rights violations, Law Number 26 of 2000 concerning human rights trials was issued. Investigations into cases of gross human rights violations are within the authority of the National Commission on Human Rights. As for the investigation and prosecution is in the authority of the Attorney General. Examination of cases of gross violations of human rights as referred to in paragraph (1) is carried out by a panel of judges at the Human Rights Court

totaling 5 people consisting of 2 judges at the relevant Human Rights Court and 3 ad hoc judges (Article 27 (2)).

In the case of the persecution of Mario Dandy Satriyo cs against Cristalino David Ozora, the authorities are still continuing. Several new facts were revealed in the reconstruction process that was held by investigators from the Sub Directorate of Renakta of the Ditreskrim Polda Metro Jaya. Including, about the celebration in the style of Cristiano Ronaldo which was carried out by Mario after abusing David. In the visible reconstruction, Mario celebrated after kicking David precisely on the left side of the head. Before kicking, Mario first takes a square while running. After kicking, Mario first circled David's body and then celebrated the goal. During the reconstruction, investigators reprimanded Mario because they were deemed not to have performed the celebration scene. When asked to demonstrate the celebration scene, Mario ran to David's right and stopped on the right side of his head. Investigators also reprimanded Mario and gave instructions to demonstrate according to the BAP and CCTV footage owned by the police.

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