



## Potential and Implications of Disputes Over the Authority of the National Human Rights Commission and the Indonesian National Police

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### **Abstract**

National Human Rights Commission is positioned as an independent state institution at the same level as other state institutions which in carrying out its functions and authorities stand on a par with other state institutions whose authority is granted by law. Although vertically it has an equal position with other state institutions, in carrying out its functions, duties, and authorities, this commission must report to the President and the DPR. Article 18 Paragraph (1) Law Number 26 of 2000 concerning the Human Rights Court states that investigations into gross human rights violations are carried out by the National Human Rights Commission. In carrying out its duties, National Human Rights Commission has the authority to receive reports or complaints from a person or group of people regarding the occurrence of serious human rights violations. Police in Article 2 Law Number 2 of 2002 which is the function of the state government in the field of maintaining security and public order, law enforcement, protection, shelter, and service to the community. If a criminal case occurs later the handling of the case is carried out by the police with the authority of investigation by the Police because it is considered an ordinary crime, but at the same time the case is also investigated by the National Human Rights Commission as a crime against humanity which is part of the National Human Rights Commission. human rights violations. Therefore, related to this condition, a struggle for authority may occur due to differences in the interpretation of the crime which then causes the National Police and National Human Rights Commission to declare authority to each other. The authority dispute between the National Police and National Human Rights Commission then could not be resolved within the executive government because National Human Rights Commission is not a state institution under the President, nor can it be resolved through the Constitutional Court as referred to in Article 24C paragraph (1) of the 1945 Constitution because the object of authority disputed by the two state institutions is powers granted by law.

**Keywords:** *Potential; Implications; Disputes; Authority; National Human Rights Commission; Indonesian National Police*

## ***Introduction***

Law enforcement is not a new figure in our homeland, it is very important to talk about because this is not only the duty and mandate of the 1945 Constitution, but furthermore on the other hand it is also a milestone as well as a bulwark for upholding law and justice. This is related to the future continuity of justice seekers in Indonesia (Hasibuan, 2007). In its journey, the Indonesian National Police as the spearhead of legal services in Indonesian society is part of one of the law enforcement pillars of the criminal justice system, namely the police, prosecutors, judiciary, and society. Law enforcement is an activity to harmonize the relationship of values that are outlined in the rules, and solid views and manifest them in attitudes, acting as a series of final value elaborations to create peaceful social life (Soekanto, 1983). National Human Rights Commission is positioned as a state institution. Independently domiciled at the same level as other state institutions which in carrying out their functions and authorities are established by law and in carrying out their functions, duties, and authorities this commission must report to the President and the DPR (Hamidi & Lutfi, 2010).

State auxiliary bodies are independent, which are useful as supports and help assist the transition process. In addition to helping the transition process, these supporting institutions are also idealized to layer or improve existing institutions but whose performance is unsatisfactory, involved in corruption, collusion, and nepotism, and the inability to be independent of the influence of other powers (Mochtar & Satriawan, 2008). The establishment of the National Human Rights Commission as an independent institution is also based on the law of Article 28I Paragraph (4) of the 1945 Constitution which states that: the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. The government in this case is the President of the Republic of Indonesia who has ratified the Human Rights Law (as the legal basis for the establishment of the National Human Rights Commission). Therefore, National Human Rights Commission is located as a state auxiliary agency (Hamidi & Lutfi, 2010).

National Human Rights Commission is positioned as an independent state institution at the same level as other state institutions which in carrying out its functions and authorities stand on a par with other state institutions whose authority is given by the 1945 Constitution. Although vertically it has an equal position with other state institutions, in its implementation The functions, duties, and authorities of this commission must report to the President and the DPR (Hamidi & Lutfi, 2010). Meanwhile, judging from the other functions it carries out, National Human Rights Commission has the task and authority to provide opinions based on the approval of the Chairperson of the Court on certain cases that are currently in the judicial process, if in that case there are violations of human rights in public matters and examination procedures by the court which are then carried out. The opinion of the National Human Rights Commission must be notified by the judge to the parties (Karisma & Ariana, without year). From this function, the National Human Rights Commission performs some of the functions of the court (semi-judicial) so that it is under the supervision of the Supreme Court.

In general, human rights are defined as basic rights that every human being is born with as a gift from God Almighty. This means that these human rights are not given or given to other people, groups, or the state (Parlindungan, 2013). Therefore, human rights cannot be taken or revoked, ignored, reduced, or taken away by power but must be respected, maintained, and protected (Bawa, 2013).

Meanwhile, judging from the other functions it carries out, National Human Rights Commission has the task and authority to provide opinions based on the approval of the Chairperson of the Court on certain cases that are currently in the judicial process, if in that case there are violations of human rights in public matters and examination procedures by the court which are then carried out. The opinion of the National Human Rights Commission must be notified by the judge to the parties (Karisma & Ariana, without year).

A violation of Human Rights (HAM) can be legally processed through the Human Rights Court (Amiruddin, 2021). However, the Human Rights Court can only adjudicate gross human rights violations as stipulated in Article 1 point 3 of Law Number 26 of 2000 concerning the Human Rights Court. Then, what is meant by gross human rights violations are the crimes of genocide and crimes against humanity. The definition of the crime of genocide is any act carried out with the intention of destroying or destroying all or part of a national, racial, ethnic group, or religious group, by:

- a. killing group members;
- b. cause serious physical and mental suffering to group members;
- c. create conditions of living for the group which will result in its physical destruction in whole or in part;
- d. imposing measures aimed at preventing births within the group; or
- e. forcibly transferring children from one group to another

Meanwhile, the definition of a crime against humanity is one of the acts committed as part of a widespread or systematic attack in which it is known that the attack was directed directly against the civilian population, in the form of:

- a. murder;
- b. extermination;
- c. slavery;
- d. forced expulsion or displacement of the population;
- e. deprivation of liberty or deprivation of other physical freedoms arbitrarily in violation (principles) of the basic provisions of international law;
- f. torture;
- g. rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence;
- h. persecution of a certain group or association based on political equality, race, nationality, ethnicity, culture, religion, gender, or other reasons that have been universally recognized as prohibited under international law;
- i. enforced disappearance of persons; or
- j. apartheid crime.

Article 18 Paragraph (1) states that investigations into gross human rights violations are carried out by the National Human Rights Commission. In carrying out its duties, National Human Rights Commission has the authority to receive reports or complaints from a person or group of people regarding the occurrence of serious human rights violations. Meanwhile, for the investigation and prosecution of gross human rights violations carried out by the Attorney General.

Meanwhile, the Police in carrying out their main duties, based on Article 14 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police (Sadjijono, 2005), the police are tasked with:

- a. implementing regulation, guarding, escorting, and patrolling the community and government activities as needed;
- b. organize all activities to ensure security, order, and smooth traffic on the road;
- c. fostering the community to increase community participation, public legal awareness, and community compliance with laws and regulations;
- d. participate in the development of national law;
- e. maintain order and ensure public security;
- f. coordinate, supervise, and provide technical guidance to the special police, civil servant

- investigators, and other forms of self-defense;
- g. conduct investigations and investigations into all criminal acts in accordance with the criminal procedure law and other laws and regulations;
  - h. organize police identification, police medicine, forensic laboratories, and police psychology for the purposes of police duties;
  - i. protect the safety of body, soul, property, society, and the environment from disturbances of order and/or disaster, including providing assistance and assistance by upholding human rights;
  - j. serve the interests of the community for a while before being handled by the authorized agency and/or party;
  - k. provide services to the community in accordance with their interests within the scope of police duties; as well as
  - l. carry out other duties in accordance with statutory regulations.

### ***Methods of Research***

This type of research is normative legal research, namely research that examines laws and regulations relating to the regulation of dispute resolution between state institutions under the law and carries out a series of actions or processes to find legal problems, whether it's a legal vacuum, obscurity of norms and conflict of norms or finding legal principles in the regulation regarding efforts to resolve disputes over authority between state institutions under the law. The focus of this legal research is to find out the regulation of dispute resolution of authority between state institutions whose authority is given by law as a consequence of the concept of separation of power in running a legal state to ensure the value of legal certainty and also to examine and analyze how to reconstruct the arrangement of dispute resolution of authority between state institutions.

### ***Results and Discussion***

#### **Potential Dispute Over the Investigation Authority Between the National Human Rights Commission and the Indonesian National Police**

Law enforcement problems will always occur as long as human life exists, the more humans grow and develop, the more various law enforcement problems occur. Talking about law enforcement, of course, cannot be separated from the matter of officials who occupy strategic positions as law enforcers, namely Police, Prosecutors, and Judges, which are limited to professional matters (Arief, 2001). Police in Article 2 Law Number 2 of 2002 which is the function of the state government in the field of maintaining security and public order, law enforcement, protection, shelter, and service to the community. The concept of a state of the law is that government authority comes from laws and regulations, which means an authority that must be sourced from the applicable laws and regulations, so that in a state of the law the application of the principle of legality becomes one of the main principles that become the main basis in the administration of government, especially for developing countries. a legal state that adheres to the civil law system (Continental Europe). Thus, every government administration must have legitimacy, namely an authority granted by law (Hatta, 2009).

In addition, the existing criminal justice system is considered no longer able to protect human rights and transparency in the public interest is increasingly being felt. The fact shows that many people prefer to settle criminal cases they experience outside the system (Zulfa, 2011). Renewal of the Indonesian Police Act, Law Number 2 of 2002 is intended to further strengthen the position and role of the National Police as a government function including maintaining security and public order, law

enforcement, protection and protection, and services to the community who uphold human rights. important in realizing legal promises into reality (Rahardjo, 2000).

If a criminal case occurs later the handling of the case is carried out by the police with the authority of investigation by the Indonesian National Police because it is considered an ordinary crime, but at the same time the case is also investigated by the National Human Rights Commission as a crime. against humanity which is part of the violation of human rights. Indonesian National Police has the authority to conduct investigations into criminal acts based on the authority granted by law in Article 14 paragraph (1) letter g of Law Number 2 of 2002 concerning the Indonesian National Police, the police are tasked with: conducting investigations and investigations against all criminal acts in accordance with the criminal procedure law and other laws and regulations. Meanwhile, the National Human Rights Commission also has the authority to investigate acts of crimes against humanity because they are part of violations of human rights, where the authority of the National Human Rights Commission is also given by law as regulated in Article 18 paragraph (1) of the Law Number 26 of 2000 concerning the Court of Human Rights states that: Investigations into serious human rights violations are carried out by the National Human Rights Commission. then in relation to these conditions, there may be a struggle for authority due to differences in the interpretation of the crime, which then causes the Indonesian National Police and the National Human Rights Commission to declare authority to each other. Likely, this will later lead to a dispute over authority between the Indonesian National Police and the National Human Rights Commission regarding the authority of the investigation.

Based on the potential dispute of authority between the Indonesian National Police and the National Human Rights Commission, it is necessary to first analyze whether there is a possible legal route for resolving the dispute over authority, the first thing that must be analyzed is the position of the state institution. Indonesian National Police based on Article Law Number 2 of 2002 concerning the Indonesian National Police in conjunction with the explanatory rule of Article 7 paragraph (2) states that the Indonesian National Police is a state institution led by the Head of the Indonesian National Police whose position is under the President and The accountability of the Indonesian National Police is also directed to the President in accordance with the law, the responsibilities referred to include, among others, related to preventive and repressive functions. So it is related if there is a dispute of authority that occurs in the Indonesian National Police, the responsibility may be in the hands of the President because based on this provision the Indonesian National Police is under executive power, namely the President, then the Indonesian National Police may follow the direction of the President as the leader of the executive power. as stated in Article 4 paragraph (1) of the Constitution that the President of the Republic of Indonesia holds governmental power according to the Constitution. However, it turns out that its position is different from the National Human Rights Commission, where the National Human Rights Commission is a state institution that is not under any branch of power, including the executive, as explained in Article 1 point 7 of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. explained that the National Human Rights Commission hereinafter referred to as the National Human Rights Commission, is an independent institution whose position is at the same level as other state institutions whose function is to carry out the assessment, research, counseling, monitoring, and mediation of human rights.

The definition of an independent institution is a state institution that in carrying out its duties is not under the authority of other state institutions, including the President (Ramadani, 2020). Therefore, the dispute over authority between the Indonesian National Police and the National Human Rights Commission cannot be resolved within the executive government because the National Human Rights Commission is not a state institution under the President, and the laws relating to the National Human Rights Commission both in the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights explains that the National Human Rights Commission and Law Number 26 of 2000 concerning the Human Rights Court there are no provisions governing the settlement of authority disputes over

investigations of violations human rights are severe so that the issue of dispute over the authority of state institutions between the Indonesian National Police and the National Human Rights Commission regarding the implementation of the authority to investigate the same case due to different interpretations of a criminal case has not yet been established. regulations or laws that regulate the settlement mechanism, which means that in the future it seems that there is a need for a judicial mechanism or forum to resolve disputes of authority like this (Fakhrizi, 2017).

## **Implications of the Dispute on the Authority of the National Human Rights Commission with the Indonesian National Police in Terms of Investigation**

Potential disputes over the authority of the Indonesian National Police and the National Human Rights Commission over each of these state institutions are the result of declaring mutual authority over a criminal case that is interpreted differently by the two state institutions, resulting in a dispute. Where the Indonesian National Police declares a case to be an ordinary criminal act which is the authority of the Indonesian National Police based on Article 14 paragraph (1) letter g of Law Number 2 of 2002 concerning the Indonesian National Police, the police are tasked with: all criminal acts in accordance with the criminal procedure law and other laws and regulations. At the same time, the National Human Rights Commission is of the opinion that in the same case, it is stated that case handled by the Indonesian National Police is an extraordinary crime that is under the authority of the National Human Rights Commission based on Article 18 paragraph (1) of the Law Number 26 of 2000 concerning the Court of Human Rights states that: Investigations into gross human rights violations are carried out by the National Human Rights Commission.

The Indonesian National Police based on Article 8 Law Number 2 of 2002 concerning the Indonesian National Police in conjunction with the explanatory rule of Article 7 paragraph (2) states that the Indonesian National Police is a state institution led by the Head of the Indonesian National Police whose position is under the president and the accountability of the Indonesian National Police is also directed to the President in accordance with the law, the responsibilities referred to include, among others, related to preventive and repressive functions. Regarding the existence of the National Human Rights Commission, which is a state institution that is not under any branch of power, including the executive, as explained in Article 1 point 7 of Law Number 39 of 1999 concerning Human Rights, it is explained that the National Human Rights Commission, hereinafter referred to as the so-called National Human Rights Commission is an independent institution whose position is at the same level as other state institutions whose function is to carry out studies, research, counseling, monitoring, and mediation of human rights.

Sukarno once said that the Pancasila philosophy had a family spirit because it was first presented to the general public as the basis for the philosophy of the Republic of Indonesia that would later be established. And human life is based on the Pancasila philosophy, so the Indonesian people see it as family life (Sumantri, 1992).

The principle of individual responsibility is not only recognized in the International Tribunal but is also recognized in all criminal law systems in the world. So this form of individual criminal responsibility is already a general principle in law, both national law and international law (Bassiouni, 1999).

Therefore, the dispute over authority between the Indonesian National Police and the National Human Rights Commission cannot be resolved within the executive government because the National Human Rights Commission is not a state institution under the President, and the laws relating to the National Human Rights Commission both the Law Number 39 of 1999 concerning Human Rights explains that the National Human Rights Commission and Law Number 26 of 2000 concerning the Human Rights Court there are no provisions governing the settlement of authority disputes over investigations of violations human rights are severe, and if they are brought to the settlement of disputes

over the authority of state institutions through the Constitutional Court, they certainly cannot be accepted because the National Human Rights Commission is not a state institution whose authority is given by the Constitution and the object of the dispute is the authority of state institutions. It is also not the authority granted by the Constitution. So that the issue of dispute over the authority of state institutions between the Indonesian National Police and the National Human Rights Commission related to the implementation of the authority to investigate the same case due to differences in interpretation of a criminal case, no mechanism or law regulates its resolution so that it may have an unfavorable impact on the process. handling the investigation of a criminal case.

The impact of no regulation on dispute resolution of the authority of the Indonesian National Police and the National Human Rights Commission in this case in the future may lead to human rights in the investigation process because between the Indonesian National Police and the National Human Rights Commission as a result of each defending each other different interpretations of the same case, and an acknowledgment that each state institution has the authority to carry out the legal process of the investigation which will lead to a struggle for the authority to investigate the same case. If the seizure of authority will continue to occur without any resolution, then in addition to the handling of overlapping investigations and the ambiguity of the case being handled by which state institution, it is declared as an alleged case of ordinary criminal crimes or gross violations of human rights in the investigation process. There are at least two ways that are known in the International rules on non-discrimination relating to the prosecution of individual accountability in international law for serious crimes in human rights violations, namely, first, the principle of non-discrimination is a form part of the perspective content in several norms. international human rights law and second, non-discrimination figures as cardinal principles of international law which explain how human rights norms, in general, should be applied (Sunga, 1992).

The implications of the dispute over the authority of state institutions over the authority of the investigation will become a new chapter/problem that is getting wider if the National Human Rights Commission succeeds in delegating the results of the investigation process into the case to the Prosecutor's Office for the next process, namely the investigation process. prosecutor's office. Regarding crimes related to gross violations of human rights which were investigated by the National Human Rights Commission, at a later stage, the law ordered the National Human Rights Commission to submit files on these cases to the prosecutor's office as a state institution authorized to conduct investigations into cases of gross violations of human rights because the task of investigating cases of gross human rights violations is carried out by the Attorney General. So the dispute over the authority of state institutions will widen when the prosecutor's office and the Indonesian National Police exercise their investigative authority which runs at the same time and in the end, the Indonesian National Police, at a stage deemed sufficient, will submit the dossier of investigation of the case to the Prosecutor's Office as a criminal case ordinary, which means that the prosecutor holds the results of the same legal process but is stated with different allegations of criminal acts, namely between ordinary crimes and crimes of gross violations of human rights. Of course, the prosecutor's office will experience difficulties when there is a process of delegating two cases from the Indonesian National Police and the National Human Rights Commission with the same object of the case on different criminal allegations, and if later the prosecutor does not want to take the risk of experiencing an authority dispute with the Indonesian National Police Indonesia or the National Human Rights Commission caused if the prosecutor's agency decides to choose one of the overflow cases. Then, the prosecutor may decide to return the case file to each of the institutions that submitted it, namely the Indonesian National Police and the National Human Rights Commission, to settle first whether a case is a violation of an ordinary crime or a gross violation of human rights.

## **Conclusion**

In the case of a dispute on authority between state institutions, the National Human Rights Commission and the Indonesian National Police, there will continue to be obstacles in the settlement

process, thus causing the case to be unable to proceed and the legal process is considered unable to resolve a case that is being processed to obtain justice. In this case, it is possible that legal objectives related to legal certainty may not be fulfilled because a case is hampered due to a conflict of investigation authority dispute between the Indonesian National Police and the National Human Rights Commission resulting in uncertainty about which legal process from state institutions should run and if it is hampered and in the end, there is no legal process. Further developments, the community or victims in particular in this case will certainly not get justice from the state, it is important then later this authority dispute needs to be resolved by establishing a mechanism through legal arrangements to resolve the authority dispute through a court forum that will be determined later.

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