

Perlindungan hukum dari diskriminasi rasial di Indonesia pada era reformasi : studi tentang diskriminasi terhadap etnis Tionghoa = Legal protection of racial discrimination in Indonesia at the reformation governance study of discrimination againsts Tionghoa ethnic

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Abstrak

[ABSTRAK

Negara Republik Indonesia sejak awal kemerdekaan sesungguhnya telah memiliki komitmen untuk menghormati dan menjunjung tinggi hak asasi manusia. Hal ini dapat dipahami dari UUD Tahun 1945 yang menegaskan bahwa Indonesia adalah negara yang berdasar pada paham kedaulatan rakyat, negara yang berdasar pada hukum serta sistem Konstitusi. Artinya berdasarkan ketiga pilar tersebut maka adanya jaminan pengakuan dan perlindungan hak asasi manusia adalah salah satu prinsip dari Demokrasi, Negara Hukum dan Sistem Konstitusi yang harus diwujudkan dalam sistem ketatanegaraan Indonesia.

Konsekuensinya Negara mempunyai kewajiban untuk menjamin kebebasan, kesetaraan dan prinsip non diskriminasi bagi semua orang yang harus tercermin dalam penyelenggaraan pemerintahan. Mengenai hal ini telah ditentukan dalam Pasal 28 I Ayat (4) dan Ayat (5) UUD Negara RI Tahun 1945. Namun sepanjang perjalanan kehidupan ketatanegaraan Indonesia ternyata masih ada praktik-praktik penyelenggaraan negara yang tidak mencerminkan adanya jaminan terhadap kebebasan, kesetaraan dan prinsip non diskriminasi yang merupakan esensi dari perlindungan hak asasi manusia. Salah satu contoh adalah praktik diskriminasi rasial yang tetap menjadi current issue di semua rezim pemerintahan di Indonesia, bahkan di era Reformasi yang menyatakan sebagai pemerintahan yang lebih demokratis dan menjunjung tinggi hak asasi manusia justru praktik diskriminasi rasial yang berujung pada konflik horisontal terjadi di berbagai wilayah di Indonesia. Persoalan diskriminasi rasial sangat potensial terjadi di Indonesia, mengingat jumlah penduduknya yang sangat banyak dengan berbagai suku bangsa, ras dan etnis (multi etnis) serta tingkat pendidikan yang relatif masih rendah. Sementara harus diakui bahwa sampai saat ini upaya yang dilakukan belum dapat menghentikan praktik-praktik diskriminasi rasial. Semboyan Bhineka Tunggal Ika dan berbagai peraturan perundang-undangan tidak cukup menjawab persoalan mengenai diskriminasi ras dan etnis. Studi tentang etnis Tionghoa yang dilakukan secara komprehensif diharapkan mampu untuk memetakan problematika diskriminasi ras dan etnis di Indonesia sekaligus membangun kesadaran bagaimanakah wujud perlindungan hukum yang tepat untuk menghentikan praktik diskriminasi rasial di Indonesia. Etnis Tionghoa adalah salah satu etnis yang secara terus menerus menyuarakan perlawanan terhadap praktik diskriminasi rasial yang dialami oleh etnis Tionghoa, namun di sisi yang lain dominasi ekonomi oleh etnis Tionghoa juga disebut sebagai sebab praktik diskriminasi rasial yang dilakukan oleh etnis Tionghoa terhadap etnis yang lain. Model pendekatan hukum hak asasi manusia dapat digunakan sebagai pisau analisis untuk menghentikan praktik diskriminasi rasial di Indonesia. Hukum hak asasi manusia menjamin kebebasan setiap orang namun disisi yang lain juga diperlukan adanya pembatasan kebebasan dengan tujuan untuk menghormati kebebasan tersebut. Hukum hak asasi manusia memuat larangan diskriminasi atas dasar apapun termasuk larangan diskriminasi rasial, namun untuk mewujudkan prinsip kesetaraan diperlukan juga langkah-langkah khusus (tindakan afirmatif) yang ditujukan untuk

kelompok masyarakat tertentu. Tindakan afirmatif adalah pembedaan yang tidak boleh dinilai sebagai perbuatan diskriminatif. Selain itu untuk sampai pada penyelesaian akar masalah diskriminasi rasial maka memaknai keadilan yang diwujudkan dalam sistem hukum yang intergratif dan tersedianya mekanisme penegakan yang komprehensif adalah sebuah keharusan dalam paham konstitusionalisme.;

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ABSTRACT

Since the beginning the Republic of Indonesia in fact, already had commitment to respect and uphold human rights. This could be understood from Constitution of Republic Indonesia 1945 which stated that Indonesia is a country based on the understanding of sovereignty, which is based on Rule of Law and Constitution system. That is based on three pillars guarantees the recognition and protection of human rights is one of the principles of Democracy, Rule of Law and Constitution System should be realized in Constitutional law system. This brought a consequence for the State, which has obligation to guarantee freedom, equality and the principle of non-discrimination for all people that should be reflected in governance. This matter has been specified in Paragraph I of Article 28 (4) and (5) the Constitution of Republic Indonesia 1945.

However, throughout as long as the experiences of Indonesia, the lack of state enforcement practices that do not reflect a guarantee of liberty, equality and non-discrimination principles which is the essence of the protection of human rights. One example is the practice of racial discrimination that remains as current issue in all regimes of governance in Indonesia, even in reformation era that states as a more democratic government and respect for human rights is precisely the practice of racial discrimination that leads to horizontal conflicts occur in various areas Indonesia. The issue of potential racial discrimination occurred in Indonesia, considered the vast amount of people from different ethnic, racial and ethnic groups (multi-ethnic) and educational level is still relatively low. While it must be admitted that so far, the efforts have not been able to end the practice of racial discrimination. The motto Unity in Diversity and the various laws and regulations do not adequately addressed the question of racial and ethnic discrimination. The study of ethnic Chinese that has been done, hopefully will be able to comprehensively map the problem of racial and ethnic discrimination in Indonesia as well as build awareness on how to form the legal protection to end the practice of racial discrimination in Indonesia. Ethnic Chinese is one of the ethnic that continually active engaged in opposition to practice of racial discrimination faced by ethnic Chinese, but on the other hand by the Chinese economic dominance also mentioned as the reason for the practice of racial discrimination committed by the Chinese against other ethnic groups. Model approach to human rights law can be used as an analytical knife to stop the practice of racial discrimination in Indonesia. Human rights law guarantees freedom of every person, but on the other also required the restriction of freedom in order to respect these freedoms. Human rights law includes the prohibition of discrimination on any ground, including the prohibition of racial discrimination, but to embody the principle of equality is also required special measures (affirmative action) aimed at specific communities. Affirmative action is a distinction that should not be considered as discriminatory acts. In addition to the completion of the root of the problem of racial discrimination, therefore to make sense of justice embodied in the legal system integrative and the availability of a comprehensive enforcement mechanism is a necessity in understanding of constitutionalism., Since the beginning the Republic of Indonesia in fact, already had commitment to respect and uphold human rights. This could be understood from Constitution of Republic Indonesia 1945 which stated that Indonesia is a country based on the understanding of sovereignty, which is based on Rule of Law and Constitution system. That is based on three pillars guarantees the recognition and protection of human

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