THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION IN ENFORCING HUMAN RIGHTS IN INDONESIA

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Abstract. Efforts to enforce human rights in Indonesia are carried out by establishing the National Commission on Human Rights (NHCR) as an independent state institution with functions and authorities, one of which is to monitor alleged human rights violations. For example, an event that is suspected of violating human rights is the loss of life outside the provisions of the law, where the NHRC plays a role in monitoring and providing recommendations based on the results of the investigation that has been carried out to the relevant parties. This study aims to find out the extent of the role of the NHRC in the enforcement of alleged human rights violations, and the obstacles faced in the enforcement of human rights. This research method is normative legal research with a legislative approach and a case approach. The results of the study show that the role of the NHRC in enforcing human rights by carrying out the function of monitoring alleged human rights violations is carried out through investigations, providing recommendations for investigation results, and providing information in the judicial process. The obstacles faced by the NHRC in the enforcement of human rights, namely the constraints of legal substance that have not adequately regulated the authority of the NHRC, one of which is related to the follow-up of the recommendations given, the constraints of the legal structure in handling the follow-up of alleged human rights violations by other related agencies, and the legal cultural constraints of the state administration apparatus related to human rights in the implementation of their duties and authority.
Keywords: *role, national commission, enforcement, human rights*

Introduction

The protection of Human Rights is the main element that is important for a state of law, John Locke argues that human beings have natural rights, such as the right to life, the right to freedom and the right to own something. These rights are rights that are basically owned by human beings solely because as a human being, not because they are given by the state but are attached to human beings based on human dignity and dignity (Hotma, 2010). The establishment of human rights instruments was carried out in order to provide protection for human rights, starting from the ratification of the Universal Declaration of Human Rights which became the first element of the provisions governing human rights which is a declaration adopted by the United Nations General Assembly on December 10, 1948 in Palais de Chaillot, France, where the Universal Declaration of Human Rights became the basis for stating that human rights are internationally must be protected. Respect for human rights in Indonesia has existed since the establishment of the Constitution of the Republic of Indonesia in 1945, although it is not mentioned by the term human rights, but it is regulated regarding the rights of every citizen as stated in Articles 27 to 31, and then through the Amendment of the 1945 Constitution, regulating Human Rights in Articles 28 A to 28 J. In addition, Efforts to protect human rights are carried out by establishing a special institution, namely the National Commission on Human Rights (NHRC) in order to protect and enforce the protection of human rights in Indonesia.

The existence of NHRC internationally is guided by the Paris Principles 1991, regarding the status and function of national institutions in order to promote and protect human rights, including institutional jurisdiction, independence and plurality that must be reflected in the composition and mode of operation (Asplund et al., 2008). NHRC is an independent state institution at the same level as other state institutions that functions to carry out human rights studies, research, counseling, monitoring, and mediation (Radjab, 2005). As an independent/independent institution based on the mandate of Law Number 39 of 1999 concerning Human Rights, NHRC has the duty and authority to carry out its functions to conduct research, study, counseling, monitoring and mediation of human rights in Indonesia. One of the functions of NHRC in Law Number 39 of 1999 concerning Human Rights is to monitor events that are suspected of human rights violations. The authority to conduct monitoring is given to NHRC through Article 89 paragraph (3), where this authority can be carried out through the investigation process in a case where human rights violations are suspected. Human rights violations can be interpreted as the actions of a person or a group of people, including state officials, either intentionally or unintentionally, reducing, restricting, obstructing, eliminating, ignoring and even revoking the rights of a person or individual and a group of people who are guaranteed by law and legal mechanisms as citizens.

According to Law Number 39 of 1999 concerning Human Rights, it regulates several forms of human rights violations, one of which is regarding human rights violations in the event of disappearance of life which is regulated in Article 33 paragraph (2), that everyone has the right to be free from enforced disappearance and disappearance of life. In the explanation of Article 33 paragraph (2), it is explained that the disappearance of life itself is an arbitrary murder without a court decision (unlawful killing). This means that unlawful killing is an act in any form that causes a person to lose his life without going through legal processes and legal court decisions carried out by state officials (Wulandari and Ariyani, 2022). The act of depriving one's life is a violation of human rights because a person who dies as a result of murder will lose the right to life, where the right to live alone is a right that cannot be reduced under any circumstances (non-derogable rights). As is the case in cases of murder committed or involving state administrators outside the legal process, where state administrators should be representatives to be able to provide protection for human rights, so that indirectly if state administrators are involved in an event of loss of life, the state is considered not fulfilling its obligation to provide human rights protection which actually reduces the enjoyment of human rights by rights holders (by commission).

For example, the case of loss of life that is suspected of being a human rights violation is an incident that occurred against 6 (six) FPI members, where this event is known as the Kilometer 50 incident, which is a shooting case against FPI soldiers that occurred at Kilometer 50 of the Cikampek Toll Road. In this case, as many as 6 FPI members lost their lives. NHRC received a report related to the incident which then carried out monitoring functions through investigations, including examining witnesses and conducting a direct review of the location of the event, as well as examining and testing evidence. From the results of the monitoring carried out by NHRC through the investigation process, NHRC found the fact that in the incident it was suspected that there was an unlawful killing, then NHRC gave a recommendation to the Government, among others, that this case be continued to law enforcement with a criminal court mechanism to obtain a more complete material truth and uphold justice. In this regard, as a country of law, the law enforcement process in Indonesia must be carried out in

accordance with the applicable laws, in other words that law enforcement must be in accordance with the provisions of the law and not violate the provisions of the law as regulated in the laws and regulations (Amin, 2020).

However, in the implementation of the monitoring function on alleged human rights violations by NHRC through the investigation process, at the end of the investigation process NHRC issued a recommendation that was shown to the relevant parties, but the problem is that the recommendations issued by NHRC were not fully followed up. For example, in the Kilometer 50 case, there are several NHRC Recommendations that have not been followed up, where these Recommendations are important to follow up so that an event can be clear and clear whether a human rights violation has occurred or not so that human rights enforcement can be carried out. The authority that NHRC currently has in conducting monitoring through investigations, such as the one carried out in the KM 50 case, is still weak, because the investigation conducted by NHRC based on Law No. 39/1999 does not have binding legal force because it is not carried out as a pro justitia investigation, in contrast to the investigative authority by NHRC given in Law No. 26 of 2000 concerning Human Rights Courts. where the investigation of NHRC based on the law is carried out in a Pro Justitia manner, but it is limited to cases of gross human rights violations. In addition, the results of the recommendations issued by NHRC are also not legally binding, because there are no sanctions provisions for related parties who do not implement NHRC's recommendations, so there are no legal consequences.

The role of NHRC as an independent institution that is expected to be able to carry out enforcement and handling of human rights violations that occur in Indonesia is inseparable from the limited authority given to NHRC at this time, which only performs supervision and monitoring functions. Based on the descriptions mentioned above, it is an important issue to be studied regarding the role of NHRC in carrying out the monitoring function of alleged human rights violations, so that it can provide input to the Government in order to strengthen the authority of NHRC in efforts to enforce human rights in Indonesia to the maximum.

Materials and Methods

This research is a normative legal research, in accordance with the problems in this study related to the role of the NHCR according to Law Number 39 of 1999 concerning Human Rights. This normative research refers to normative juridical materials by looking at theories, concepts, legal principles and also applicable laws and regulations related to the subject matter to be discussed. The approach in this study is a legislative approach and a case approach, as a research support, the research approach can be interpreted as the researcher's perspective in choosing a spectrum of discussion space which is expected to be able to provide clarity in the description of the substance of a scientific work (Marzuki, 2017).

Overview of human rights, national commission on human rights, and human rights violations

Human rights are a set of rights inherent in human beings as creatures created by God who have rights that must be respected, and protected by the state based on their dignity and dignity as human beings. Basically, human rights are rights inherent in human beings in a natural (scientific) manner. The recognition of human rights comes

from the belief that all human beings are born in a free state and have the same dignity and dignity between one human being and another. According to Soetandyo Wignjosoebroto, human rights are universal because these rights are stated as part of the humanity of every human being, skin color, gender, age, cultural background, religion or belief. Human rights are said to be inherent and inherent because these rights are owned by every human being solely because of their existence as human beings and not because of the gift of any power organization. Human rights are inherent because human rights cannot be deprived and revoked (Wignjosoebroto, 1999). Indonesia as a country of law is one of the various countries that respect human rights, so that the government that runs the country creates rules or legal instruments to be able to protect and enforce the human rights of Indonesian citizens. Regulations on human rights have basically been implied since the ratification of Pancasila as the basis for the Indonesian state guidelines, which in Pancasila itself regulates the relationship between humans and God Almighty, and also the relationship between humans and fellow humans, this is as contained in the values of Pancasila.

Provisions on human rights in Indonesia have been implemented since the enactment of the 1945 Constitution after the amendment, specifically regulated in Chapter XA in Articles 28A to 28J. In order to better ensure the protection of human rights, the Government in carrying out the mandate given by the 1945 Constitution was formed Law Number 39 of 1999 concerning Human Rights which regulates several matters related to respect and protection of human rights in Indonesia. Guarantees for the protection, promotion, enforcement and fulfillment of human rights need to be ensured by the establishment of national human rights institutions. Where this is very necessary to carry out the promotion and protection of human rights. The establishment of a national human rights institution must be effective by paying attention to the feasibility of being called a national institution. Therefore, in the establishment of a national human rights institution, it must meet the elements regulated in international standards as mentioned in the Paris Principles 1991, namely independence, clear jurisdiction and adequate authority, ease of access, cooperation, operational efficiency, and accountability. In the history of the establishment of the Indonesian nation, the implementation of the promotion, protection, enforcement and fulfillment of human rights is still far from what is expected. This can be illustrated by various incidents such as illegal arrests, kidnappings, persecutions, murders, and so on. So that to be able to help people who are victims of human rights violations to be able to restore and restore their rights, it is necessary to have a state institution with the establishment of the NHRC.

The NHRC was established on June 7, 1993 based on Presidential Decree No. 50 of 1993 concerning the NHRC. to follow up on the recommendations of the Workshop on Human Rights initiated by the Ministry of Foreign Affairs of the Republic of Indonesia and the United Nations, held on 22 January 1991 in Jakarta. Article 1 paragraph (7) of Law Number 39 of 1999 states that NHRC is an independent institution, whose position is at the same level as other state institutions, which functions to carry out human rights studies, research, counseling, monitoring, and mediation. Furthermore, it is related to human rights violations among experts as a violation of state obligations born from international human rights instruments. The state's violation of its obligations can be committed either by its own acts of commission or by its own negligence acts of ommission. In another formulation, human rights violations are acts or omissions by the state against norms that have not been criminalized in the national criminal law but are

internationally recognized human rights norms (Asplund et al., 2008). Human rights violations are essentially a form of violation of various national instruments such as the International Civil and Political Rights, the Convention against Torture and Punishment or cruel, inhuman and degrading treatment and the declaration on protection of all people against enforced disappearances (Wahjoe, 2008).

Results and Discussion

The role of national human rights commission in enforcement of human rights in Indonesia

The role of NHRC, which includes its functions and authorities, is regulated, one of which is through Law Number 39 of 1999 concerning Human Rights. The law regulates several duties and functions of NHRC which are regulated in Article 89 paragraphs (1) to (4) such as the function to carry out human rights assessment, research, counseling, monitoring and mediation. The monitoring function is one of the authorities of NHRC in carrying out human rights enforcement, where what is meant by the monitoring function according to Law No. 39/1999 in Article 89 paragraph (3) that to carry out the functions of NHRC in monitoring, NHRC is tasked and authorized to do: Observation of the implementation of human rights and preparation of reports on the results of these observations; Investigation and examination of events that arise in society based on their nature or scope should be suspected of human rights violations; Summons to the complainant or victim or the party made to be asked and heard for his statement; The summons of witnesses to be asked to be heard their testimony, and to the complainant witnesses are asked to submit the necessary evidence; On-site and on-site review and other venues deemed necessary; Summons to related parties to provide information in writing or submit necessary documents in accordance with the originals with the approval of the chief justice; Local inspection of houses, yards, buildings, and other places occupied or owned by certain parties with the approval of the chairman of the court; and The provision of opinions is based on the approval of the chief justice of certain cases that are in the judicial process, if in the case there are violations of human rights in public matters and examination proceedings by the court, which then the opinion of NHRC must be notified by the judge to the parties.

The monitoring function referred to above can be carried out by NHRC when receiving complaints or reports related to an event that is suspected of human rights violations, where the authority of NHRC in receiving reports or complaints related to alleged human rights violations is based on article 90 paragraph (1) of Law No. 39/1999, that every person and or group of people who have strong reasons that their human rights have been violated can submit oral or written reports and complaints to NHRC. After a report or complaint, the NHRC Team can carry out a monitoring function based on Article 89 paragraph (3) letter b can be carried out through investigation and examination of an event that occurs in the community where there is a suspected human rights violation. One form of incident where there is allegedly a human rights violation is the murder incident. When referring to the provisions stipulated in Law Number 39 of 1999 concerning Human Rights, the definition of murder that can violate human rights is murder that is carried out arbitrarily without a court decision. So that not all forms of murder can be categorized as a form of human rights violation according to Law Number 39 of 1999 concerning Human Rights. The case of loss of life outside the provisions of the law that is carried out arbitrarily without

a court decision is a form of human rights violation so that it becomes one of the bases for NHRC to carry out human rights enforcement efforts by carrying out a monitoring function through an investigation process to find out the facts of whether or not there are human rights violations in the murder incident. The investigation conducted by NHRC into an event that is suspected of human rights violations is based on Article 89 paragraph (3) of Law No. 39/1999, where in Article 89 paragraph (3) letter b that NHRC has the duty and authority to conduct investigations and examinations of events that arise in society based on their nature or scope should be suspected of human rights violations.

Referring to the Criminal Procedure Code (KUHAP), that an investigation is a series of actions by investigators to search for and find an event suspected of being a criminal act in order to determine whether or not an investigation can be carried out, where an investigation is carried out to be able to search and find a criminal act. Meanwhile, according to Law No. 39/1999, the investigation in question is an activity to find out whether or not there is a violation of human rights. The task of NHRC in carrying out the investigation regulated in Law No. 39/1999 itself is carried out by summoning the complainants or victims, summoning witnesses to be asked for information and collecting evidence, as well as conducting a review of the crime scene, as well as conducting local inspections of houses, yards, buildings and other places with the approval of the chief justice. In addition to carrying out investigation duties in order to carry out the monitoring function by NHRC, in the follow-up to the investigation process by NHRC has the authority to submit recommendations on the results of investigations carried out on alleged human rights violations, as stipulated in Article 89 paragraph (4) letter b which states that to carry out the function of NHRC in mediation, NHRC is tasked and authorized to submit recommendations on a case of violation Human rights to the Government for follow-up on the solution. Regarding the follow-up of the investigation conducted by NHRC based on Law No. 39/1999 and Law No. 26/2000 on Human Rights Courts, there is a difference in the follow-up process, where in Law No. 39/1999 on Human Rights, the investigation process is carried out on an ordinary case of human rights violations, so that the follow-up of the investigation is carried out by providing recommendations to relevant parties, in this case the Government through the Coordinating Minister for Politics and Security, and the President. Meanwhile, the follow-up to the investigation conducted by NHRC based on Law 26/2000 on the Human Rights Court was given to the Attorney General to be followed up through the investigation process.

The investigative authority possessed by NHRC according to the Human Rights Law is fundamentally different from the investigative authority regulated in the Human Rights Court Law, where in the Human Rights Court Law, investigations conducted by NHRC are carried out in handling cases of gross human rights violations, besides that the investigation is also Pro Justitia. Different from the investigation based on the Human Rights Court Law, the investigation referred to in Law No. 39/1999 on Human Rights is very limited because it is only in the context of monitoring, and there is also not a single article in the Human Rights Law that states that the investigation conducted by NHRC refers to the criminal procedure law. In the sense that the investigation and the results of the investigation by NHRC according to Law No. 39/1999 are not Pro Justitia so that they are classified as non-legally binding (not legally binding). This can be illustrated if the results of the investigation and recommendations given by NHRC are worthy of being followed up, then law enforcement can voluntarily follow up. On

the other hand, if it is considered unsuitable for follow-up, then law enforcement does not need to follow up, and there are no legal consequences arising if it does not follow up on the results of the investigation and recommendations of NHRC. In addition, NHRC also does not have any authority to interfere in the follow-up of its recommendations. To examine the role of NHRC in monitoring alleged human rights violations, the loss of life can be seen in the case of alleged human rights violations in the KM 50 incident. The involvement of NHRC in participating in monitoring the death of 6 (six) members of the FPI army in the background is the alleged occurrence of events that are considered human rights violations, where the human rights violations in question are allegations that there has been a murder outside the legal process of unlawful killing by state officials. NHRC to carry out its role in the context of enforcing human rights by making efforts in accordance with the functions mandated by Law No. 29/1999 concerning Human Rights, where the efforts made by NHRC are carried out with several processes to find out the facts of whether or not there are human rights violations in the event in accordance with Law Number 39 of 1999 concerning Human Rights such as carrying out the monitoring function by conducting an investigation into the incident aforementioned.

In this incident, NHRC conducted an investigation process regulated in Article 89 paragraph (3) of the Human Rights Law, to find out the facts in determining whether or not there were human rights violations in the shooting incident of the 6 (six) FPI soldiers, such as conducting a direct review of the location of the incident, asking for information from related parties in the incident, and receiving evidence. The investigation process carried out by NHRC in the shooting incident of 6 (six) FPI members based on Press Statement Number: 003/PRMAS/KH/I/2021 carried out by NHRC in accordance with Article 89 paragraph (3) of Law No. 39/1999 as follows:

(1) Request for testimony of witnesses

Witness statements are one of the efforts to find information or facts on an event. Referring to Article 89 paragraph (3) letter d, NHRC has the authority to summon witnesses to be asked to be heard for their testimony, where in this case NHRC seeks information by obtaining information from witnesses who are in several locations related to the incident, where in this case NHRC gets witnesses who are in the area related to events such as in the Sentul area and the KM 50 Rest area. Witness testimony in a criminal event has a very important role, because in a criminal event there must be a witness who knows the event to shed light on a case, where in Article 184 of the Criminal Procedure Code the position of the witness is the main of other evidence that has been determined. The definition of a witness is that according to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, that a witness is a person who can provide information for the purpose of investigation, investigation, prosecution, and examination at court hearings about a criminal case that he hears himself, sees himself and/or experiences himself.

(2) Requesting information from related parties

The request for information from the relevant parties is one of the investigation processes carried out by NHRC. This refers to Article 89 paragraph (3) letter f which stipulates that NHRC can summon related parties to provide information in writing or submit the necessary documents in accordance with the original with the approval of the chief justice. Requests for information from related parties were made by NHRC to

several parties, including the Police Department, including the Head of the Metro Jaya Regional Police, Police Medicine and Police Health, Indonesia Automatic Fingerprint Identification System, Forensic Laboratory and police officers on duty in the incident, as well as FPI administrators and witnesses, victims' families, and the President Director of PT Jasa Marga including technical officers.

(3) Conducting requests and receipts of evidence as well as testing of evidence by experts

One of NHRC 's efforts to shed light on this incident is to request and receive a number of evidence provided voluntarily. Where the receipt of evidence by NHRC was given from several parties such as FPI and the victim's family, the police, and the toll road manager. After obtaining evidence from several parties, NHRC conducted a test of evidence through expert investigation. Where NHRC collaborated with several parties who were experts on the evidence found by NHRC in this incident. The experts include Forensic Medicine, Forensic Psychology, and Weapons Experts from Pindad. NHRC's action in bringing in experts when referring to the provisions of Article 89 paragraph (3) of Law No. 39/1999 there is no regulation regarding the law of investigation procedure that gives NHRC the authority to bring in experts. If it is related to Article 89 paragraph (3) letter f, if the expert in question is considered a related party, his summons to provide information must be based on the approval of the Chief Court, which is based on Article 89 paragraph (3) letter f which stipulates that NHRC can summon related parties to provide information in writing or submit the necessary documents in accordance with the original with the approval of the chief justice. Based on this, it is basically NHRC's step in making requests to Forensic Medicine Experts, Weapons Experts from Pindad and Forensic Psychologists to provide information is not appropriate because it exceeds the authority of the provisions given by Law No. 39/1999.

(4) Conducting an event location review

The location of the event or better known as the crime scene. According to Van Hamel, the crime scene is the place where the perpetrator has committed his own act, the place where the tool used by the perpetrator works, the place where the immediate consequences are taken. Based on a press statement from NHRC, the Investigation Team from NHRC conducted a review of the Crime Scene. Where in the examination of the crime scene, the NHRC Investigation Team found several objects that were suspected to be part of the evidence in the shooting incident of 6 (six) members of the FPI soldiers. The authority to conduct a review of the location of the incident as carried out by NHRC above is one of the authorities owned by NHRC, where according to Article 89 paragraph (3) letter e of Law No. 39/1999 concerning Human Rights gives the authority to NHRC to be able to conduct a review at the scene and other places that are deemed necessary. Referring to Article 89 paragraph (3) letter e, it can be said that the review of the location of the event by NHRC has been in accordance with what is regulated in the law.

(5) Providing recommendations on the results of the investigation

After monitoring through the investigation process by NHRC that has been described above, as regulated in the Human Rights Law, NHRC is authorized to provide recommendations on the results of the investigation carried out to the relevant parties.

Based on the results of the investigation that has been carried out by NHRC, NHRC recommends the following: (a) The death of 4 (four) FPI Laskar is a category of human rights violations, therefore, NHRC recommends that this case must be continued to law enforcement with a criminal court mechanism in order to obtain a more complete material truth and uphold justice; (b) Investigate and enforce the law against the people in the two black Avanza B 1739 PWQ and Avanza silver B 1278 KJD cars; (c) Further investigation into the possession of firearms allegedly used by Laskar FPI; (d) Calling for a law enforcement process, accountable, objective and transparent in accordance with Human Rights standards.

One of the contents of NHRC 's recommendation regarding the loss of life that occurred to 4 (four) out of 6 (six) members of Laskar FPI according to NHRC is a category of human rights violations. Therefore, NHRC recommends that the case be enforced through a criminal justice mechanism where this NHRC Recommendation is one of the ones that is followed up by the relevant parties. There are several other recommendations that have not been followed up, one of which is related to the ownership of firearms allegedly owned by Laskar FPI. According to NHRC members, until now there has been no follow-up on the recommendations, as conveyed by the Commissioner of NHRC, Beka Ulung Hapsara who stated that not all NHCR recommendations have been implemented by related parties. According to him, only one thing has been carried out, namely processing the law of the perpetrators of the shooting. In this case, based on information from officers who claimed to have secured a number of evidence in the form of two Revolver type assembled weapons allegedly belonging to FPI members involved in the incident. This is strengthened by the results of an investigation by NHRC which stated that there were allegations that FPI members used assembled firearms during a shootout on the Jakarta-Cikampek Kilometer 50 toll road on December 7, 2020 (CNN Indonesia, 2021). The alleged possession of assembled firearms by FPI members is basically important to follow up, this is to be able to explain whether the officer's statement that FPI members owned assembled weapons at the time of this incident is true, because the ownership of this assembled firearm is only a conjecture, and has not become a fact based on the law. Even if the alleged possession of the firearm is not proven and is not true, then it is possible to prove that the officer's statement that there was a shootout between the Police officer and FPI members is refuted so that the possibility of unlawful killing is true.

The uncertainty of the follow-up of NHRC's recommendations in this incident is an illustration that the authority possessed by NHRC is so weak that the results of NHRC's recommendations are not legally binding, so that they have no legal consequences if the recommendations are not followed up by the relevant parties, where the recommendations of NHRC should indeed be very closely related to an event of alleged human rights violations so that everything related to the event can be clear so that the enforcement of human rights by NHRC is carried out optimally. In this incident, the defendants were acquitted by the South Jakarta District Court Panel of Judges who tried the KM 50 incident case based on the South Jakarta District Court Decision Case Number 868/Pid.B/2021/PN. Jkt.Sel and Case Number 869/Pid.B/2021/PN. Jkt.Sel. Consideration of the Panel of Judges of the South Jakarta District Court in its decision, stated that the incident that occurred was not a murder outside the legal process of unlawful killing, because in the facts of the trial that there was an unlawful attack from FPI members which was carried out one of them by seizing a firearm belonging to the

defendant who was a member of the Police, so that in order to maintain the firearm, The defendant, who is a member of the Police, must be protected, so by being forced to defend himself to take a stance by taking firm and measured action, by shooting first, resulting in the death of 4 (four) FPI members. Based on the decision of the South Jakarta District Court, even though after going through the trial process in the end the incident was not proven to be a violation of human rights, if you look at NHRC's efforts in finding out the facts of whether or not there were human rights violations in the incident, basically NHRC has carried out its functions and duties in efforts to enforce human rights by carrying out monitoring activities, including efforts to investigation into the death of 6 (six) members of the FPI army in accordance with Law Number 39 of 1999 concerning Human Rights.

Obstacles faced by national human rights commission in human rights enforcement in Indonesia

The implementation of human rights protection and enforcement efforts by NHRC, of course, does not always go as expected. Where the existence of NHRC from the beginning of its formation until now is still not optimal in carrying out its role. This is due to the rules regarding the NHRC institution which still have weaknesses so that they are not adequate to deal with the complex problems related to human rights in Indonesia. At the beginning of its establishment, NHRC was expected to become an institution capable of implementing human rights protection and enforcement, especially when Indonesia entered the reform era. However, what happened was that the implementation of human rights enforcement by NHRC still did not meet expectations. It is evident that since the establishment of the NHRC, there are still so many cases of human rights violations that have occurred and have not been resolved by NHRC. The obstacles experienced by NHRC in carrying out maximum human rights enforcement are basically inseparable from the problem of the position of NHRC which is still very weak, especially related to the position and authority it has. At this time, the authority possessed by NHRC in enforcing human rights is still very limited, where the authorities given by NHRC are still considered inadequate when facing challenges and problems in human rights enforcement in Indonesia.

Legal substance

NHRC currently has the authority regulated in several provisions of the Law, which is based on Law Number 39 of 1999 concerning Human Rights, where NHRC has the task to carry out the functions of assessment and research, counseling, monitoring and mediation. In addition, Law Number 26 of 2000 concerning the Human Rights Court also gives authority to NHRC as an investigator in cases of gross human rights violations. Since the formation of NHRC through Law Number 39 of 1999 concerning Human Rights, until now there is no special law that regulates the institution of NHRC, in the sense that the presence of NHRC is only part of the implementation of the human rights law, where implicitly the authority of NHRC is spread through several laws, this illustrates the incomprehensibility of the authority given to NHRC. In addition to the authority of NHRC which is not yet comprehensive because it is divided into several laws, the authority owned by NHRC in the existing laws is also very limited. For example, in Law Number 39 of 1999 concerning Human Rights, according to Article 89 paragraph (4) letter d, the authority possessed by NHRC in the law only goes so far as to

provide a recommendation to the Government for follow-up if in an event there is a suspected violation of human rights.

The provision of recommendations is one of NHRC's efforts to implement human rights enforcement through the function of monitoring and mediating events that are suspected of human rights violations. However, the problem is that the recommendation is not legally binding, so it will not provide legal sanctions for both the Government and related parties if they do not implement the recommendations issued by NHRC. This is what makes the recommendations issued by NHRC still not followed up. As conveyed by the Chairman of NHRC Ahmad Taufan Damanik, that there are still many recommendations for resolving cases of alleged human rights violations issued by NHRC that have not been followed up by related parties, where throughout 2021 NHRC has issued recommendations out of 522 (five hundred and twenty-two) cases handled by NHRC, but only 22 (twenty-two) recommendations have been followed up (Tim, 2022). The weakness of NHRC's recommendations is basically inseparable from the instruments that serve as guidelines in the establishment of human rights institutions such as the Paris Principle, where the 1991 Paris Principles state that a national human rights institution is an advisory body, so that the recommendations of the institution will not be binding on any party, which means that its implementation is based on voluntariness and cannot be forced. is not legally binding so that from this there is no law regulating sanctions for the Government or other parties who do not follow up on the recommendations of NHRC, thus making human rights enforcement efforts by NHRC constrained.

Legal structure

Regarding the legal structure, this is related to several matters related to the institution of NHRC, one of which is related to the position of NHRC as a state institution, the existence of NHRC as an independent institution as explained in Article 1 paragraph (7) of Law Number 39 of 1999 concerning Human Rights. The status of NHRC as an independent state institution still has various problems that can interfere with its independence, such as in the recruitment process of NHRC commissioners according to Article 83 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, that the election of NHRC members is elected by the House of Representatives (DPR) and inaugurated by the President. This, of course, can cause NHRC to become an institution that is vulnerable to political interference in the recruitment process of its members. In addition, another thing that is a problem with the legal structure is related to the existence of NHRC's authority in handling cases of alleged human rights violations, where the position of the NHRC institution in carrying out human rights enforcement in Indonesia is still very weak, this can be seen from the position of NHRC when handling cases of alleged human rights violations. For example, in the context of the authority of NHRC to conduct investigations on cases of gross human rights violations in accordance with Law Number 26 of 2000 concerning Human Rights Courts, where many cases of gross human rights violations have been investigated by NHRC but not followed up by the Attorney General's Office through the investigation process, where many cases of gross human rights violations stop at the time of processing by the Attorney General's Office.

The limitations of the authority possessed by NHRC which is only as an investigator are an obstacle that makes the handling of cases of gross human rights violations less effective. Referring to the provisions in the Criminal Procedure Code (KUHAP), the

process of finding evidence for an event that is suspected of being a criminal act is at the investigation stage. This is like NHRC as an investigator can only determine whether an event is a gross violation of human rights or not, while the stage of collecting evidence is carried out by the Attorney General's Office as an investigator (Nurani, 2022). These obstacles show that the position of NHRC is still very weak when juxtaposed with other law enforcement agencies. The problem with the results of the investigation conducted by NHRC has not been followed up and detained by the Prosecutor's Office, where this is caused by the institutional relationship constructed by Law Number 26 of 2000 concerning the Human Rights Court between NHRC as a pro justicia investigator and the Attorney General's Office which is an investigator for cases of gross human rights violations. According to Enny Soeprapto, the separation of the institutions that carry out the investigation function and the investigation function as well as the prosecution of cases of gross human rights violations can result in an unsmooth relationship between the two institutions that carry out the investigation and investigation functions, namely the National Commission on Human Rights and the Attorney General's Office. However, the unsmooth relationship is not solely due to the separation of authority between the implementing agencies of the investigative function on the one hand and the implementing agencies of the investigative and prosecution functions on the other, but because the two implementing agencies often do not have the same perception of the problems being handled, namely gross human rights violations and their various aspects (Soeprapto, 2011).

Legal culture

Since the new order era to the reform, Indonesia has never been free from all human rights violations, where from various regions quite a lot of human rights violations have occurred. In the new order era itself, there were many incidents of human rights violations, where at that time several human rights violations were included in the severe category. Quoted from Tempo.co in the New Order regime, there were several cases of human rights violations committed by the New Order regime such as the Mysterious Shooting (Petrus), the forced disappearance of activists in 1997-1998, and the May 1998 riot case (Erowati, 2024). The establishment of NHRC through Law Number 39 of 1999 concerning Human Rights is a new hope as an effort by the government to implement the protection and enforcement of human rights in Indonesia. However, in its implementation, this was not carried out optimally due to the lack of authority possessed by NHRC accompanied by the low legal awareness of the community and state administrators in participating in enforcing human rights (Nurani, 2022). Another factor that affects the culture of law enforcement against human rights violations in Indonesia so that it still experiences obstacles is that most human rights violations are carried out by state administrators, both government and law enforcement officials. Where the State, which is the main subject of law in human rights, should have the responsibility to protect, enforce, and promote human rights. However, what is happening factually is that there are still many human rights violations that occur in Indonesia involving state administrators, including law enforcement officials, both gross human rights violations and violations of human rights that are not included in gross human rights violations.

The NHRC Annual Report in 2021 recorded that there were 2,729 (two thousand seven hundred and twenty-nine) complaints to NHRC by the public regarding alleged human rights violations, most of which were carried out by state administrators and law

enforcement officials. The involvement of state administrators in several cases of human rights violations can be an obstacle to the human rights enforcement process in Indonesia. This is related to the position of the independent NHRC is still questionable. Where the election of members from NHRC itself still involves the House of Representatives and the President who are state administrators, so it is prone to intervention by NHRC in efforts to enforce human rights. In addition, the legal culture of state administrators, including law enforcement officials, still considers that as state administrators they have the right to take any action for the benefit of the state, from this so that there are still many state administrators who act beyond their authority that can violate human rights on the grounds that their actions are protected by the law and the state. Cultures like this can certainly greatly interfere with the effectiveness of a country in implementing human rights enforcement.

Conclusion

Based on the description of the discussion, conclusions can be drawn, First, NHRC has the authority to implement the enforcement of human rights as stipulated in Article 89 paragraph (3) of Law Number 39 of 1999 concerning Human Rights, namely carrying out the monitoring function of events that are suspected of human rights violations such as the loss of life outside the Unlawful Killing law, where the implementation of the monitoring function through the investigation process such as summoning the complainant or victim, summoning witnesses and requesting evidence related to the events that occurred, conducting a review of the location/place of the event, summoning the relevant parties to provide information in writing with the approval of the chairman of the court, and giving opinions on the approval of the chairman of the court on the case that is in the process of trial. Second, The enforcement of human rights by NHRC until now is still experiencing several obstacles, namely legal substance constraints, one of which is the authority of NHRC in Law Number 39 of 1999 concerning Human Rights which only gives authority to NHRC to carry out monitoring, besides that the results of the monitoring are also only limited to recommendations to related parties and there are no sanctions if the relevant parties do not implement NHRC's recommendations on events that are suspected of human rights violations. The legal structure constraints are related to the position of NHRC in the institutional system, where NHRC is an independent institution but the recruitment process for NHRC members is still through the House of Representatives and needs to be approved by the President so that it can affect the independence of NHRC in enforcing human rights in Indonesia. The cultural constraints of human rights enforcement law in Indonesia, where there is still the involvement of state administration officials in human rights violations, certainly greatly affect the legal culture of human rights enforcement.

Suggestion, First, to the Government of Indonesia, to revise Law No. 39 of 1999 concerning Human Rights, by adding the authority of NHRC regarding the authority to investigate alleged human rights violations, and to add articles that regulate the NHRC Recommendations so that they can be legally binding and impose sanctions on relevant parties who do not follow up on the recommendations of NHRC. Second, to the Government of Indonesia through institutions related to human rights to conduct socialization to state administrators, including law enforcement officials and the public

to build a legal culture that respects human rights and can also assist the task of NHRC in carrying out human rights enforcement in Indonesia.

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Conflict of interest

The authors confirm that there is no conflict of interest involve with any parties in this research study.

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