

## Community Rights Facing Criminal Law in a Human Rights Perspective

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| Harisman |

Lecturer of Law Faculty in  
University of Muhammadiyah  
Sumatera Utara, Indonesia

[harisman@umsu.ac.id](mailto:harisman@umsu.ac.id)

### ABSTRACT

*Legal protection is one form of human rights that must be obtained by everyone, especially with regard to the application of criminal law that can have the impact of violations and restrictions on the freedom of others as a form of human rights. It is not uncommon for people's rights to be questioned or even contested when dealing with criminal law. To answer this problem, a study was conducted using the legal research method through a normative juridical approach which was intended to collect secondary data obtained from the literature in the form of primary legal materials, secondary legal materials and tertiary legal materials. The materials collected were analyzed qualitatively descriptive. Based on the analysis conducted, it is clearly seen that people's rights in criminal law are part of human rights that must get respect and protection in order to maintain human dignity through efforts that include: equality before the law, presumption of innocent, non-retroactive and legal assistance, and not tortured, punishment or cruel, inhumane treatment, degrading human dignity and dignity, and not treated arbitrarily.*

### KEYWORDS

*Community Rights; Criminal Law and Human Rights local people.*

### INTRODUCTION

The presence of criminal law in the midst of society is often responded negatively with a variety of reactions such as: fear, horror, and spooky. Many people assume that when dealing with criminal problems synonymous with punishment or misery or prison. In terms of criminal law intended to protect the community as a goal. (Yulies Tiena Masriani: 2004: 61) Misunderstanding like this on the one hand can damage and or eliminate public confidence in criminal law. In fact, it is not uncommon for criminal law to be misused to frighten. In the end, what is the goal of criminal law is not achieved.

Especially now that community life is getting more and more complex, it is possible to always come into contact with the law. It is not uncommon for criminal law to be used by the community as the only solution in overcoming the problems it faces. Criminal law is considered capable of solving all problems. Moreover, criminal law is seen to have the nature of force of force as its main characteristic. The element of compelling criminal law in the form of sanctions in the form of capital punishment, imprisonment, confinement, fines, and revocation of certain rights. The nature of force forces in the form of sanctions is the reason for various parties to choose to use criminal law. Society sees criminal law as being able to solve various problems.

Such a large community expectation sometimes causes criminal law to be enforced. Moreover, it is supported by public understanding of criminal law which is quite minimal. Unwittingly imposed criminal law will be able to violate the rights of others. This is very contrary to the concept of the rule of law (rechtsstaat).

Indonesia is expressly stated in the 1945 Constitution (Amendment) is a state of law (rechts staat) (Article 1 paragraph (3) of the 1945 Amendment). In accordance with the concept of the rule of law is where the freedom of the will of the holder of power is limited by legal provisions. (Nurul Qamar: 2013: 27) The application of criminal law should be based on the law and merely uphold human rights as stated as characteristics of the rule of law. There is no power other than the law that can influence it. The use of criminal law by society is solely based on the right reasons according to the legislation and human rights. In other words, the application of criminal law must be in accordance with the "rules of the game." (Tutik Quarterly Point: 2010: 62)

Based on the description above, the problem examined in this study is how people's rights deal with criminal law in the human rights perspective

## **RESEARCH METHODS**

This writing method is directed at legal research by applying normative juridical research intended as a study of legal norms, legal norms, and secondary data sources or other literature to explain what is the focus of research in this writing. Data obtained through library research by collecting various kinds of statutory regulations and various library references that are relevant to the topic of this study include: 1945 Constitution Amendments, Law Number 39 of 1999 Concerning Human Rights, and various international human rights instruments, among others: International Covenant on Civil and Political Right 1966 (ICCPR). Literature data collected was analyzed qualitatively with a view to getting conclusions in the form of answers to the rights of communities dealing with criminal law in the perspective of human rights with reference to on secondary data collected. (Shown Ansari Siregar: 2007: 134) The conclusions obtained are elaborated or described analytically descriptive with clear, firm and systematic sentences in an article.

## **RESULTS AND DISCUSSION**

### ***Criminal Law and Human Rights***

Criminal law as part of the legal system has close links with human rights that have the aim of providing protection for the community. Mansyur A. Effendy said that: law and human rights are a unit that is difficult to separate, both are like two sides in one coin. Human rights act as guardians of the law, while the law is a juridical instrumentarium, a means or tool (tool) to pay attention to respect for the principles in human rights. (Nurul Qamar: 19)

The presence of criminal law is intended to prevent and overcome normative abuse of human rights. Because criminal law contains formulations about what actions can be threatened with the law, who can be punished, and what punishment can be imposed on people who commit acts that are contrary to the law. (Ishaq: 2013: 127)

Various forms of criminal law are closely related to efforts to limit the rights of human personal freedom. The existence of restrictions on criminal law like this is intended to provide guarantees for human rights rather than vice versa. Even criminal law can prevent social conflict in the midst of society.

The existence of restrictions on criminal law is a consequence of the concept of the rule of law which places the law as a unique regulatory tool within the primacy of the law. (H. Aziz Syamsuddin: 2011: 31) Likewise in Article 28 J paragraph (2) of the 1945 Constitution (Amendments) and Article 73 of Law Number 39 Year 1999 concerning Human Rights determine as follows:

*"In exercising their rights and freedoms, every person is obliged to submit to limitations imposed by law with the sole purpose of ensuring recognition and respect for the rights of freedom of others and to fulfill fair demands in*

*accordance with moral considerations, religious values, security and public order in a democratic society."*

Based on the above provisions, that the limitation of human freedom rights through categorization in the form of acts that are contrary to the law (offense / criminal acts), and the restriction of certain freedoms and rights through sanctions as regulated through criminal law is justified. Like Laica Marzuki, States parties may reduce or distort obligations to fulfill the rights of non-derogable types. But such deviations can only be made if they are proportional to the threats they face and are not discriminatory, namely for the sake of: (i) maintaining national security or public order or health or public morality; (ii) respect the rights or freedoms of others.

To avoid misuse of restrictions on freedom of rights through criminal law, as Rosalyn Higgins categorizes it as a "clawback provision" it states that the International Covenant on Civil and Political Right 1966 (ICCPR) has outlined that these rights must not be limited "beyond those" stipulated by this covenant ". In addition, it is also required to submit the reasons for the limitation to all States parties to the ICCPR. (Miftahul Huda: 2010: 22-30) Likewise also seen from Article 28 J paragraph (2) of the 1945 Constitution (Amendment), that criminal law must also pay attention to the rights of freedom of others and to meet fair demands in accordance with moral considerations, religious values, security and public order in a democratic society.

Basically, criminal law is not solely intended to protect the interests of society in general, but also the protection of criminal offenders. Perpetrators of crime require the protection of their rights as human beings. Because the regardless every person of status is given the right to be treated equally before the law. Arbitrary treatment - the execution or vigilante action - of the perpetrators of criminal acts including the denial of human rights as a basic right that is inherently inherent in human beings, is universal, and lasting so that they must be protected, respected and must not be ignored , reduced or deprived by anyone. (Monang Siahaan: 2016: 30)

Article 3 paragraph (2) of Law Number 39 Year 1999 concerning Human Rights determines: "Every person has the right to recognition of guarantees, protection and fair legal treatment and to obtain legal certainty and equal treatment before the law". Based on this provision, the perpetrators of criminal offenses must be given legal protection so that they are not treated arbitrarily.

The limitation or deprivation of the rights of perpetrators of criminal acts is only justified through legal proceedings. With the legal process two interests will be fulfilled, namely on one side of Terayomi community, and on the other side the perpetrators of the crime, because the desire for retaliation for the crime that has been committed and for a while the perpetrators of the crime have been kept away from the victim or the community. In addition, for those who commit criminal acts through a legal process, they will be able to know what is the power and authority of law enforcement in carrying out their duties. (Pujiono: 2007: 100-101)

### ***Community Rights When Confronting Criminal Law in the Human Rights Perspective***

The presence of criminal law in the midst of society that is regulated both in general and specifically in various types of existing laws and regulations is one form of efforts to respect and protect human rights, as well as providing guarantees for the freedoms of others. Every member of the community with the application of criminal law obtains a guarantee of freedom of their rights without interference from any party.

Criminal law can be used as a means of maintaining the rights of freedom they have. Even people with criminal law can demand that their freedom of rights are respected and protected by others. Because the regulation of human rights in a statutory regulation is used as a normative reference in the promotion and protection of human rights (ICCE Team UIN Jakarta: 2003: 221)

Basically, criminal law is formed to protect the rights of the community both as victims of criminal acts on the one hand and perpetrators of criminal acts on the other. Both parties must be treated fairly without exception when dealing with criminal law. When a criminal act occurs, the rights of victims and perpetrators of criminal acts must be protected in accordance with applicable criminal law provisions. Criminal law provisions are used as a benchmark in protecting the rights of victims and perpetrators of criminal acts as a form of implementing human rights.

The implementation of criminal law should refer to the principle of "equality before the law" as a form of human rights that requires all people regardless of their status to be treated equally or non-discrimination before the law. " Article 5 paragraph (1) of Law Number 39 Year 1999 stipulates: "Every person is recognized as a private person who has the right to demand and receive the same treatment and protection in accordance with his human dignity before the law."

Provisions as above are further strengthened by the inclusion in Article 28D paragraph (1) of the 1945 Constitution. Amendments stipulate: "Everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law."

Every member of the community whether a victim or perpetrator of a crime, must have their rights respected and protected. The application of criminal law for victims of criminal acts is intended as an effort to remedy the violations of their rights. (Syamsul Fatoni: 2016: 7) As for the perpetrators of criminal acts intended to protect against being treated arbitrarily. Because the criminal law has determined materially the form of the act, which includes the act of answering the law and what sanctions must be imposed for the perpetrators of the crime. (Monang Siahaan: 3) Likewise, formal procedures have been established as a way to uphold criminal law. The criminal law places the victim and the criminal offender in the same position before the law.

Although at first the application of criminal law seems to be directed only at efforts to protect the rights of perpetrators of criminal acts only. This does not mean that victims' rights from criminal offenses do not get protection from criminal law. Implicitly, it can be seen from what the objectives of criminal law have provided legal protection for both perpetrators and victims of criminal acts. Criminal law is intended to protect the public as a goal. (Yulies Tiena Masriani: 61). In its development the position of the victim has received very serious attention to gain access to justice, the right to obtain compensation, restitution and other assistance as stated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, and the United Nations Resolution on Protection of Human Rights Of Victims of Crime and Abuse of Power 1990. (Muladi: 2005: 107-108)

Getting criminal law protection is a human right that must be respected and protected. Victims to protect their rights can file complaints through an applicable legal process. No one is justified to take action outside legal procedures in order to maintain and or demand remedies for violations of their rights. Article 17 of Law Number 39 Year 1999 stipulates:

*"Every person without discrimination has the right to obtain justice by submitting applications, complaints and lawsuits, both in criminal, civil and administrative cases and tried through a free and impartial judicial process, in accordance with procedural law that guarantees an objective examination by a judge who are honest and fair to get a fair and right decision."*

The existence of criminal law provisions like this means does not want the existence of "vigilantism" (execution). No one is permitted and or given authority by law to carry out a sentence against a criminal. Penalties for perpetrators of crimes are only justified through proper legal procedures, namely: a free and impartial trial. Even though the victim suffers loss and / or suffering due to a criminal act he has the obligation to respect the human rights of the perpetrators of the crime. The existence of such obligations is solely intended for the respect and protection of human dignity and which is the goal of human rights regulation itself. Moreover, victims and perpetrators of crime are recognized to have the same dignity and dignity as humans. This is in accordance with the "principle of equality before the law" as contained in Article 28 D paragraph (1) of the 1945 Constitution, Article 3 paragraph (2) and Article 5 paragraph (1) of Law Number 39 of 1999. Moreover in Article 7 Universal Declaration of Human Rights 1948 concerning "equality protection of the law. (Syamsul Fatoni: 5)

Enforcement of criminal law through the legal process is a complete fulfillment of human rights for everyone without exception. Syamsul Fatoni said: "Access to the legal process is a basic human right that is in line with the principle of equality before the law." (Syamsul Fatoni: 7)

The application of legal processes in the criminal justice system can guarantee the fulfillment of human rights. Access to criminal law enforcement through the legal process is an effort to prevent the occurrence of vigilante actions (pre-execution) so that the rights of the community get fair legal protection. If this is allowed to continue, it is feared that chaos in the community will occur - homo homoni lupus - so that what is the goal of law in general and criminal law in particular will not be achieved.

Referring to various existing human rights instruments, it appears that the regulation of victims' rights is very minimal compared to the perpetrators of criminal acts. Muladi stated that "human rights instruments focus more on the protection of perpetrators of crime, while the attention to victims should be done on the basis of compassion and respect for the dignity of the victims (compassion and respect for their dignity) as if forgotten or at least lacking attention " (Muladi). Such arrangements for victims relate solely to the right to equality before the law and the right to due process without due discrimination. While the perpetrators of criminal offenses other than the two rights aimed at protecting victims are also regulated in the form of other rights such as: the right to presumption of innocence, the right to act prosecuted on the basis of a retroactive law (non-retroactive), the right to get favorable provisions in the event of changes in legislation, the right to legal assistance, and the right not to be sued for the second time in the same case. The enforcement of such rights is used as access for victims and perpetrators of crime to obtain the right to obtain justice in the context of respect and protection of human rights as regulated in Chapter III Concerning Human Rights and Basic Human Freedom, Part Four of Article 17 to Article 18 Law Number 39 of 1999.

In addition, the perpetrators of crimes also get the right to a sense of security in the criminal legal process which includes: free from the practice of torture, punishment or cruel, inhumane, degrading treatment and human dignity. Similarly, no arrest, detention, torture, exclusion, alienation or arbitrary disposal as referred to in Article 33 paragraph (1) and Article 34 of Law Number 39 Year 1999.

The implementation of rights as mentioned above in criminal law is based on non deregable rights considerations. Because criminal law enforcement has close links with rights that fall under the category of human rights that cannot be reduced under any circumstances and by anyone (non deregable right). Article 4 of Law Number 39 of Law Number 39 of

1999 and strengthened by the inclusion in article 28I paragraph (1) of the 1945 Constitution Amendments determine:

*"The right to life, the right not to be tortured, the right to personal freedom, mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on the basis of a retroactive law are rights human rights that cannot be reduced under any circumstances and by anyone."*

Criminal law enforcement for criminal offenses should pay attention to basic rights that are categorized as non-derogable right. Moreover, the above rights are used as principles and or norms of criminal law both materially and formally. Referring to Article 28 J, paragraph (2) of the 1945 Amendment and Article 73 of Law Number 39 of 1999, the regulation of criminal law that limits rights that fall into the category of non derogable rights does not mean violations of human rights. But it must be understood or interpreted as an effort to protect these rights so that every member of the community - victims and perpetrators of criminal acts - is treated equally before the law, is not discriminatory, and is not treated arbitrarily.

Human rights should be used as guidelines in the application of criminal law. Therefore, criminalization does not need to occur. New people can be punished if they meet the material elements as stipulated in criminal law. New punishments are justified as long as the material elements of criminal law can be proven through legal procedures in the judiciary. The application of such a law is an effort to fulfill human dignity as its goal.

The various rights of the perpetrators of criminal acts as regulated in the above human rights instruments, in their application have been included in the formal criminal law, namely the Criminal Procedure Code (KUHAP) as regulated in Law Number 8 of 1981. Various Such rights in the KUAHP are aimed at the protection of suspects, defendants and convicted persons in the legal process so that they are not treated arbitrarily.

## CONCLUSION

The application of criminal law should be understood as one that can guarantee the fulfillment of human rights. The application of criminal law is not only directed at the protection of the rights of perpetrators of crimes, but also includes victims of crime in particular and the general public. For the fulfillment of human rights in the application of criminal law should be done through a legal process or a free and impartial judicial process. Because the implementation of legal or judicial processes are in criminal law is the fulfillment of human rights.

The rights of the community to deal with criminal law in the perspective of human rights consist of: the right to justice and the right to security. Both of these rights serve as guidelines in the application of criminal law both materially and formally with the aim of ensuring respect and protection of human dignity and dignity for victims and especially perpetrators of criminal acts.

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