



Criminal Law Perspectives on Persecution in Indonesia

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Abstract. This study aims to elucidate the classification and regulation of acts of persecution within the Indonesian legal framework, responding to the prevalent instances of maltreatment based on ethnicity, religion, and political beliefs. Employing a normative research methodology with a statute and case approach, this research delves into the codification of persecution as delineated in articles 351, 352, 354, and 356 of the Indonesian Criminal Code, alongside pertinent provisions in Law No. 19/2016 concerning Amendments to ITE Law No. 11/2008. The findings assert that persecution, characterized by actions causing distress, injury, or harm, constitutes a criminal offense, meeting the stipulated legal elements. Specifically, the legislation differentiates between verbal and physical persecution, prescribing penalties ranging from fines to imprisonment, depending on the severity of the injury inflicted or the resultant death. This study contributes to the understanding of persecution from a criminal law standpoint, highlighting the legal mechanisms in place to address such offenses in Indonesia.

Keywords - Persecution, Classification, Punishment.

1 Introduction

The development of the times in people's lives has undergone very significant and rapid changes seen in the process of how the view of development in the fields of social, political, economic, security and culture is positive but also the number of these changes has had a negative impact on the development of new crimes and violations that are very detrimental to others because of the weakness or lack of attention from law enforcement officials which is then made an opportunity by perpetrators with bad intentions. Many expectations from the community to law enforcement officials and the government to act quickly, precisely, simply and lightly cost so as to minimize crimes and violations that will occur, but expectations like this are often used as a joke for the community itself because it is often found that a law enforcer behaves and behaves that disturb the community itself.

With this development there are several aspects that need to be considered by the government or law enforcement officials for users when accessing social media, even social media has become a "new weapon" in all fields, this requires us to face new challenges that cannot be avoided, the

presence of social media provides a new force in view of the increasing number of users. One of the negative impacts that arise in line with the development of this technology is to provide new assistance and education so as not to do everything on their own because the success of law enforcement can be said to be successful if the community is aware of the law and obeys the rules in it. Sudikno Mertokusumo [1] states that the rice of each person or citizen requires the protection of legal interests that must be obeyed, implemented and enforced in order to avoid problems. Furthermore, according to Isaac Pardosi, explaining *"persecution when referring to its meaning, is actually different from "taking the law into your own hands"*. The act of persecution is more directed to the act of judging against the background of political differences, while vigilantism is more general, although sometimes in the field it refers to the action of "Rama-ramai" attacking someone who is caught committing a crime.

The occurrence of technological and information developments that are increasingly sophisticated which indirectly requires us to the current developments where in this internet world we do not have the freedom of access that we ourselves want how we communicate with anyone in any part of the world, one of the products of the Internet that has a very extraordinary user is one of them Social Media. The role of Social Media that we now feel and that occurs in the Technology Field is an innovation that changes the style of communicating with new media. Various aspects of human life, such as communication and interaction, have also experienced changes that were never expected before.

One of the negative impacts that arise in line with the development of this technology is to provide new assistance and education so as not to do everything on their own because the success of law enforcement can be said to be successful if the community is aware of the law and obeys the rules in it, the following cases occur due to changes or developments in the world of technology, the case taken by the author, occurred in 2017 which befell children with the initials PMA residents of cipinang muara, East Jakarta who experienced several physical and psychological violence, which is a social media case that has caught the attention of many people in a video belonging to the company Google.LLC (Youtube) video excerpt:

- a. Ordered Mario Alfian's son to make a stamped and signed apology letter
- b. Give a little criticism to the victim's friends so that they do not do the same thing
- c. There is an element of threat *"In West Jakarta, it's already out of shape...if FPI here is still like this, we use the procedure"*. [2]

Still in the same case, the news excerpt mentions :

- a. Use of Public space
- b. Getting victims of persecution to admit their guilt
- c. The slapping incident occurred after the victim made the statement.

Persecution in the perspective of communication explains that what someone has done to another person that is clear and certain is the law or someone's authority to judge the mistakes of others, then this can be reaffirmed as an act of persecution. In the book Philosophy of Communication Theory, the content of persecution starts from:

1. Feeling disturbed by someone's speech or writing that causes another person or group to feel insulted.
2. Differences in understanding of one's point of view on a matter, then the factor of interest is one of the factors that often causes persecution because.

This research is a "Library Research" or Literature Study. By using a statutory approach

(*Normative*) and reviewing the source of Premier legal materials [3] A) Law Number 39 of 1999 concerning Human Rights (HAM), B) Criminal Code (KUHP) C) ITE Law on Electronic Information and Transactions. and Secondary legal sources in the form of information, scientific journals, books or literacy that are interrelated. Then the two sources of legal material are processed using the Deductive Analysis method (Examining the general principle of truth) as a framework for assessing specific problems.

This type of research uses *normative research methods with a statutory approach or statute approach*, namely by examining the laws related to legal issues. From the legal materials obtained, the author uses an inductive analysis method by drawing conclusions from this discussion of problems that have a general nature to specific problems.

2 Discussion

2.1 Classification of Acts of Persecution

As is known, the various disciplines in law can be classified into criminal law, civil law and constitutional law. Specifically related to persecution cases as above, persecution up to the explanation of the articles relating to the act of persecution itself, it is increasingly clear that the perpetrator or act of persecution is a criminal offense that can disturb a person, group, citizen and others, which action must be eradicated in order to bring a sense of comfort to Indonesian citizens. However, the eradication or resolution of problems or cases of persecution is the authority and responsibility of law enforcers in Indonesia, one of which is the police[4]

included in the study of criminal law. W.L.G Lemaire,[5] provides an understanding of criminal law, namely:

"consists of norms containing obligations and prohibitions which (by the legislator) have been associated with a sanction in the form of a penalty, i.e. a special suffering".

Furthermore, according to Teguh Prasetyo, there are 2 (Two) parts:

"The purpose of criminal law as a sanction law. This objective is conceptual or philosophical in nature which aims to provide the basis for criminal sanctions. Types of forms and criminal sanctions and at the same time as parameters in resolving criminal offenses. This objective is usually not written in the criminal law articles but can be read from all criminal law provisions or in general explanations."

"The purpose of imposing criminal sanctions on people who violate criminal law. This goal is characterized by pragmatics with clear and concrete measures that are relevant to the problems that arise due to violations of criminal law and people who violate criminal law. This goal is the embodiment of the first goal."

So from this, there are often some new content discussions on law enforcement because the regulations that are not yet adequate result in someone being arbitrary when they see someone making a mistake which is then exaggerated, one of which is persecution caused by social media.

2.2 Verbal Persecution

Verbal (Adjective), According to KBBI [6]Oral (Not Written). The threat of Article 368 paragraph (1) of the Criminal Code / ITE Law, the perpetrators of persecution can be charged in accordance with Law No. 19/2016 concerning Amendments to ITE Law No. 11/2008, namely committing acts of threatening and frightening in private can be subject to a maximum sentence of 6 years in prison.

Persecution in the perspective of communication is actually present as a result of various communications that have been obstructed or blocked so far. Onong Uchjana Efendy [7]in the book Science, Theory and Philosophy of Communication argues that communication barriers occur due to several things, namely; first, mechanical interference where there is a disturbance in the communication channel or physical noise, this disturbance is more directed to the medium used in communication such as double sound on the radio due to overlapping waves, or the boisterous sound of the audience when people make speeches. second, due to semantic interference. Second, because of semantic interference.

This type of impairment is concerned with the actual meaning of words or changes in the meaning of words. The same words have different meanings for different people. This is due to two types of understanding of words: denotative, which is what is in the dictionary, and connotative, which is what depends on a person's emotional state and background. Second, because of Interests (Interest). The interest factor will also hinder effective communication, because the communicator's interest factor makes the communicator selective in receiving and responding to messages. People will be aroused by messages that are their needs.

2.3 Physical Persecution

Beatings If the perpetrators of persecution commit persecution, they will be charged with Article 351 of the Criminal Code with a sentence of 2 years in prison. If the persecution is carried out together, the article charged is Article 170 of the Criminal Code on beatings with a penalty of 5 years imprisonment. Arrest and Detention, in the Code of Criminal Procedure (KUHAP)

"This is one of the first steps to take the right to freedom for someone who is indicated to be guilty and this is an effort by law enforcement for those concerned not to escape"

Therefore, this effort must be carried out as carefully as possible so as not to be associated with violations of human rights, according to existing procedures:

"First, the provision of a letter of arrest or detention, Second, the reading of the rights given to those concerned so that they receive equal protection."

According to Yahya Harahap [8] argues: That detention is a deprivation of human freedom, which is in fact close to the good name, human values and personal dignity of a person. And also according to L. Sumartini [9] argues: Arrest and detention are carried out if in a precarious situation that is necessary, because if something happens that is not appropriate it will result in a violation of human rights (HAM) which can be prosecuted through pretrial or compensation.

2.4 Criminal Liability for Perpetrators of Persecution

Every citizen in a country is obliged to follow or obey the rules or laws enforced in the area by customary law or modern law in Most rural communities are customary in their tendency to solve problems conventionally by prioritizing written law in solving problems and clearly indicates that

the form of law has a relationship with the form of society.

The trigger for persecution is because some people do not respond to events and facts that occur in society with a cool head and do not consider the consequences and the ease with which a group or organization is provoked by invitations or incitement of a hateful nature is the reason or one of the causes of the rampant criminal acts of persecution. A person who takes advantage of the loyalty of group members to the organization in which he or she belongs, if not addressed wisely and carefully, will be very easily provoked by incitement on the basis of hatred or slander which causes threatening, persecution or can even lead to murder,

stated by LBH Jakarta in a press release of the anti-persecution coalition, namely "recorded in 1965 when people were easily killed, persecuted because they were accused." [10] *"communists without trial, Petrus or mysterious shootings in the 90s, witch doctors in 1998 in Banyuwangi and persecution of Ahmadiyah"*.

Persecution is a form of action that is classified as a criminal offense that can cause harm to others, in Article 368 on Extortion, Article 369 on Threatening, Article 351 on Maltreatment, Article 170 on Robbery of the Criminal Code (KUHP), The definition of persecution then experienced expansion with the enactment of the 1998 Rome Statute According to Article 7 paragraph (1) letter h of the 1998 Rome Statute of the International Criminal Court, persecution is considered a crime against humanity. The provision states:

"for the purposes of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court".

In general terms, it can be concluded that persecution is a form of persecution that is not allowed under international law as a crime against humanity because it involves politics, race, nationality, ethnicity, culture, religion and gender.

368 of the Penal Code *"Any person who, with intent to unlawfully benefit himself or another, forces anyone by force or threat of force to deliver any property which wholly or partially belongs to that person or to another, or to incur a debt or to cancel a debt, shall, being guilty of extortion, be punished by a maximum imprisonment of nine months."*

369 of the Penal Code *"Any person who, with intent to unlawfully benefit himself or another, by threat of verbal or written abuse, or by threat of disclosure, forces any person to deliver any property wholly or partially belonging to him or to another person, or to incur a debt or to cancel a debt, shall be punished by a maximum imprisonment of four years."*

351 KUHP *"(1) Maltreatment shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred Rupiahs, (2) If the fact results in a serious physical injury, the offender shall be punished by a maximum imprisonment of five years. (3) If the fact results in death, he shall be punished by a maximum imprisonment of seven years. (4) With maltreatment shall be equated intentional damage to health. (5) Attempt to commit this crime shall not be punished"*.

170 of the Penal Code *"Any person who openly and with common force uses violence against persons or property, shall be punished by a maximum imprisonment of five years and six months"*.

A crime can be categorized as persecution if it fulfills six elements of the crime. The six elements are:[11]

1. The perpetrator of the crime actually deprives others of their basic rights.
2. Criminals target a person or group of people on the basis of different identities.
3. Persons or groups targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds universally prohibited under international law.
4. the crime of persecution, the commission of which is associated with any of the acts set out in Article 7(1). or any other crime over which the ICC has jurisdiction." [12]
5. The crimes were committed as part of a widespread and systematic attack directed against a specific group of civilians.
6. The perpetrator of the crime (persecution) knows that his actions constitute or intends to be part of a widespread and systematic attack.

A person from the point of view of the occurrence of a prohibited act, will be held accountable for bkan for the action, if the action is against the law and there is no justification or nullification of the unlawful nature of the crime committed. From the point of view of the ability to be responsible, only someone who is capable of being responsible can be held accountable for his actions. *The criminal offense in the absence of fault is the principle of criminal responsibility, therefore in terms of punishment of a person who commits an act as threatened, this depends on the question of whether in committing this act he has fault.*" [13]

According to the explanation above, criminal responsibility in criminal law consists of 3 (three) conditions, according to researchers:

1. A person's capacity for accountability and or the culpability of the perpetrator
2. The existence of an unlawful act
3. The absence of justification or reasons that can prevent the perpetrator from eliminating criminal liability.
4. Then regulate the regulation of acts of persecution that are spread through social media.

3 Conclusion

The investigation into the regulation of persecution under Indonesian criminal law reveals a comprehensive legal framework categorizing and penalizing acts of maltreatment. By distinguishing between verbal and physical persecution and outlining specific legal repercussions, the study underscores the Indonesian legal system's recognition of the severity and implications of such acts. This approach not only affirms the commitment to safeguard individuals from ethnically, religiously, or politically motivated persecution but also presents a legal basis for the prosecution of offenders. The implications of this study suggest a need for further research into the effectiveness of these legal provisions in preventing persecution and ensuring justice for victims, potentially guiding policy revisions for more effective legal protections.

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