

## CHAPTER ONE

### INTRODUCTION

#### A. Background of Research

The year is 2019, but the paranoia on leftism ideology - caused by 1965 *coup d'etat* organized by Indonesian Communist Party (PKI) as well as decades of Indonesian government's indoctrination through propaganda - still rooted among the mind of Indonesian. On 8th January 2019, West Sumatra Police Command (KODIM) purportedly raided products of left-wing themed books which includes, *The Chronicles of 65 (Kronik 65)*, *The 30th September Movement (Gestapu 65)*, *The Red Coat (Jas Merah)*, *Hunting Down Soekarno (Mengincar Bung Besar)*, it taken away from bookstores in Hos Cokroaminoto Street. Indeed, Scholars and human rights activists have castigated the Indonesian National Armed Forces (TNI) current action to impound books about the nonexisted Indonesian Communist Party (PKI) in some parts of Indonesia, mocking the book raids oppressive and the absence of due process of law .<sup>1</sup> This case is one of numerous cheerless intellectual freedom in Indonesia for spreading and expressing the knowledges.

Behind this big operation, the Attorney General Officer (AGO), Muhammad Prasetyo proposed a massive raid to razzia forbidden ideology literature<sup>2</sup> as regulated in article 6 law no. 4/PNPS/1963<sup>3</sup> that states "for prohibitted bibliography confistication is by the Attorney General, the Police Department or other state instruments that have the authority to maintain public security", on the other hand, Indonesian Constitutional Court (MK) stated in

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<sup>1</sup> Ivany Atina Arbi, 2019, "Raids over PKI books condemned", The Jakarta Post, <https://www.thejakartapost.com/news/2019/01/10/raids-over-pki-books-condemned.html>, accessed on 21-10-2019 at 20.00 pm.

<sup>2</sup> Coconuts Jakarta Editor, 2019, "Indonesia Defense Minister says raid on leftist books needed to prevent communist 'revenge' ", Coconuts.co, <https://coconuts.co/jakarta/news/indonesia-defense-minister-says-raid-leftist-books-needed-prevent-communist-revenge/>, accessed on 22nd of October 2019 at 21.30 pm.

<sup>3</sup> Mahrus Ali, 2011, "Pengawasan Peredaran Barang Cetak, Due Process of Law Dan Hak Atas Kebebasan Mengeluarkan Pendapat", *Jurnal Konstitusi*, Vol. 8, No. 4.

Constitutional Court verdict no. 6-13-20/PUU-VIII/2010 that clearly explains Attorney General's the privilege to confiscate forbidden literature unaccompanied any due process of law, in addition, it is not has binding legal force and against 1945 Constitution.<sup>4</sup>

On International scope, the preamble of the Universal Declaration of Human Rights 1948 (UDHR) states that, by teaching and education, every individual and institution of society shall endeavor to encourage respect for human rights. The Declaration must always be taken into account.<sup>5</sup> Moreover, Article 19 of the Declaration highlights the freedom of expression in the following terms:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interferences and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>6</sup>

In particular, the UDHR grants the right to education and requires that the educational establishments and the scientific resources they are aiming to enforce the human person as regards human rights and fundamental freedoms are available and accessible.<sup>7</sup> Berne Convention 1886 Believes that there will be continued decline of intellectual freedom, without respect for the fundamental rights of authors and their works.<sup>8</sup>

Freedom of expression is far wider range than intellectual freedom.<sup>9</sup> This principle of freedom of expression encourages intellectuals to enjoy freedom to propagate ideas free of interference. On the other hand, there are some cases of

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<sup>4</sup> Abdul Wahid, and Siti Marwiyah, 2011, “Hak Kemerdekaan Menulis Buku Dan Pencerahan Edukasi Masyarakat”, *Jurnal Konstitusi*, Vol. 8, No. 4.

<sup>5</sup> Kumar Satish, 2018, “Reflection of Human Rights through Public Libraries and Information Worker in a Society”, *IME Journal*, Vol. 12, No. 1.

<sup>6</sup> Bing Wang, 2015, “Nanjing Library's Efforts on Intellectual Freedom”, *Chinese Librarianship: An International Electronic Journal*, Vol. 39, No.7.

<sup>7</sup> Osler Audrey, 2015, “Human Rights Education, Postcolonial Scholarship, and Action for Social Justice”, *Theory & Research in Social Education Journal*, Vol. 43, No.2.

<sup>8</sup> Mathangani, Salome Waigumo, and Japheth Otike, 2017, “The Legal Implications of Providing Information Services in PUL in Kenya”, *Journal for Library Culture*, Vol. 5, No.1.

<sup>9</sup> Paul Sturges, 2017, “Intellectual Freedom, Libraries and Democracy”, *Libri Journal*, Vol. 66, No.3.

biblioclasm in which the legal enforcer or the equal officers have confiscated the author's work or subjected the authors where they have been in a state of fear of writing and discussing and even expressing their opinions. The problem is, by any means, abused by potical matters on the countries.<sup>10</sup>

The right to fair trial is specifically mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR).<sup>11</sup> The right to fair trial is one of the fundamental guarantees of human rights, aimed at ensuring the proper administration of justice. Moreover, It must be administered in a way that achieves fairness for all, regardless of the identity of the parties. Furthermore, it must be determined by a competent, independent and impartial tribunal established by law.<sup>12</sup>

On national scope, the proposition paradigm explains that any communist or forbidden ideology literatures must be confiscated as regulated in law no. 4/PNPS/1963 article 1(1) of Law No 4/PNPS/1963 on the protection of printed matter concerning "The Minister of Attorney General shall be authorized to prohibit the circulation of printed matter which is considered to be capable of disrupting public order." Moreover, on article 6 "For printed objects prohibited on the basis of this provision, the confiscation shall be carried out by the Attorney General, the Police or other State instruments which have the authority to maintain public order.

The opposition paradim countered proposition's thesis, as supported by constitutional court verdict no. 6-13-20/PUU-VIII/2010 stated that biblioclasm is contradictory to the 1945 Constitution. In addition, explicitly explains on article 28D paragraph (1) of the Constitution 1945 which affirmed, "Everyone has the right to recognition, guarantees, protections and legal certainty as well as equal treatment before the law".<sup>13</sup>

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<sup>10</sup> *Ibid.*

<sup>11</sup> Gergory. S Gordon, 2018, "Freedom of Expression, Hate Speech, and Incitement to Terrorism and Genocide: Resonances and Tensions," *Journal Incitement to Terrorism Brill Nijhoff*, Vol. 3, No. 21.

<sup>12</sup> Flynn Asher, 2016, "Legal Aid and Access to Legal Representation: Redefining the Right to a Fair Trial", *Melbourne University Law Journal*, Vol. 1, No. 40.

<sup>13</sup> Aji R. N. B and C. Liana, 2018, Responding Book Banning in Indonesia", *Journal of Physics:*

The issues on above related on Bibliocaust or Biblioclasm, it is a ceremonial destruction, usually carried out in a public setting, of books or other written materials by fire. Biblioclasm is an aspect of censorship, usually arising from the cultural, religious or political opposition to the content concerned.<sup>14</sup>

According to the Constitutional Court verdict, it is absolutely necessary to perform the function of due process of law enforcement to prohibit printed material/electronic material that is a book, whether it is a book that is considered to be a criticism or a book that teaches radicalism. It would be wise for anyone who disagrees with a book, and then responds by writing a book.<sup>15</sup> The result of this research is to promote and suggest that the government and its legal apparatus should not arbitrarily impose a ban on books. Likewise, citizens should not take aggression action to address this problem. In historical records, the prohibition of books without due process of law is always followed by the withdrawal of books and the failure of people to deal with differences, particularly in knowledge. Moreover, through a book, the government and its apparatus must create a favorable situation and encourage the creation of different perspectives in the context of the advancement of science. It would imply that people can respect every perspective and every thought.<sup>16</sup>

As a Muslim following prophetic values. The Prophet's descendants are Islamic scholars and intellectuals. An intellectual Muslim must actively help save the world and save the ummah. In other words, in social sciences this prophetic idea is based on Islamic ideals and aims at social change within the prophetic set of values and principles.<sup>17</sup> It is systemic transedental epistemology, humanization and interaction among consciousness ended in

*Conference Series*, Vol. 9, No. 1.

<sup>14</sup> Javid Jafarov, 2018, "A Brief History of Armenian Biblioclasm", *Journal of Manuscripts Don't Burn*, Vol. 8, No. 1.

<sup>15</sup> Muhammad Gandara, 2015, "Kriminalisasi Kewenangan Kejaksaan Di Bidang Pidana", Fakultas Hukum, Universitas Islam Sultan Agung, Semarang, Indonesia.

<sup>16</sup> Syukri Asy'ari Meyrinda Rahmawaty Hilipito, and Mohammad Mahrus Ali, 2016, "Model dan Implementasi Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang (Studi Putusan Tahun 2003-2012)", *Jurnal Konstitusi*, Vol. 11. No. 4.

<sup>17</sup> Umar Sidiq, 2019, "Prophetic Leadership in the Development of Religious Culture in Modern Islamic Boarding Schools", *Istawa: Jurnal Pendidikan Islam*, Vol. 4, No. 1.

liberation. This formula of the three edicts of prophetic literature which Kuntowijoyo developed, not only as an author, but also as a cultivator, who generated literary and cultural works as culture. All cultural works are worship because they are ways that are subject to the Creator and to Allah's religion. Kuntowijoyo sees the need, therefore, of Islamic understanding rather than of Islamic knowledge to abandon the myth and theoretical world in the direction of the wisdom world in order to be preliminary.<sup>18</sup>

## **B. Research Question**

How is the urgency and protection to perform the function of due process of law enforcement on biblioclasm by General Attorney or other legal prosecutors?

## **C. Objectives of Research**

The objective of research is to know the urgency and protection to perform the function of due process of law enforcement on biblioclasm by General Attorney or other legal prosecutors.

## **D. Benefits of Research**

### 1. Theoretical Benefits

The research reveals the urgency and protection to perform the function of due process of law enforcement on biblioclasm by General Attorney or other legal prosecutors. Moreover, the research also grants a deep theoretical understanding of knowledge on the promotion of intellectual freedom against biblioclasm and its implementation in

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<sup>18</sup> Pradana Boy Z, 2011, "Prophetic Social Sciences: Toward an Islamic-Based Transformative Social Sciences", *Indonesian Journal of Islam and Muslim Societies*, Vol. 1, No. 1.

Indonesia.

## 2. Practical Benefits

The research describes how far the urgency and protection to perform the function of due process of law enforcement on biblioclasm by General Attorney or other legal prosecutors and give recommendations to settle the problems that appear on the implementation and execution of biblioclasm in Indonesia.

### **E. Systematic of Writing**

The research contains of five chapters as follows: Chapter One (Introduction); Chapter Two (Literature Review); Chapter Three (Research Method); Chapter Four (Finding and Analysis); Chapter Five (Conclusion and Recommendation).

The aims of this research are to discourse on the urgency and protection to perform the function of due process of law or fair trial on biblioclasm by General Attorney or other legal enforcer. Moreover, the research focus on the topic by dividing it into five chapters.

Chapter I, an introduction of the research, it elaborates introductory matter related to the issue by mentioning correlated case that contradictory on interconnected international law and national law.

Chapter II, a discussion on related literature review, it covers the related general theories. Furthermore, it bestow the definition of related issue coined by scholars, types of correlated issue, importance and challenges of the related issue. These four points are essential in understanding the matter unbiasedly.

Chapter III, In this chapter, the type of research, the type of approaches, the type of data with its data analysis method are provided.

Chapter IV, The research seeks to respond to the issues by

developing them comprehensively. It elaborates a brief understanding of Intellectual Freedom coined by international scholars with current related case on national level. Finally, this chapter seeks to expose the urgency to perform the function of due process of law or fair trial by General Attorney or the other law enforcer on intellectual freedom against biblioclasm.

To summarize the research, Chapter Five of the Conclusion and Recommendation concludes the research and makes some personal recommendations based on findings and analysis throughout the research.