

CHAPTER I

INTRODUCTION

A. Background

Currently, there are many issues of human right violation that is emerged in line with the development of technology, ideology, and the freedom of thoughts and expression. Vienna Declaration and Program of Action 1993 stated that “*Human rights and fundamental freedoms are the birthright of all human being; their protection and promotion is the first responsibilities of government*”. Means that any action that happened to be speculated as inhuman, barbarous, and harmful element to the rights of individual & violates someone rights are simply becoming the responsibility of the government of a state.

Many issues have been occurred on human right particularly at the cases of torment towards individuals. There are several cases where vigilantism action happened towards someone’s rights of freedom and the rights of not to be tortured are being violated by irresponsible people. Sometimes, people commit Vigilantism or abuse of power towards someone life’s right without any rational consideration that make them become inhuman to others. In Indonesia there are phenomena pertaining on arbitrary action towards individuals which is unsure to be categorized as thief. There are several cases such as the cases that’s just happened recently at December 2019 when there was a man recorded as a thief

and got torment by the society until he met his demise at Bekasi, Bojongsari Village, West Java.¹ People should realize that even though he was a thief, he still has the rights to live. The right things to do as a citizen that lives in a law state, the people should bring those misbehavior (whose indicates as a thieves) to the one who has authority and duty to settle the problem based on the law. Talking about Law, the Indonesia government has ratified the convention of human rights against torment and other cruel, inhuman or degrading treatment towards human being at December 10, 1984 following the decision of G. A. Res. 39/46 at December 10, 1984 and it has been activated since June 26, 1987.

Torment is considered as one of the most serious human right violations because it directly strikes towards human dignity. The prohibition of torment and slavery is an absolute right without exemption. It has already become and recognized as the customary international law.² In Dutch, the term “torment” is recognized as *Eigenrichting*, which means vigilantism action towards others. This vigilantism action has already regulated at Criminal code and its sanctions have been decided as well. So, for those who committed this action will be imposed or punished by the law. In other word, someone can be free from punishment/sanction if they have justified reasons

¹ Isal Mawardi, “Curi Motor di Bekasi, Pelaku Diamuk Massa hingga Tewas”, <https://news.detik.com/berita/d-4816541/curi-motor-di-bekasi-pelaku-diamuk-massa-hingga-tewas>, accessed on Saturday, April 18, 2020, 7.14 PM.

² Eko Riyadi, 2018, “*Hukum Hak Asasi Manusia: Perspektif Internasional, Nasional, dan Regional*”, Depok, PT Raja Grafindo Persada, pages 132.

towards his/her action among others such as the self-defense reasons or “rechtvaar digings grond” that includes; emergency situation, forced defense, following the content of the law, and position orders.³

Currently the positive law of Indonesia put more concentration for an offender and less attention to the existence of a victim.⁴ A victim got compensation and restitution from the damages that they received and the state should pay attention to the general interest of a society, offender, and of course the victim itself with balanced. From the perspective of keeping the social justice, the state should be able to emerge the social contract argument and the social solidarity argument. The first argument said that the state as the one which monopolize all social reaction towards crime should forbid any actions that is considered as *eigenrichting* actions. The second argument stated that the state should take care the society by fulfilling their interest and their cooperation, therefore, is needed if the society has hardship. This method could be done by increasing the social service or emerging the rights of its society.

Article 1 of the convention against inhuman action defines that “Torment is any action that done by intentionally, causing pain or great suffered to physically and psychologically, done by someone with intention to gain a recognition or information that should be done by

³ Sudikno Mertokusumo, 2007, “*Mengenal Hukum: Suatu Pengantar*”, Yogyakarta, Liberty Yogyakarta, pages 23-24.

⁴ Adhi Wibowo, 2013, “*Perlindungan Hukum Korban Amuk Massa: Sebuah Tinjauan Viktimologi*”, Yogyakarta, Thafa Media, pages 41-42.

public authority”.⁵ From the statement of article 1 above, it is implied that this activity is legal if it is done by public authority to gain recognition and information by the suspects under the certain conditions and rules. So, if it is done by the society as the means to get the recognition of the suspected or victim which is totally wrong and illegal. Moreover, from the facts that is already existed, the intention of the torment that done by our society is to make everyone aware that theft action is not right. However, it is also illegal and cannot be justified by The Law.

The torment has commonly found in Indonesia and the enforcement of the rules has put into effect but so far the solution of this vigilantism actions has not been reached. What is needed, thus, is the living law or legal awareness of each individual in Indonesia because with the living law, the enforcement of law hopefully can decrease the vigilant cases especially toward motorcycle thieves.

B. Statement of Problem

Based on the background above, the researcher formulated the problems as follows:

1. Why is Vigilantism action becoming top current issues in Indonesia?
2. How do the legal instrument alongside the human rights perspective overcome the vigilantism issues in Indonesia?

⁵ Eko Riyadi, 2019, “*Hukum Hak Asasi Manusia: Perspektif Internasional, Regional, Nasional*”, Depok, PT Raja Grafindo Persada, Pages 132.

C. Research Objective

1. To find out the reasons why the vigilantism action or arbitrary action happened and becoming the actual issue in Indonesia.
2. To analyze the instrument of Indonesian Law and human right perspective in settling the issue.

D. Research Benefit

This research was conducted in the hope that it would provide several benefits:

1. Theoretical Benefit

This research will contribute to the development of legal science especially for determining the regulation in the field of Human Right.

2. Practical Benefit

The research will give recommendation to policy makers, especially in the field of Human Right in Indonesia as an evaluation material for the application of previous policies.