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PUBLIC SPACE PARTICIPATION IN LAW ENFORCEMENT AGAINST SERIOUS HUMAN RIGHTS VIOLATIONS IN DISCOURSE PERSPECTIVE JÜRGEN HABERMAS

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ABSTRACT This writing aims to analyze the background of the public sphere's participation in resolving cases of gross human rights violations by using the public sphere discourse of Jurgen Habermas. The method used in writing is a normative juridical approach. The point is that this research focuses more on literature studies and news studies, documentary studies on the provisions of laws and regulations. The results of this paper show that the factors that cause serious human rights cases cannot be legally resolved because of the very dominant political element in the settlement, such as this serious human rights case will be used as an advantage for practical political interests five years, and also the average perpetrators of gross human rights violations are currently an important element in the current Indonesian government. In this case, the element of public space should play an important role in resolving these gross human rights violations, in the theory of public space discus according to Jurgen Habermas, so that social problems such as legal problems can be resolved intersubjectively between the system and the public sphere, and the results obtained through consensus can be accepted. Intersubjectively without putting aside each opinion, Habermas proposes his concept of communicative discourse as a discourse that must be tested first in a communicative ratio. In the settlement of serious human rights cases, it is still possible to be resolved legally by involving the public sphere, because according to Habermas every social problem such as law can be resolved through communicative action.

KEYWORDS: Communicative Ratio, Law, Serious Human Rights Cases, Public Space

INTRODUCTION

In the dynamics of the public sphere conversation in English public sphere or in German offenlickheit, which is a discussion that is currently a hot topic of discussion in social sciences such as law and political science, it shows how vital the debate about this public sphere is, especially in social sciences. The era of post-modernism is currently between the 20th century and the 21st century.(Prasetyo, 2012) The public space formerly in Ancient Greece until the Middle Ages was only understood as a space for kings and

leaders of a polis. Even in the Middle Ages, it was only understood as the actions of leaders. It was only pastoral, but in Ancient Greece, it did not mean that the public sphere was only understood in terms of the activities of the leaders of the polis or city-states, but also that there was a distinction between res publica (public matters) and res private (private matters), which later on this distinction would be used in modernism and post-modernism, as well as the concept of distinction in the ancient Yanani era in the idea is still not as broad as the concept in the 21st century.(Roza, 2013) But in the age of the Aufklarung enlightenment in Germany, around the 17th to 18th centuries, the idea of public space was understood broadly and fundamentally, which became the embryo of the birth of public space in a broad sense. In this case, according to the Aufklarung period, public space is a space where people communicate with each other to discuss a matter that becomes a polemic, such as social, legal, human rights, and political issues.(Budi Hardiman, 2010)

In the 21st century, or what can be called the era of post-modernism, public spheres or communities participate in discussions on human rights, post-World War II, which is a fundamental thing for human rights according to all citizens in the world.(Suswandari, 2017) Conduct deliberation with other countries. Thus, the Universal Declaration of Human Rights was born on December 10, 1948. At that time, the birth of the Universal Declaration of Human Rights was very enthusiastically welcomed by all countries from both western and eastern countries.(Gunakaya, 2017) This declaration aims to protect the rights of every citizen in the world, this declaration not only protects the rights of citizens as human subjects who have become citizens but also protects humans in general or natural humans, or we can say asylum seekers and refugees to other countries due to internal conflicts in their country.(Arifin & Lestari, 2019) In this case, the Universal Declaration of Human Rights does not only protect fundamental human rights but also provides the right of community participation or public space in participating in protecting fellow human beings, such as participating in the enforcement of quite serious human rights violations

such as genocide that often occurs countries even in our country Indonesia today.(Budi Hardiman, 2010)

Regarding the terminology of human rights, in English literature literacy, various formulations are found, such as natural rights, human rights, and fundamental rights. In Dutch literacy and literature, there are several terms such as grondrechten, menserechten, rechten, and van den men, and whole rechten. Meanwhile, in Indonesian literacy and literature, human rights have natural rights, fundamental rights, and immune rights for humans. In this case, according to Manfred Nowak regarding human rights, which is the only value system that is universally recognized even though the value system is not like ideology or religion, it is not a value system that cannot be changed again, so the purpose of Nowak is human rights does not have fixed concepts and rules, can always change because human rights are probability, and the object of human rights protection is the human condition, which is sure to be particular, not universal, as are ideologies and revelations from religions.(Sasmito, 2018)

In article 7 of Law no. 26 of 2000 concerning the Human Rights Court states that what is meant by gross human rights violations include two crimes of genocide and crimes against humanity. Rights, which cannot be reduced because every human being must protect human rights. The difference is that the rights of citizens are derogable rights. However, de facto in Indonesia, human rights are still not getting enough attention from the government and law enforcers in Indonesia.(Kurniawan, 2018) Serious human rights issues are only used to immunize political power once every five years to gain the public's voice regarding serious human rights issues in Indonesia, such as the 1965 Genocide case (the massacre of PKI people, carried out by the Suharto government), the Tanjung Priok case, the May 98 riots, the Semanggi cases 1 and 2, and the East Timor human rights case. Thus, no serious human rights cases in Indonesia that we know of have ever been tried in legal terms, and these cases are only at the stage of submitting files at the Attorney General's Office, in this case, the government and the public or public spaces are required to communicate with each other.

Others to find a solution to the problem of the ineffectiveness of the government and society or the public sphere in resolving this serious human rights case.(Astuti, 2017)

In the thoughts of Jurgen Habermas who is a German philosopher and sociologist who is a thinker about the public sphere with Hannah Arendt. Habermas is a philosopher who developed in the Frankfurt School who developed a critical theory in the social sciences. (Ulumuddin, 2006) In his book Habermas entitled Theorie des Komunikativen Handelns, Habermas reveals that in the public sphere, people must communicate with each other in solving social and societal problems such as law, which according to Habermas, every discussion must be tested in a procedural ratio, which means that every social controversy relating to Lebenswelt or the world of life must be examined first intersubjectively between the government and the community or public space. As with these grave human rights issues that we know are unresolved, such as the Genocide 65 case and the May 98 riots, in this case, Jurgen Habermas's thoughts offer how social issues such as those relating to human rights can be resolved by deliberation. According to Habermas, every healthy country must open access to the broadest possible public space to solve social and legal problems collectively that can be resolved and accepted by the intersubjective paradigm between public space and government, or in Habermas' language between Lebenswelt and the power system.(Latipulhayat, 2016; Muzaqqi, 2013)

Based on the background, the author will try to analyze problems such as what are the factors that influence the ineffectiveness of resolving gross human rights violations in Indonesia and how the role of the public sphere (civil society) in gross human rights violations in Indonesia in the perspective of the discourse of Jurgen Habermas.

RESEARCH METHODS

The research in this writer uses a normative juridical approach. The point is that this research focuses more on literature studies and news

studies, documentary studies on the provisions of laws and regulations, in this case, Law No. 39 of 1999 concerning Human Rights, Law No. 26 of 2000 concerning the Human Rights Court. is descriptive-analytical, where the analysis is carried out critically by using various theories related to the issues raised. (Benuf & Azhar, 2020; Ishaq, 2017)

This research was compiled through several primary works of literature, F.Budi Hardiman Deliberative Democracy (Considering 'The State of Law' and 'Public Space' in Jürgen Habermas's Discourse Theory), Human Rights (Polemic with Culture and Religion, Public Space Tracking "Democratic Participation" from Polis to Cyberspace (Collect of Journals on "Public Space" Driyarkara College of Philosophy Jakarta, Joko Sasmito, Introduction to the State of Law and Human Rights, and also in this secondary book, such as Antonio Gramsci, Selection From The Notebooks (edited by Quintin Hoare& Nowell Smith), Martin Suryajaya, Alain Badaiou and the Future of Marxism, and the analytical method used in this research is qualitative, in the truth of the data/final premise is determined by the research itself. Meanwhile, the form of the research results will be presented in the form of prescriptive-analytical.(Rukajat, 2018; Subrata & Kom, 2007)

RESULTS AND DISCUSSION

1. Factors Affecting the Ineffectiveness of the Settlement of Severe Human Rights

The rule of law is a concept that has the aim of postulating favorable laws that form the basis for regulating public order, not only to control the going back and forth of people in the country, but the rule of law also prioritizes a concept of human rights, which is a fundamental right of the people. Man. Because the state of the law will not be perfectly upright if its human beings who are the subject of law do not get the complete protection of their human rights from the state by the state.(Aswandi & Roisah, 2019; Sasmito, 2018)

According to Father Franz Mangnis Suseno regarding the idea, the concept of the rule of law himself argues that the rule of law must display and prioritize the optics of justice over state power because if state power appears arbitrarily before the statute of justice, the state of law exists only for elements of power and not will appear before the horizon of society. In this case, according to Father Franz Magniz Suseno, regarding the moral aspect of politics, according to him, there are four main ideas in the rule of law, namely: legal certainty, demands for equal treatment, democratic legitimacy, and directions for a reason.(Magnis-Suseno, 1987)

In this case, it is known that Indonesia adheres to the concept of the rule of law, which prioritizes legal values and human rights. However, we know that settlements related to human rights in Indonesia are still stagnant, there is no effectiveness in resolving severe human rights cases. even though Indonesia already has two laws about human rights, namely, Law no. 39 of 1999 and Law No. 26 of 2000 concerning the Human Rights Court, but no severe human rights cases have reached the Ad hoc Court at this time, cases such as the 1965 Genocide, the May 1998 case, the Semanggi I and II cases, and the Timor-Timor cases.(Aswandi & Roisah, 2019) This case is only in the process of delegating files to the Attorney General's Office and has not yet reached the legal trial process. What factors hinder the settlement of human rights, whether there is hegemony by the authorities over severe human rights cases so that these cases will not touch the court. According to Antonio Gramsci, within the social group of the state, some groups have the following characteristics.(Basuki, 2007) As domination and as 'intellectual and moral leadership or hegemony' in this case, the purpose of Gramsci's explanation is every group in society. It always wants to dominate the structure in society, or it can be said that there is a group that has always been a superstructure in society, which has political powers to cover violations committed by dominating hegemony in society.(Siringoringo, 2016)

In the case of gross human rights violations, as regulated in Law No. 26 of 2000 concerning the Human Rights Court, Article 4 states "The Human Rights Court has the duty and authority to examine and decide cases of gross

human rights violations" and Article 7 states "Violations of Human Rights. serious crimes include: genocide and crimes against humanity".(Gramsci, 2015) By law, all past gross human rights violations can be carried out by the Court. We know that human rights violations apply a vital principle following Article 28 of the 1969 Vienna Convention and Article 28 of the 1986 Vienna Convention. But to establish an Ad-hoc Court for human rights violations is complex, taking the difficulty in practice, three factors become difficult in disclosing this grave human rights case, namely:

a. The perpetrators of past gross human rights violations when they had an essential role in the Indonesian government system, the possibility of hegemony, and the emphasis that these past human severe rights cases would not come to trial, was proven by the Semanggi I and Semanggi II cases in the conclusion of the Special Committee of the DPR July 27, 2001, which said that the case, not including gross human rights violations, the perpetrators evaded and seemed to have received immunizations from the protection of the DPR, so that the perpetrators did not get into the legal process of the ad hoc trial.
b. In every incident of serious human rights violations, there must be a role for the state through the power of the military and police apparatus, such as the genocide of former PKI people in which nearly one to two million people were killed en masse by the Indonesian military, as well as elements of violence perpetrated by the Indonesian military. Society, but it was the military element who killed the most innocent people. After the 1965 Genocide, the government-backed by military forces, became the President of Indonesia, which buried the case.
c. Any attempt to resolve this human severe rights case through the courts will inevitably encounter difficulties because, at the time of this gross human rights violation, there must have been elements of the community who committed the act, such as the

> case of the massacre of the Chinese people in May 1998, now it is not only the military who are involved. Commit violence, but there is a role for society in that as well. In this case, perhaps severe human rights cases will never be resolved in Indonesia because this serious human rights issue is helpful as immunity for practical political action.(Ramadhan dkk., 2020)

In this case, we can conclude that severe human rights cases in Indonesia have not been resolved by law because many past extreme human rights perpetrators had an essential role in power, and according to the author, why severe human rights cases were left unchecked—neglected until now, because of the practical political elements that were very thick in the past severe human rights cases.(Irawati, 2019) At the same time, past severe human rights cases are legal cases that must be resolved through the courts, not through political negotiations that seek to cover up past sins for the sake of political interests.(Daud & Jaya, 2019)

Thus, the author has described the factors causing severe human rights cases along with their analyses. Why are these severe human rights cases not resolved by every regime in Indonesia? These past severe human rights cases may become political weapons or ammunition, especially the interests of the presidential election to attack presidential candidates who have a terrible record of one-time extreme human rights, serious human rights issues. This will be a dark history, can't be solved seriously, because the new regime that wants to solve past human severe rights cases will get copulation and intimidation from the previous government, because this new regime gets political supplements of the prior administration, which has several records of gross human rights violations—the past.(Wiratraman, 2013) The uncertainty of the actions taken by the Indonesian government in resolving past severe human rights cases has ignited the public sphere, or the community has been fed up with "poetic" promises in resolving these problematic human rights cases. Finally, the community or the public sphere has contributed to assisting the settlement of these cases amicably. democratic, such as taking action to take to the streets peacefully, this is an

action that can only be done by the community in helping to resolve past human severe rights cases.(Pakpahan, 2017)

2. The Role of the Public Space in the Resolution of Serious Human Rights Cases in Indonesia in the Perspective of the Discourse of Jurgen Habermas

Today we know that the discussion of human rights has penetrated the public sphere system or society in general, such as discussions in academia in campus classes, in seminars that discuss human rights, and even this discussion of human rights, into cyberspace (virtual world).(Budi Hardiman, 2010; Hayati, 2018) In this case, it can be found that the problem points regarding severe human rights cases in the past that have become the attention of the community today, the issues are the lack of seriousness and uncertainty of the government to solve these problems, and the lack of communication between the government and the community, even though according to Rocky Gerung in his journal entitled "intellectual and political conditions" to fight political banality, it takes the strength of the public space or an argumentative society (argumentative society), where the public is given a full mandate in choosing public policies aggressively and communicatively, or it can be said that the thesis is presented. Rocky Gerung contains elements of "civic politics."(Gerung, 2009)

The thesis given by Rocky supports the theory of Jurgen Habermas, a 20th Century German philosopher and sociologist who was developed in the Frankfurt School in his book entitled Theorie des Komunikativen Handelns according to Habermas in solving social problems such as legal problems and human rights systems. Power or it can be said that the government must accept and listen to the back and forth of "peripheral opinions" in society in determining and resolving every legal problem, not only fixed in a monologue or ethnocentric manner, but intersubjectively, in this case, Habermas proposes a communicative ratio thesis to solve problems cooperatively. Habermas sees in the era of post-modernism (the term Post-modernism is a cultural term or culture of western thought in the 20-21 century which was first echoed by Francois Lyortad, see Bambang Sugiarto's

book "Post-modernism challenges to philosophy") communication in space The public is increasingly aiming at the horizon of 'multiculturalism,' which means that public space communication is currently increasingly intensive between the community and the power system, such as the existence of journalistic media, the public can find information about social and legal issues that are increasingly complex today.(Noor, 2016)

The existence of social media users who are increasingly massive at this time, and increasingly complex communication in the discussion of social problems that exist in society, such as the problem of past severe human rights cases in Indonesia, which are currently experiencing a 'regression,' because the role of culture is distorted from the discussion in a public area. For example, in making decisions regarding past severe human rights cases, the state represented by the power system entirely dominates the decision, without involving the community in communication in solving social problems such as past serious human rights problems. According to Habermas, the communicative actions carried out by the power system are still subjective or, in Habermas' language, 'instrumental ratio' because every decision issued by the power system still imposes its own opinion during the back and forth a public statement.(Budi Hardiman, 2010)

In this case, Jurgen Habermas's thoughts want to provide a subtle resistance to the assumptions of subjectivity in Immanuel Kant's philosophy, which believes that the 'ratio of subjectivity' can be universal. In contrast, according to Habermas, the act of communication, which is subjective, resonates the opinion of every society into the object of communication, which should be in communicative action. Every community in the country must be free from the point of view of objectifying the arguments given by the community.(Prasetyo, 2012) In Habermas's theory, interests are not things that must be taken for granted or isolated from the interests of the community, but the interests between the power system owned by the government will clash with the interests of the community, for example, the community or the public space wants severe human rights cases in the future. Then this must be disclosed and fair according to the applicable law,

by way of the investigation stage which as stated in Law No. 26 of 2000, this stage is only given to the Attorney General's Office, according to the community, so that past severe human rights cases are quickly resolved must be expanded into the Komnas sector HAM which is an ad-hoc institution tasked with resolving human rights cases. Still, according to the government, the authority to investigate severe human rights cases is only given to the Prosecutor's Office without any interference from Komnas HAM. Indeed, in this two-way communication, there will be contradictions between arguments. Still, according to Habermas, in such a confrontation, the idealization of common interests is formed between the public sphere and the power system.(Supratinigsih, 2007)

Not all interests conveyed through their arguments can be universalized in communicative acts. Still, the existence of goods in the middle becomes particular, because according to Habermas, every society should not take it for granted a priori whether interest can be accepted intersubjectively or not. No. Each of these opinions must be tested in the discursive process in a communicative ratio. In this case, the communicative discursive test is explained in detail. The ethical principle of discourse, as contained in Habermas' book entitled Moralbewubstein und Komunikatives Handelns, reads, "That every valid norm would have the approval of all those concerned with it if these people could participate in a practical discourse."

With the thesis given by Habermas, we can conclude that the valid norms have been given the nature of the communicative discourse that can be accepted intersubjectively between the power system and the public sphere of society. So in this communicative act, suppose that there is a counterfactual between each speaker, even though empirically not all participants or humans in the public sphere participate in this practical discourse. The community and the power system in communicative acts in determining a way out of human rights problems must provide the broadest possible deliberation horizon in the norms tested in a communicative ratio.

Laws made by the communicative power or the House of Representatives must be tested and accepted intersubjectively. They must

not reveal an ethnocentric or subjective horizon in the final result. (Supriadi, 2017) According to Habermas, in the law-making process, a communicative ratio must exist in law-making or solving problems such as human rights issues, the German term used by Habermas in political communication in policy-making in matters of public space Politische meanings-und Wilensbildung. In this case, Habermas wants to mediate public opinion and political aspirations carried out by the power system with the public sphere. Habermas proposes his answer in a democratic process as follows:

The process of drafting laws in the legal system is the real locus of social integration. Therefore those who take part in legislation should be urged to leave their role as subjects of private law and by their role as citizens take over the perspective of the voluntary community members. In the community, the rules of ordinary life are either guaranteed through tradition or produced by consensus according to normatively accepted rules.(Budi Hardiman, 2010)

In this case, in practical discourse in general, those who participate, namely between the power system and the public sphere, which are oriented towards public opinion and political aspirations, according to Habermas, must abandon their subjective interests to reach an intersubjectively acceptable consensus. Habermas said that communication is not between the subject and the subject but between communication and communication when the public sphere or society interacts with the power system. Habermas's opinion indicates that there should be no mutual co-optation between the public sphere and the power system in every touch. When the public or public sphere gives an idea on past serious human rights issues, the design of power or government must accept with openness the opinion first. Then, in that case, the public opinion is presented with the political aspirations of the government.

In the model of the political public sphere, which is part of the liberative public sphere, which according to Habermas is weak (das schawache publicum), there is a part or system which according to Habermas is called a strong public (das Starke publicum). With this, Habermas presents the two

methods which, according to Habermas, can use the Deliberative Democracy model, so that the rule of law does not always mean that a state that prioritizes dogmatic decree, but a state of law that is communicative between the power system and the public sphere. or society.(Nurcahyono & Hadi, 2003)

The public space, in this case, is a place where manipulative and unlimited communication occurs. In the general area, the community must participate in settlements such as legal issues regarding human rights. The role of the community in giving their opinion argumentatively can be found with the principle of how political aspirations can be found, whereas, in the distinction between public opinion and political aspirations, they are mutually exclusive. Habermas finally offered a concept called the dam model (schleusenmodell) for public deliberation, so according to Habermas, with this public dam model, all public opinions are filtered discursively since the power system communicates with the public sphere, which aims to bridge between public opinion and political aspirations.

In this case, the opinion given by the community will first be tested in the discursive, if there is an agreement between the interests of the power system and the public sphere, then the social problem can be said to be deliberative, with Habermas' deliberative democracy giving a critical touch to the the public sphere in taking part in social issues such as human rights issues, with the dam model Habermas reconciles communication between the system and the public sphere, for example, what are the obstacles to the settlement of past human severe rights cases that have made the case neglected, it can be discussed in a communicative ratio so that these problems can be resolved with communicative law.(Gramsci, 2015)

According to Habermas, communicative law places a balance between the system and the periphery. The communication process can be illustrated because of the 'opinions of the periphery' given by the community to solve legal problems that will lead to political aspirations. This center is a political and legal system consisting of the government, judiciary, parliament, and parties. So that the system can accept this 'peripheral opinion,' it must first

be tested in a communicative ratio or filter procedure. (Budi Hardiman, 2010) Not all public opinion can be obtained. Taken by political aspirations, only public opinion that has been discursively tested can be treated as a communicative decision. Thus every social problem such as this legal problem must be tested communicatively according to Habermas, between the public sphere and the system, there is no mutual determination in communicative, which or in Habermas's vocabulary, every communicative public space must be free of domination and hegemony, Habermas' opinion is in line with a philosopher named Alian Badiou who said that every time he reads political and legal issues of contention from the public sphere, the basis for solving these problems deliberatively without any pressure on all parties, the public space is given a very open horizon to provide arguments against any discourse on social issues in the public sphere.(Suryajaya, 2011)

CONCLUSION

After the author describes some of the concepts discussed above, it can be concluded that the settlement of past human severe rights cases always finds a need in resolving the political factors that overshadow the issue so that it cannot be decided legally, nor do we know that the law in Indonesia already has two laws related to human rights, there is Law no. 39 of 1999 concerning Human Rights and Law no. 26 of 2000 concerning the Human Rights Court, but empirically the LawLaw is not able to provide legal certainty to this serious human rights case, there is a political element that makes these two laws "passive." According to the author, why the issue is difficult to solve is because there is no clear demarcation line between LawLaw and politics, the LawLaw that we see today is more about "political dances, rather than sociological elements, this is a factor in past human severe rights cases not being seriously resolved, because this case serves only as practical political interest.

In the communication of public space, society in the current era has a place in its participation in solving social and legal problems; every community has the fundamental right to express their opinions in public,

according to Habermas, if the state wants to say the country is healthy, should open the broadest possible public space for public participation in legal issues such as past severe human rights cases that have not been resolved, perhaps according to the author, the lack of communication between the system and the public space which is one of the factors in the case is not resolved, and maybe the system It is the power that does not accept 'public opinion, this is the problem according to Habermas because every democratic country that is deliberative and communicative must provide space for discussion to solve legal issues intersubjectively, in this case, Habermas delivers an idea of future LawLaw. pan for laws in Indonesia that are communicative which give a more communicative humanist side in the public sphere.

The advice given by the author in this discussion is that law in a democratic country must display a more humanist and communicative legal perspective because the concept of communicative law described by Jurgen Habermas is instrumental for legal conditions in Indonesia. After all, almost all Indonesian legal products is an ethnocentric product whose decision-making is only subjective, it is rare for public participation to be included in deliberative legal discourse, according to Habermas a healthy state is a state that opens the broadest possible public space and past severe human rights cases, why Until now it has not been resolved, because this case has become a supplement to the political agenda, this legal issue should be free from hegemony and practical political domination because there is a political element that is the most challenging factor in disclosing the case.

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