



IMPLICATIONS OF REGULATION OF THE CRIME OF PERSECUTION IN LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL LAW BOOK

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Abstract

The term persecution is not contained in the Criminal Code (KUHP). However, in practice, acts of persecution are often threatened with criminal penalties contained in the Criminal Code, namely abuse, beatings and violence. However, as is known, persecution is part of crimes against humanity regulated in Article 7 of the Rome Statute. With the existence of Law Number 1 of 2023 concerning the Criminal Code (UU KUHP), acts of persecution have now become part of criminal acts. Therefore, this research will discuss whether the regulation of persecution in article 599 letter c of the Criminal Code Law is in accordance with international conventions? and what are the legal implications of the regulation of persecution in article 599 letter c of the Criminal Code Law in the context of legal certainty. The research method used in this research is normative juridical with a statutory approach, a conceptual approach and a comparative approach.

Keywords: *Crime, Persecution, Legal Implications*

1. INTRODUCTION

The term persecution is a term that is not foreign to Indonesian society. The phenomenon of persecution in Indonesia often occurs and is not only limited to the public aspect but also occurs in areas of human rights freedom. According to data from the Human Rights Commission, there have been around 500-600 cases of persecution of freedom of religion or belief in the last 15 (fifteen) years. Apart from that, based on SAFEnet data in 2017, in just 5 (five) months from January to June there were 59 (fifty nine) acts of persecution in Indonesia. This shows that cases of persecution are quite sensitive matters for society. Several cases of persecution that have occurred include in 2017 in Tangerang there was a case of persecution which resulted in the murder of a solo organ music player, starting with an argument between a single organ music player and 3 (three) local residents because they did not accept that their solo organ music was stopped and ended. with persecution carried out by 3 (three) residents. There are also several judge's decisions that contain acts of persecution. This can be seen in the Makale District Court Decision number 78/Pid.B/2018/PN.Mak. The judge in his ruling stated that the defendant's actions had been legally and convincingly proven guilty of committing the crime of persecution. In 2021, there was persecution of the Indonesian Ahmadiyah Congregation group in Siantang, West Kalimantan.

Persecution can be categorized as a criminal act, because it is carried out without the basis of authority regulated in an applicable provision. Several cases that have occurred in Indonesia show that cases of persecution can take the form of violence, threats of violence, abuse, murder or beatings based on feelings of hatred towards a person or group. Violence resulting from hatred towards individuals or groups is contrary to the provisions of the laws in force in Indonesia. Persecution is contrary to the provisions of Article 28A of the Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) that every person has the right to live and the right to defend his or her life and life. Furthermore, the provisions of Article 28I Paragraph (2) of the 1945 Constitution of the Republic of Indonesia regulate in detail that every person is not treated discriminatorily on any basis. In fact, the term persecution itself is not found in the legislation in force in Indonesia. The concept of persecution itself is defined in more detail in Article 7 letter h of the Rome Statute which reads:

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; (Persecution of an identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender grounds as defined in Paragraph (3) or on other universally recognized grounds as not permitted under international law, relating to any act referred to in this paragraph or any crime within the jurisdiction of the Court. In the formulation of the Rome Statute, the act of persecution is synonymous with the act of treating a person or group cruelly and unfairly because of differences or political beliefs, religion, race, culture, gender or on other grounds that are universally recognized and not permitted under international law. There is a form of deprivation of the rights of a person or group that is contrary to international law by reason of the identity of the group or collectivity. This shows that there is a separate meaning regarding the act of persecution when interpreted from the definition.

In Indonesia itself, acts of persecution are categorized into several criminal acts contained in the Criminal Code (KUHP), such as the crime of assault under Article 170 of the Criminal Code, the crime of assault under Article 351 of the Criminal Code, and the crime of extortion with violence under Article 285 of the Criminal Code. This shows that there are different interpretations between the laws that apply in Indonesia and international law. Apart from that, it can also have implications for errors in the interpretation of actual events, where the action constitutes persecution but because it is not regulated it is considered a criminal crime in general as contained in the Criminal Code. Legal problems regarding acts of persecution in society are increasingly developing and complex, so a regulation is needed that strictly regulates and creates a legal umbrella to protect society itself so that law enforcement officials can easily apply legal sanctions against such acts of persecution. There are several characteristics related to acts of persecution, namely as follows:

- a. Basic rights have been taken away.
- b. The perpetrator targets:
 - i. People or individuals because of two group identities
 - ii. People or individuals because of a shared/collective identity
 - iii. Certain groups
 - iv. Certain collectivities
- c. Such targeting is based on political, racial, national, ethnic, cultural, religious, gender or universally impermissible grounds under international law.
- d. The actions carried out range from killing, torture, to inhumane acts that cause physical and mental suffering.
- e. The perpetrator knew that his actions were part of actions intended to be part of a widespread and systematic attack.

In practice in society, persecution is an arbitrary or persecuting action that begins with words of hatred, insults via social media, then by a party who feels insulted or hurt by hunting, visiting or being "grubbed" directly at the residence and then there the party who feel hurt and then intimidate. Patterns related to this persecution include instructing the masses to hunt down targets whose identities, photos and addresses have been revealed, visiting homes or offices, carrying out intimidation, and in some cases being beaten, being forced to sign stamped letters of apology and other forms. The use of the word persecution is often used by various media which gives rise to allegations that acts of persecution have occurred and are real in Indonesia. In September 2021, there was news about a public figure whose residence or house was visited by men who were at his residence. Similar news also happened to teenagers who experienced alleged persecution in Bekasi. This incident shows that in society, acts of persecution of this kind often occur. This act was even reported to the police, to seek criminal responsibility for the perpetrator suspected of carrying out this act of persecution. In practice, alleged legal acts of persecution are resolved through articles in the Criminal Code. This further explains that the validity of the use of the term persecution in the legal world has not been recognized.



In determining whether or not there is persecution, it must be proven related to the contextual elements of the persecution, namely the perpetrator's knowledge that his actions were part of a systematic or widespread attack against the civilian population. In addition, there are reasons to discriminate against victims, groups or collectivities of which they are part, such as discrimination based on political interests (not necessarily institutionalized), race, nationality, ethnicity, culture, religion, gender, or other grounds that are universally prohibited under international law. The perpetrators of persecution can be anyone, not only the government or state organs, but also civil society. For this reason, in its current development, the term sex has been regulated since the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP Law). The term persecution is categorized as a crime against humanity as regulated in Article 599 Letter c of the Criminal Code Law which reads:

Convicted of a crime against humanity, every person who commits one of the acts as part of a widespread or systematic attack knowing that the attack is directed against the civilian population, in the form of: Persecution of groups or associations on the basis of politics, race, nationality, ethnicity, culture, religion, belief, gender, or persecution for other discriminatory reasons that have been universally recognized as prohibited under international law, with a minimum prison sentence of 5 (five) years and a maximum of 15 (fifteen) years; or

The regulation of crimes against humanity including persecution in the Criminal Code Law is based on the fact that the increasing number of laws outside the Criminal Code are not systemized, so it is necessary to have a comprehensive "recodification and national reunification" with reference to one of them being adaptive to the development of international crimes, with various sources. Conventions that have or have not been ratified. Apart from that, the reason for including crimes against humanity is because it has a broad impact both at the national and international levels and causes losses both material and immaterial which result in feelings of insecurity for both individuals and society, so that it needs to be immediately restored in realizing the supremacy of law to achieve peace, order, peace, justice and prosperity for all Indonesian people.

The formulation of Article 599 Letter c of the Criminal Code Law does not provide further regulation regarding the form of the act of persecution itself. This provides uncertainty as to the act of persecution in question. However, there is a phrase that indicates that "something is prohibited by international law". Indirectly, this gives an indication that the purpose of acts of persecution in the Criminal Code Law is related to the formulation in the Rome Statute itself. Based on this, by definition several things can be drawn that can describe acts of persecution. First, persecution is not the same as mere violence. Acts of persecution are not only a form of discrimination, they are even more than that. Because acts of persecution are carried out widely, the impact is not just in the form of violence but the actions have a reason. Therefore, there is a need for a special study regarding actions in the Criminal Code that are categorized as persecution. Because, there are differences in meaning between the Criminal Code and the Rome Statute, it is feared that there will be different determinations in viewing an action which, even though it can be suspected of being persecution, however, the threat of punishment given does not fulfill the elements of persecution.

Based on the description of the problem above, there are several things that are the focus of the problem in this research, including the following:

1. Are the provisions for persecution in article 599 letter c of Law Number 1 of 2023 concerning the Criminal Code in accordance with international conventions?
2. What are the legal implications of the regulations in article 599 letter c of Law Number 1 of 2023 concerning the Criminal Code in the context of legal certainty?

2. IMPLEMENTATION METHOD

Research is essentially an activity to obtain the truth about a problem using scientific methods. The main impetus for conducting research is the instinct of curiosity that exists in every human being. Therefore, this type of research uses normative juridical research methods. The normative juridical research method is a scientific research procedure to find the truth based on legal scientific logic from the normative side. By using a statutory approach (Statute Approach), a

conceptual approach (Conceptual Approach), and a Comparative Approach. In this research, the author divides the type of legal research into 2 (two) parts of legal materials, namely primary legal materials consisting of the Criminal Code, Article 599 Letter c of Law Number 1 of 2023 concerning the Criminal Code and The Rome Statute as well as secondary legal materials consisting of books or literature related to criminal law regarding acts of persecution. Based on the approach method used, the researcher chose the technique of searching for legal materials using library research. With this literature study technique, researchers search for legal materials, look for, collect, study, understand and quote from books or literature, statutory regulations, previous research, articles in print and electronic media, expert opinions, as well as searches using internet media with access websites or online journals related to the analysis of criminal liability for perpetrators of acts of persecution which are analyzed using descriptive methods and interpreted using grammatical interpretation methods

3. RESULTS AND DISCUSSION

Persecution Regulations Article 599 Letter c Law Number 1 of 2023 concerning the Criminal Code

The presence of Law Number 1 of 2023 concerning the Criminal Code (UU KUHP), indicates that the criminal system in Indonesia has experienced a shift. Whereas previously the applicable criminal law provisions adhered to the Dutch criminal system, now they have been adapted to the conditions of Indonesian society. With the existence of the Criminal Code Law, forms of incidents that were not previously regulated in the Dutch version of the Criminal Code (KUHP) should be able to be accommodated by the Criminal Code Law. One of the acts that is not regulated in the old version of the Criminal Code is acts of persecution. Conceptually, persecution can be defined as systematic bad treatment by an individual or group against another individual or group. Persecution is one of the crimes against humanity regulated in Article 7 Paragraph (1) Letter h of the Rome Statute which reads:

“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”

This provision explains that "persecution" means the deliberate and cruel deprivation of basic rights contrary to international law for political, racial, national, ethnic, cultural, religious, gender reasons. This can also be interpreted to mean that persecution means torturing or persecuting so that it contains elements of torture in practice and is contrary to applicable regulations.

According to Damar Juniarto, persecution is different from taking the law into your own hands, in the true sense, persecution is the act of hunting down a person or certain group arbitrarily and systematically. Meanwhile, according to Masyhur Effendi, the definition of persecution is the deliberate and cruel deprivation of basic rights and is related to eliminating group identity which is a violation of international law.

This means that persecution is an action which is based on differences or discrimination based on politics, race, sex, religion, gender and other discriminatory reasons which can lead to violence against an individual or certain group. The violence carried out can take the form of abuse, threats of violence, beatings and other actions. The previous Criminal Code did not recognize the term persecution. This is because persecution itself has a specific meaning that can lead to violations of human rights if it creates feelings of hatred or hostility towards certain individuals or groups of society based on ethnicity, religion, race and between groups in a systematic or organized and widespread manner. Meanwhile, human rights violations have specific characteristics (extra ordinary crimes) and their own handling mechanisms. If persecution is regulated in a general criminal provision (KUHP), it will reduce the offense of human rights violation itself so that the hope or ideal of the law to have a deterrent effect (retributive aspect) or non-repetition becomes unclear.



In criminal law there is a principle of legality, where an act cannot be punished, unless there is a law that regulates it. The principle of legality introduced in criminal law is to avoid arbitrariness or uncertainty in the application of criminal law. The application of criminal law based on custom or judge's interpretation tends to give rise to legal uncertainty. The punishment for certain people in the same case may be different and vice versa. Meanwhile, to punish acts of persecution requires a criminal law regulation that covers this. The Dutch version of the Criminal Code itself does not regulate this. However, in practice, sexual acts are often linked to other criminal acts to punish the perpetrator. This shows that even though the term persecution is not familiar, this does not mean that the act cannot be subject to criminal punishment. The punishment of perpetrators of persecution is based on the provisions contained in the Dutch version of the Criminal Code relating to the principle of criminal responsibility, where a person cannot be punished without making a mistake. There are two conditions that must be met to be able to convict someone, namely that there is a prohibited external act/criminal act (*actus reus*), and an evil/disgraceful inner attitude (*mens rea*).

The doctrine of *mens rea* is based on the maxim *actus non facit reum nisi mensit rea*, which means "An action does not make a person guilty unless the person's thoughts are evil." The concept of "*actus reus*" is not only about an act, but includes a broader understanding, namely:

- a) The conduct or behavior of the accused person;
- b) The results or consequences of the action (its results/consequences);
- c) Circumstances listed or contained in the formulation of the criminal act (surrounding circumstances which are included in the definition of the offenses), for example in the case of murder, "the soul of another person" is mentioned. Therefore, in textbooks it is often stated that *actus reus* consists of all the elements contained in criminal incidents or crimes, except for elements related to the mental state or inner attitude of the defendant."

In criminal law, the concept of liability is a central concept known as the doctrine of error. In Latin, this doctrine of error is known as *mens rea*. An action does not make a person guilty unless the person's thoughts are evil. Thus, what is meant by criminal responsibility is an assessment of whether a suspect or defendant can be held responsible for a criminal act that occurred. The provisions in the previous Criminal Code are different from the formulation regarding persecution regulated in Article 7 Paragraph (1) Letter h of the Rome Statute. First, the provisions of Article 170 of the Criminal Code constitute a crime against public order. This provision is often used by law enforcement officials when a criminal act of beating occurs. In fact, by definition, the word beating is not known in the scientific knowledge of criminal law and is a language that arises and lives in society as a social reality. Even though the elements of the beating were carried out collectively or the perpetrators in this case were in large numbers/more than one person, directly or indirectly, whether planned or unplanned, cooperation had been established, whether this was done jointly or individually in one a series of events that give rise to criminal acts, or more specifically cause/result in damage, both physical and non-physical. However, these provisions are not enough to assess the beatings as persecution when referring to the provisions formulated in the Rome Statute.

Second, the provisions of Article 351 of the Criminal Code regarding abuse are also not sufficient to be categorized as a criminal act of persecution. The crime of abuse is a form of crime that often occurs in society, this occurs along with the development of technology and intense interaction accompanied by the individualistic nature of humans. Assault is a criminal act in the form of an attack on the body or part of the body which can result in pain or injury, even because such injuries to the body can cause death. An absolute element of a criminal act of abuse is the pain or injury desired by the perpetrator or in other words the element of intent and violation of existing law. Even though the crime of abuse contains elements of violence, or attacking a person's body, causing injury and/or death. However, in persecution itself, there is not only violence but there is a purpose and purpose for carrying out the action. The same thing also applies to Article 368 of the Criminal Code relating to extortion with violence.

Based on this explanation, law enforcement officials, in this case the police, chose to use the legal rules contained in the Criminal Code and not other legal rules because only the legal rules contained in the Criminal Code regulate criminal acts. In this regard, this shows that there is a discrepancy between the perpetrator's actions which are suspected of being persecuted but whose threat of punishment is categorized as an act of beating or abuse or extortion with violence. As is known, persecution in Article 7 Paragraph (1) Letter h of the Rome Statute contains elements of deliberate and cruel deprivation of basic rights which are contrary to international law for political, racial, national, ethnic, cultural, religious, gender reasons. This means that violence is carried out for reasons that underlie it, namely political, racial, national, ethnic, cultural, religious, gender. These elements correspond to the meaning of crimes against humanity. Actions carried out as part of a widespread or systematic attack where it is known that the attack is aimed directly at the civilian population, one of which is in the form of persecution.

Crimes against humanity, especially persecution, are regulated in Article 599 Letter c of the Criminal Code Law, which reads:

"Convicted of a crime against humanity, every person who commits an act as part of a widespread or systematic attack knowing that the attack is directed against the civilian population, in the form of:

persecution of groups or associations on the basis of politics, race, nationality, ethnicity, culture, religion, belief, gender, or persecution for other discriminatory reasons that have been universally recognized as prohibited under international law, with a minimum prison sentence of 5 (five) years and a maximum of 15 (fifteen) years;"

Previously, the Dutch version of the Criminal Code did not recognize the term criminal offenses against humanity. The Dutch version of the Criminal Code uses the word "crime" to describe a criminal act. The term criminal act or in English is defined as "criminal act" is the basic meaning of criminal law (normative juridical) and the translation of the word "strafbaarfeit". Conceptually, a criminal act is an act of doing or not doing something that is punishable by law. Meanwhile, crime is a serious criminal act. The threat of punishment can be in the form of a fine, prison sentence, death penalty, and sometimes it can include confiscation of certain items, revocation of certain rights, and announcement of the judge's decision.

In the international world, the term crime against humanity is not recognized, but rather crimes against humanity. The international world immediately classifies an act against humanity as a crime. This means that this act is classified as the most serious crime and threatens humanity. As a criminal concept, crimes against humanity were initially developed in the context of the law of war, namely based on the 1907 Hague Convention which is a codification of customary law regarding armed conflict. This convention states that humanitarian law is the basis for protection for combatants and civilians in an armed conflict. In this regard, to understand the meaning of the formulation of Article 599 Letter c of the Criminal Code Law, it is necessary to first analyze each element of this provision, as follows:

a) Each person

The definition of every person, according to L. J Van Apeldoorn quoted by Chidir Ali, states that a person in the juridical sense is every person who has legal authority. Legal authority is the ability to become a legal subject. Furthermore, it is said, the law is bound only to humans, because only humans can have subjective rights, meaning authority and obligations. The Criminal Code Law does not explain what each person means. Meanwhile, in the previous Criminal Code, the meaning of each person was a natural person or individual. In this it can be understood that persecution can be carried out by anyone, in the sense of an individual.

b) Widespread or systematic attacks

This element is closely related to the reasons for serious human rights violations. Widespread and systematic are 2 (two) words that are inherent and absolute and must be present in every act of serious human rights violation, especially in relation to crimes against humanity. This systematic and widespread element is an important and



significant factor that differentiates human rights violations from ordinary criminal acts.

The Criminal Code Law and other human rights legislation does not explain what constitutes a widespread or systematic attack. This shows that there is a lack of clarity in knowing for certain about widespread and systematic attacks. However, in some views, a widespread attack is considered to occur if "the inhumane acts [are] committed on a large scale meaning that the acts are directed against a multiplicity of victims. . . The term 'large scale' is broad enough to cover various situations involving multiplicity of victims, for example, as a result of the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude." This means that widespread attacks are a term to cover various situations involving many victims as a result of the cumulative impact of a series of inhumane acts or the single impact of an extraordinary inhumane act.

Meanwhile, systematic, in systematic terms in several cases, is defined as a form of policy, where the violation is carried out based on a plan or policy that has been prepared previously. Implementation of these plans or policies may result in repeated or ongoing acts of inhumane conduct. From a systematic conception, it can be interpreted as action that is thoroughly organized and follows a regular pattern based on general policy involving large amounts of public or private resources. There is no requirement that this policy be formally adopted as a state policy. However, there must be some kind of plan or policy that has been formed beforehand.

Judging from these views, widespread and systematic are 2 (two) words that cannot be separated as explained by Romli Atmasasmita. However, in Article 599 Letter c of the Criminal Code Law, the words "widespread" and "systematic" are separated because there is an "or" between the two words. Referring to the definitions above, it can be seen that a widespread attack can occur due to a policy or plan (systematic) so that the attack has a widespread impact. Then this "systematic" characteristic can also be used as an assessment of whether an attack is carried out continuously. So if these elements are separated, it will certainly eliminate the value of this form of human rights violation and will only be part of an ordinary criminal act.

c) The attack was directed against the civilian population

There is a difference between the formulation of Law Number 26 of 2000 concerning Human Rights Courts (Human Rights Court Law) and Article 599 Letter c of the Criminal Code Law, namely the inclusion of the words that the attack was "directly aimed" at civilians in the Human Rights Court Law, whereas the 1998 Rome Statute does not include the words "directly aimed", it only says "widespread or systematic attacks aimed at a group of civilians".

If we analyze these differences, the tendency for the application of the Human Rights Courts Law to only be aimed at perpetrators of serious human rights violations (state officials) who are on duty directly in the field which causes crimes against humanity, so for leaders of state officials who are not directly in the field when crimes against humanity occur. humanity can evade accountability. Moreover, in the Human Rights Court Law there is a provision that says military commanders "can" be held accountable for the actions of troops under their command as in Article 42 of the Human Rights Court Law. The word "can" can be interpreted to mean that a commander does not have to or is not obliged to take responsibility.

In contrast to the implementation of the Rome Statute, there is a principle of command responsibility. In Article 28 of the Roman Statute it is expressly stated that a military commander is criminally responsible for crimes committed by troops under his command as a result of his failure to exercise control properly and properly. Meanwhile, in the Criminal Code Law, it applies to criminal acts that cover people in

general. So, if this is done either directly or indirectly but fulfills the elements of being aimed at civilians, then this can be categorized as a form of criminal act of persecution.

- d) Persecution against groups or associations on the basis of politics, race, nationality, ethnicity, culture, religion, belief, gender, or persecution for other discriminatory reasons that have been universally recognized as prohibited under international law

As has been explained, persecution is an act of hunting down a person or certain group carried out by a party in an arbitrary and systematic and broad manner, so it is different from taking the law into your own hands. Usually someone who is unable or unwilling to return to their original place of residence because they have a fundamental fear of persecution due to reasons of race, religion, nationality, membership of a particular social group or political opinion.

This means that it is clear that persecution is not ordinary persecution but contains several actions, including:

1. Basic rights have been taken away.
2. The perpetrator targets:
 - a. People or individuals because of two group identities
 - b. People or individuals because of a shared/collective identity
 - c. Certain groups
 - d. Certain collectivities
3. Such targeting is based on political, racial, national, ethnic, cultural, religious, gender or universally impermissible grounds under international law.
4. The actions carried out range from killing, torture, to inhumane acts that cause physical and mental suffering.
5. The perpetrator knew that his actions were part of actions intended to be part of a widespread and systematic attack.

In the crime of persecution, according to Amzulian Rifai, there are 2 (two) elements of the crime of persecution which are categorized as follows:

1. The crimes were committed as part of a widespread and systematic attack aimed at a specific group of civilians.
2. For the last element, the perpetrator of the crime of persecution knew that his actions were or had the intention of being part of a very widespread and systematic attack against certain civilian groups.

The elements of the criminal act of persecution regulated in Article 599 Letter c of the Criminal Code Law have a fairly broad meaning. If adapted to the conditions of Indonesian society, the practice of persecution that has occurred in recent times is not the same as the formulation regulated in Article 599 Letter c of the Criminal Code Law. By limiting 'everyone' without any further explanation regarding the meaning of this word, it can limit criminal liability for acts of persecution. Because what happens in Indonesia, persecution is not only carried out by individuals/individuals, but in the form of community groups.

Apart from that, regarding the formulation of widespread and systematic attacks, in practice that has occurred in Indonesia, in fact acts of persecution do not have a wide impact even though they are carried out systematically with planning or policy. This is because the persecution carried out is often only given to people/individuals based on differences in religion, politics, race and so on. So the element of "widespread attack" in Article 599 Letter c of the Criminal Code Law cannot yet be applied if this act of persecution only occurs against individuals. The same thing also applies to the element "systematically", in international legal doctrine, "systematic" is defined as a "planning" or "policy" on the basis of which an act is carried out. The absence of further explanation regarding the element "systematically" can have broad meaning. This means that, even though a group is not a formal institution such as a government, state, organization and the like, it can also issue a policy or plan to take action against someone for discriminatory



reasons. Therefore, it is the attack that must be systematic or widespread, not the acts of persecution or criminal acts that form part of the attack.

Apart from having a broad meaning, the formulation of Article 599 Letter c of the Criminal Code Law is categorized as a serious criminal offense against human rights. The use of the term "serious criminal act" is new in Indonesian legislation. In the Academic Text of the 2015 Criminal Code Law, it is stated that "serious criminal acts" are defined as criminal acts that are considered very serious with a benchmark of a threat of 7 years or more as the objective limit for declaring a criminal act as a serious criminal act. This means that a crime that carries a sentence of 7 (seven) years or more is categorized as a serious crime. In Article 599 Letter c of the Criminal Code Law, persecution is punishable by imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years. In connection with the elements described above, it can be seen that acts of persecution are part of a widespread and systematic attack and are aimed at a certain group of civilians for discrimination. In an act of persecution that is carried out, there is intention within the perpetrator or what is known as the offense of *dolus*, meaning deliberate. This form of intentionality can be seen from the intention (*Oogmerk*) within the perpetrator to search for, find and execute someone for political, racial, national, ethnic, cultural, religious, belief, gender or persecution reasons for other universally recognized discriminatory reasons. as prohibited under international law.

However, in the Academic Text of the 2015 Criminal Code Law, it is considered that criminal acts are no longer about dividing crimes and violations as a "qualifying offense", but in its working pattern, it still classifies the weight of offenses, one of which is an offense that is considered "very serious/very serious." ", namely an offense that is punishable by imprisonment for more than 7 (seven) years or is punishable by a more serious penalty (i.e. death penalty or life imprisonment). To show its serious nature, imprisonment for offenses in this group is only threatened individually or for certain offenses it can be accumulated with a category V fine or given a special minimum threat. Looking at the threat of punishment contained in Article 599 Letter c of the Criminal Code Law, persecution certainly has an element of intention in it. There is already an intention that requires the goal of the persecution, this can be seen from the stages of the acts of persecution carried out, namely by searching for and finding the target/victim of the persecution, until finally carrying out the persecution of the victim. So there is no justification or reason that eliminates criminal liability for the creator. In this case, the act of persecution does not contain elements that can be used as an expunging or justifying reason in criminal law.

Thus, if an action meets the elements of Article 599 Letter c of the Criminal Code Law above, it can be categorized as persecution. This shows that persecution can no longer be categorized as criminal acts of abuse, beatings or threats as only in the Dutch version of the Criminal Code. This is due to the limited understanding of the word "persecution" in Indonesia so that it does not have its own meaning to describe this action. With the existence of Article 599 Letter c of the Criminal Code Law, it has provided a new formulation for persecution.

Legal Implications for the Regulation of Article 599 Letter c of Law Number 1 of 2023 concerning the Criminal Code in the Context of Legal Certainty

Philosophically, the formation of the Criminal Code Law has 2 (two) objectives to be achieved, namely reforming criminal law as a means of protecting society and the welfare of Indonesian society as well as participating in creating world order in connection with the development of international crimes. Meanwhile, sociologically, legal reform is carried out because of the desire to fulfill the legal needs of society which have been pursued for decades. This need is based on the cultural values of an independent and sovereign nation (*latency*). The internal conditions of Indonesian society are developing rapidly in line with developments occurring in the international world and the demand for legal certainty and justice is so strong, this means that

several criminal law formulations contained in the Criminal Code can no longer be used as a legal basis for overcoming crime problems.

The formation of the Criminal Code Law will certainly have an impact on the development of criminal law enforcement in Indonesia. Judging from the intent of its formulation, the Criminal Code Law is adapted to the conditions of Indonesian society, because the Dutch version of the Criminal Code is no longer in accordance with the development of society in Indonesia. In fact, the formulation of the Criminal Code Law does not only change several previous regulations regulated in the Dutch version of the Criminal Code. However, there are several things that have also been added, one of which is regulations regarding crimes against humanity. The Criminal Code Law has formulated and included crimes against humanity, which generally refers to the provisions of Article 7 of the Rome Statute and Article 9 of Law Number 26 of 2000 concerning Human Rights Courts (Human Rights Court Law). However, in the Criminal Code Law, the phrase used is not 'Crimes against Humanity' but 'Serious Criminal Acts Against Human Rights'. Specifically, the difference only takes several forms of crimes which refer back to the underlying acts of Crimes Against Humanity in the Rome Statute.

The inclusion of elements of crimes against humanity in the Criminal Code Law is a form of comprehensive "recodification and national reunification". With the inclusion of these criminal acts, it is hoped that in the future, through a comprehensive codification policy, it can strengthen the idea of establishing a complete Indonesian national criminal law system as a parameter of justice in the field of criminal law and punishment in order to guarantee legal certainty and justice as well as standard (normal) law enforcement. The consequence of this comprehensive codification policy is to prevent the issuance of laws containing criminal acts outside the Criminal Code in the Indonesian criminal law system because this will have the potential to violate human rights for suspects/defendants and convicts and encourage deviations in criminal law enforcement practices. As explained in the previous chapter, the implementation of Article 599 Letter c of the Criminal Code Law will have an impact on law enforcement for crimes against humanity, especially in this case the criminal act of persecution. From the formulation of persecution in Article 7 Paragraph (1) letter h of the Rome Statute, it can be interpreted that the perpetrator seriously deprived (severely deprived) the fundamental rights of a person or more than one person which is contrary to international law. The perpetrator targets a person or more than one person for reasons of group or collective identity or targets a group with a collective. Targets are based on political, racial, national, ethnic, cultural, religious, gender or other universally recognized grounds under international law. This action was carried out as part of a systematic or widespread attack on civil society. The perpetrator knew that his actions were part of or intended that his actions were part of a widespread or systematic attack on civilians.

Persecution, in practice, is carried out by a group of people or society against a person or group on the basis of racial, political, religious, cultural and other discrimination that is universally recognized by international law. That the element of "discrimination" in the formulation of Article 599 Letter c of the Criminal Code Law is a very important thing to pay attention to. Because, the element that can determine an act committed by that person or group of people is an act of persecution. So, to assess criminal liability for acts of persecution, one must be guided by the knowledge and attitudes of the perpetrator of the persecution. This means that there is knowledge and attitude regarding the act of discrimination that has resulted in harm to the victim. With the regulation of the criminal act of persecution in the Criminal Code Law, this act has been categorized as a criminal act. Persecution is a deliberate waste. This can be seen from the formulations of international conventions which view persecution as part of crimes against humanity. It could even potentially constitute a crime of genocide or exterminating a particular person or group based on racial, political, religious, cultural and other discrimination.

In connection with persecution itself which is categorized as a serious criminal act against human rights, it shows that it is clear that there is no justification or reason that eliminates criminal responsibility for perpetrators of persecution. Moreover, persecution is categorized as a crime against humanity, showing that it has been universally acknowledged that persecution is a crime for which accountability must be held. With the formulation of Article 599 Letter c of the Criminal



Code Law, it has the potential to eliminate the meaning of persecution which is recognized in international law. This is because the absence of further explanation regarding the provisions for persecution can narrow criminal liability for perpetrators of criminal acts of persecution, thereby giving rise to several legal consequences for their implementation. From the explanatory description regarding the regulation of Article 599 Letter c of the Criminal Code Law, there are several legal consequences that can arise, including the following :

1. Persecution is no longer a serious human rights violation

Persecution is categorized as part of serious crimes against human rights. The term "serious criminal acts against human rights" is a term not found in the international world. In the Human Rights Courts Law, the term used is "Serious Human Rights Violations", which includes (i) crimes of genocide and (ii) crimes against humanity. Meanwhile, Chapter XXXV Part One of the Criminal Code Law uses the term "Serious Crimes against Human Rights", which includes two types of crimes in the form of (i) genocide, and (ii) crimes against humanity. When translated into English, the terms used in these two instruments will mean "serious human rights violations" for "serious human rights violations" and "serious crimes of human rights" for "serious criminal acts against human rights". These two terms are not common in the vocabulary of international law. The concept that has been used by the international community is "gross violations of human rights" or gross violations of human rights which first appeared in Economic and Social Council (ECOSOC) Resolution 1235 in 1967 and subsequently ECOSOC Resolution 1503 in 1970 .

Basically, gross violations of human rights (Gross Violations of Human Rights) are extraordinary crimes which are the enemy of all mankind (*hostis humanis generis*). Serious human rights violations of course require extraordinary and special methods in handling compared to other general crimes. Serious human rights violations are universal while ordinary crimes are only violations of the customary, cultural and social order of a nation. Then, the police, prosecutor's office and general courts are certainly not used to dealing with serious human rights violations, so they need a special team known as an Ad Hoc Human Rights Court. The Ad Hoc Human Rights Court was formed based on a proposal from the DPR to look at the serious human rights violations that occurred which will then be submitted to the President so that a Presidential decision can be made. Therefore, the inclusion of serious human rights violations in the Criminal Code Law, where the term is replaced with serious crimes against human rights, clearly constitutes a degradation in the specificity of handling or investigating criminal acts of serious human rights violations, especially in this case persecution. The absence of a definite definition to describe acts of persecution will certainly make it difficult to assess these acts. Then, with the categorization of persecution in the Criminal Code Law, which according to international human rights standards is a serious human rights violation, the juridical consequences, persecution is no longer a serious human rights violation but a conventional criminal act where the handling can be resolved through conventional court mechanisms.

2. Everyone can be punished

If examined more deeply, the provisions relating to crimes against humanity in the Criminal Code Law have many differences from the formulations outlined in the Rome Statute and the Human Rights Courts Law - which are the basis or standard for international criminal tribunals. The Rome Statute regulates four core international crimes, including: Genocide, crimes against humanity, war crimes and crimes of aggression. The elements of the articles on serious crimes against human rights in the Criminal Code Law stipulate that the subject is "every person". The element "every person" is a copy of "Hij die" (*Wetboek van Strafrecht* text) which is meant by every person is a person or persons who, if they have fulfilled the elements of an offense regulated in an article, then that person is called the perpetrator or perpetrator. the perpetrator of the offense. In other words, anyone who is any person or person who commits a criminal act is a legal subject who can be legally responsible for all their actions.

However, the provisions of Article 599 Letter c of the Criminal Code Law only regulate criminal sanctions that will be given if the individual violates this article. However, the subject of

serious human rights violations is not limited to individuals or everyone. If we refer to the provisions of the Rome Statute, criminalization is aimed not at the legal subject, but at the action/deed. The Human Rights Court Law also complies with this standard, by mentioning genocide and crimes against humanity focusing on the actions, not the legal subject. The formulation of the definition of serious crimes against human rights in the Criminal Code Law sends a signal that the state only recognizes that human rights violations are committed only by individuals. In fact, states or corporations can be held responsible for criminal cases of serious human rights violations. Likewise with persecution, it can bind anyone, in this case individuals or individuals involved in an incident of persecution. Therefore, there should be further explanation in the formulation of Article 599 Letter c of the Criminal Code Law. This is because the practice of persecution is not only carried out by every person or individual. However, in the form of civil organizations, institutions or states, they can become perpetrators of persecution.

3. The Human Rights Court does not have the authority to judge

The change in the phrase from "serious human rights violations" to "serious criminal acts against human rights" in categorizing crimes against humanity carries juridical consequences. Article 4 of the Human Rights Courts Law states that human rights courts have the duty and authority to examine and decide cases of serious human rights violations. The phrase used is "serious human rights violations" not "serious criminal acts against human rights". Furthermore, serious human rights violations in the Court Law consist of 2 (two) types, namely crimes of genocide and crimes against humanity. Where specifically these two things are described in Articles 8 and 9 of the Human Rights Courts Law. However, since the Criminal Code Law was passed, these 2 articles have been declared invalid because there is Chapter XXXV Part One of the Criminal Code Law which regulates these 2 (two) crimes, including in this case the criminal act of persecution. Previously, all forms of criminal offenses contained in the Dutch version of the Criminal Code were examined and tried in conventional courts. Meanwhile, serious human rights violations are tried and examined by the Human Rights Court. The two enforcement agencies have differences. There are many factors that can be used to differentiate between the two, including statutory factors, political factors, and law enforcement factors. According to Eddy OS Hiariej, the factors that differentiate the criminal justice process for serious human rights violations from general crimes are because human rights courts in Indonesia are very different from general criminal courts, because human rights courts are courts that are formed due to the formation of ad hoc courts which require recommendations for the formation of courts from DPR to the President with a Presidential Decree regarding the establishment of an Ad Hoc Court.

This Ad hoc Court was formed to try cases of crimes against humanity that occurred after 2000, while cases that occurred after 2000 were tried in the Human Rights Court. Human Rights Courts are formed automatically without requiring a recommendation for the formation of a court from the DPR to the President. The Human Rights Court highly upholds the confidentiality of witnesses' identities in cases of serious human rights violations, which is very different from ordinary crimes where the witnesses' identities can still be known by the general public. Therefore, with the inclusion of the formulation of the criminal act of persecution in the Criminal Code Law, the human rights court may no longer be an institution that will try this criminal act, because the value of persecution which should be part of a serious human rights violation has now become a serious criminal act against human rights. Then, until now, there have been no other implementing regulations that indicate the existence of trials for crimes against humanity, including persecution. If you continue to refer to the Human Rights Court, it could lead to inconsistencies in enforcing human rights law. Because there are differences between different meanings and scopes and arrangements.

4. The threat of criminal penalties is lighter

Another legal consequence in regulating serious crimes in the Criminal Code Law is that the threat of criminal punishment is lower when compared to the Human Rights Courts Law. Unfortunately, there is no official statement regarding the reasons for several reductions in the



number of sentences in the Criminal Code Law. The Human Rights Court Law has a breakthrough by criminalizing perpetrators of persecution with a maximum sentence of 20 years as stated in Article 40 of the Human Rights Court Law. The formulation of Article 599 letter c of the Criminal Code Law is clearly different from the formulation of crimes against humanity regulated in Article 9 letter h of the Human Rights Court Law and in Article 7 Paragraph (1) letter h of the Rome Statute. Even though the provisions in Article 599 Letter c of the Criminal Code Law basically aim to replace the provisions in Article 9 of the Human Rights Courts Law, in fact there are striking differences that can be found between these two provisions. The reduced threat of criminal punishment for perpetrators of persecution does not indicate that the crime of persecution is a very serious crime and was formulated carefully and precisely. Even in the academic text of the 2015 Criminal Code Law, the differences in the threat of punishment are not explained. However, as is known, crimes against humanity are considered crimes that violate jus cogens norms, peremptory norms, and thus the hierarchical position of such rules is apparently above all other principles, norms and rules of international law and national law. because this crime has violated human rights which cannot be reduced under any circumstances (non-derogable rights), and was carried out systematically or has had a widespread impact.

In formulation, Article 599 letter c of the Criminal Code Law cannot show any similarities with the Rome Statute. Because the addition of "everyone" has the potential to narrow the criminal liability of perpetrators of persecution. "Persecution" means the deliberate and cruel deprivation of basic rights contrary to international law on the grounds of the identity of the group or collectivity. Meanwhile, the inclusion of persecution in the Criminal Code Law provides ambiguity in meaning. Because persecution is closely related to other crimes against humanity, so with its regulation in the Criminal Code Law, which is a national criminal law, the potential for serious forms of human rights violations to disappear could occur. The existence of a formulation of serious crimes against human rights which replaces the provisions of Articles 8 and 9 of the Human Rights Court Law, still shows that there is a lack of clarity regarding its formulation. This can be seen from the use of the phrase "serious criminal acts against human rights", where the world of international law does not recognize this term. However, regarding the criminal act of persecution in Article 599 Letter c of the Criminal Code Law, it should be appreciated because this revised formulation is in line with the use of the term "persecution" which is known in Article 7 paragraph (1) letter (h) of the Rome Statute. So that the term persecution in criminal acts has been regulated and other provisions are no longer used to assess the act.

From the description of the legal implications of the enactment of Article 599 Letter c of the Criminal Code Law above, it can be seen that persecution is no longer part of serious human rights violations but is interpreted as a serious criminal act against human rights. This has implications for the invalidation of the provisions of Article 7 of the Law on Human Rights Courts and its explanation which uses the Rome Statute as a reference in interpreting crimes against humanity. So that in the future, this criminal act will also be equipped with elements of the offense. This is intended to facilitate the application of the provisions for the type of crime in question. Apart from that, there is still an element that is not yet known, namely "widespread or systematic attacks". In the formulation of Article 9 of the Human Rights Courts Law, this element is also not explained in detail as to how it is described. Meanwhile, this element has been re-included without explaining in more detail the meaning of this element as in Article 599 Letter c of the Criminal Code Law. In fact, the Elucidation of Article 599 of the Criminal Code Law does not provide room for interpreting this phrase based on international legal construction. Therefore, the formulation in Article 599 of the Criminal Code Law is almost certainly unable to answer similar problems that have existed since the Human Rights Courts Law was officially promulgated in 2000.

Based on the description above, the inclusion of Crimes against Humanity in the Criminal Code Law, especially the crime of persecution, can also have implications for effective prosecution. This is because there are provisions and general principles in criminal law which are not in line with the characteristics of crimes against humanity. Because when applying a criminal penalty for a criminal act committed by a person, one must look at the principles of criminal law to declare that the perpetrator is right and appropriate to be held responsible for his actions. Thus,

placing these types of crimes with the formulation currently contained in the Criminal Code Law in the future will give rise to weaknesses both in terms of the formulation of the crime and the inadequacy of the general principles it adheres to, as well as potentially causing conflict with the general principles of criminal law. in Book I of the Criminal Code Law. This will have an impact on the weakness of efforts to provide protection for human rights, in this case acts of persecution.

4. CONCLUSION

The formulation of Article 599 Letter c of the Criminal Code Law is categorized as a serious crime against human rights. From the elements described above, it can be seen that acts of persecution are part of a widespread and systematic attack and are aimed at a certain group of civilians for discrimination. Looking at the threat of punishment contained in Article 599 Letter c of the Criminal Code Law, persecution certainly has an element of intention in it. There is already an intention that requires the goal of the persecution, this can be seen from the stages of the act of persecution carried out, namely by searching for and finding the target/victim of the persecution, until finally carrying out the persecution of the victim. So there is no justification or reason that eliminates criminal liability for the creator. In this case, the act of persecution does not contain elements that can be used as an expunging or justifying reason in criminal law. With the inclusion of the criminal act of persecution as formulated in Article 599 Letter c of the Criminal Code Law, there could be legal implications for its implementation, namely that persecution is no longer a serious violation of human rights, everyone can be punished, human rights courts have no authority to judge and the threat of criminal punishment is lighter. Apart from that, it can also have implications for effective prosecution. This is because there are provisions and general principles in criminal law which are not in line with the characteristics of crimes against humanity. Because when applying a criminal penalty for a criminal act committed by a person, one must look at the principles of criminal law to declare that the perpetrator is right and appropriate to be held responsible for his actions.

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