

LEGAL RENEWAL ON INTERNAL LEGAL PROTECTION FREEDOM TO EXPRESS OPINIONS FROM A PUBLIC PERSPECTIVE LEGAL STATE IN INDONESIA

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ABSTRACT

Freedom to convey opinion is a right everyone is guaranteed in the constitution and laws, freedom conveys opinion in advance general aim as function control to the government. Which can done in a way written or in a way oral in advance general. Freedom to convey opinion is a characteristic of the rule of law. However, in practice, freedom conveys opinion in advance general Not yet in line with The rules there, still happens problem in enforcement law, so enforcement law in freedom conveys opinion in advance general throughout history in an incident resulting demonstration the emergence of good victims verbal violence, injuries, and deaths are not once finished. The method used is to study law normative with an approach study legislation data analysis from incident demonstration linked with enforcement law in conveying opinion in advance general. The results of the research show that enforcement law is not yet maximum, especially for the victims of incident demonstrations. There is a solution in a way law until complete and necessary exists the ideal concept of formation of new rules, especially enforcement laws, and restrictions set time in the Constitution.

Keywords: Renewal; Protection; Freedom; Country; Law.

ABSTRAK

Kebebasan menyampaikan pendapat adalah hak semua orang yang dijamin dalam konstitusi dan undang-undang, kebebasan menyampaikan pendapat dimuka umum bertujuan sebagai fungsi kontrol terhadap pemerintah. Yang dapat dilakukan secara tertulis atau secara lisan dimuka umum. Kebebasan menyampaikan pendapat adalah ciri negara hukum. Namun dalam praktiknya kebebasan menyampaikan pendapat dimuka umum belum sejalan dengan aturan yang ada, masih terjadi persoalan dalam penegakkan hukum, sehingga penegakkan hukum dalam kebebasan menyampaikan pendapat dimuka umum sepanjang sejarah dalam peristiwa demonstrasi yang mengakibatkan timbulnya korban baik kekerasan verbal, luka-luka, dan korban meninggal dunia tidak pernah tuntas. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan kajian perundang-undangan analisis data dari peristiwa demonstrasi dikaitkan dengan penegakan hukum dalam menyampaikan pendapat dimuka umum. Hasil penelitiannya adalah dalam penegakkan hukum belum maksimal terutama para korban dari peristiwa demonstrasi belum ada penyelesaian secara hukum sampai tuntas, dan perlu adanya konsep yang ideal pembentukan aturan yang baru khususnya penegakkan hukum dan pembatasan waktu yang diatur dalam undang-undang.

Kata Kunci: Pembaharuan; Perlindungan; Kebebasan; Negara; Hukum.

A. BACKGROUND

Independence conveys opinion is the right to base somebody in disclosing feelings, thoughts, and opinions in a way written nor in a way direct on the stand freely/publicly to convey their aspirations to be heard by others. Naturally with system appropriate way with provision rule applicable laws. The aim is to convey aspirations that can accommodated by holder policy To realize what expectations are conveyed by somebody or a group person.¹

Indonesia is a respectable country that values democracy. After the occurrence of reform, system democracy becomes a perceived choice suitable to the conditions of Indonesian society. One of the characteristics of democracy is each other's honor exists differences and freedom emits thoughts and opinions No freedom to do or do action.²

Aspect Juridical Freedom conveys an opinion is part of the right guaranteed to humans by the Constitution and listed in Article 28 of the 1945 Constitution of the Republic of Indonesia which states "Independence". associate and assemble, issue thought with oral and written and so on set with Constitution.

Freedom speak and convey mentioned in Chapter 5 Constitution Number 9 Year 1998 About Independence Convey Advance Opinion General³ mention that, every citizen who conveys opinion in advance generally entitled For:

1. Emit thought in a way free;
2. Acquire protection law.

That matter on need exists A protection laws that must be regulated in a way firm related there are victims in action Independence Convey Opinion In advance General even until died at the time carry out action Independence Convey Opinion In advance General. Until the moment This process law to the victims of abuse and death in action Independence Convey Opinion In advance General, the legal process that occurs not complete and closed by the media. Especially in cases of prosecution involving law apparatus security country. So that in context protection law to Independence Convey Opinion In advance General What is meant is in article 5 point b in Constitution Number 9 of 1998 not yet accomplished with Good in explain protection law to Independence

¹Abdikoro, HM (2011). INDEPENDENCE OF EXPRESSING OPINIONS IN PUBLIC (LEGAL POLITICAL REVIEW). *WACANA: Scientific Journal of Communication Sciences*, 10 (4), 19-23.

²Anton Tabah, *National Police in Democratic Transition*, Mitra Hardhasuma, Jakarta, 2022, page. 78.

³ Law Invite Number 9 Year 1998 About Independence Convey Public Opinion, Promulgated in Jakarta on October 26, 1998, STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 1998 NUMBER 181.

Convey Opinion In advance General, despite the fact chapter the will always bumped to authority Regulation Police chief Number 7 of 2012 concerning Procedures Maintenance Service, Security, and Handling Case Delivery Opinion In advance General.⁴

Problem enforcement law in the country Law Indonesian democracy is related security Independence Convey Opinion In advance General chaos in Indonesia it should be for who did it violation law so can worn penalty Good in a way criminal nor civil for the perpetrator who caused it emergence victim because characteristics of the rule of law are honor Right Asasi Man.⁵ So, with thereby No There is a privilege or slash choice in enforcement law in a country Indonesian law, whoever does it so can wear sanctions criminal although matter the carried out by the authorities security or enforcer law, then everything must The same position in front of law (*equality before the law*). That matter realized certainty Indonesia as a country upholds fair laws tall values equality law in public. Indonesia is a legal state as explained in the 1945 Constitution Article 1 paragraph 3.

Indonesian society today more methods of delivering opinions in a way oral or more often known method do action Independence Convey Opinion In advance General Because considered more effective than writing. Besides feeling more effective, the way is chosen Because the public considers that opinion will be more channeled and will be directly heard by those who own more power. Good with dialogue or only just convey aspirations in form demand Independence Convey Opinion In advance General by the public to policy government.

Difference opinion is a normal thing in life every day, especially in country democracy. One of the characteristics country's democracy is exists participation public to country in this case it is the freedom public to convey their opinion.⁶ As well as characteristic other exists certainty law and guarantee to human rights man. Protection law in country democracy applies For all parties in this case it is protection law For participant action Independence Convey Opinion In advance General, for journalists, and officials

⁴National Police Chief Regulation Number 7 of 2012 concerning procedures for providing services, security, and handling cases of expressing opinions in public, Stipulated on 5 March 2012, State Gazette 2012 Number 259

⁵Oksi Delfayanto , 2020. *The State of Law, Certainty, Justice, and the Usefulness of the Law in the Indonesian Criminal Justice System*, Library Reka Copyright, Bandung, page. 1.

⁶ Cholisin, C. Characteristics of democratic citizenship in the Pancasila democratic perspective. *Civics Journal: Civic Studies Media*, 4. 2 (2007).

security of the TNI and Polri involved in a way direct in process Independence Convey Opinion In advance General.

Based on problem the above, the researcher will study in a way literature linked with rules related to independence convey opinion from side enforcement laws, and ideal rules in form rule new law in independence convey opinion in advance general.

B. RESEARCH METHODOLOGY

Method research used by the researcher in finishing this research is with use type study law normative.⁷ With the use approach through study legislation (*statute approach*).⁸ Approach conceptual, approach study cases. Approach Sociological Philosophical. Method analysis is used through analysis of the primary data taken from the 1945 NRI Constitution and laws, secondary data taken from literature books, journals, and works of scientific, while tertiary data taken from supporting data knowledge of law obtained from encyclopedias and dictionaries law, then linked with norms that have been There is that is The 1945 Constitution of the Republic of Indonesia and Laws Number 9 of 1998 Concerning Independence Convey Opinion In advance General, as well linked with Constitution Number 39 of 1999 Concerning Right Asasi Man.

C. FINDING & DISCUSSION

Indonesia is a rule of law country, and one characteristic of a legal state is exists freedom of opinion, freedom of organization, and assurance exists protection rights basic man. Freedom put forward opinion is very important For guaranteed protection for society No feel worry every put forward opinion or deficiencies in government processes. Freedom puts forward opinions profitable to all citizens and the government Alone. Putting forward opinion is often done the moment the public feel disappointed with the performance government.⁹ Freedom in a way generally entered into the draft from philosophy politics and recognized conditions Where an individual own ability to act by his wish.¹⁰

This matter none other than form concern public as citizens and what rights just

⁷ Mukti Fajar (ed), *Dualism of Normative & Empirical Legal Research*, Student Library, Yogyakarta, 2019, page. 34

⁸ Peter Mahmud Marzuki , *Research Law* , Kencana Prenada Media Group, Jakarta, cet. 8, 2013. page. 136.

⁹ Basyaib, H. (2006). *Defending freedom: a conversation about liberal democracy*. Alfabeta Library.

¹⁰ Irmansyah, RA (2013). *Law, Human Rights, and Democracy*. Science House.

can do, one form of delivery is including through demonstration, however with provision licensing tend to demonstrate complicated and restrain like the above provisions, then in the matter, this country yet ensure rights and freedoms fully public on guarantee freedom opinion in accordance right basic man.

Freedom of expression is very important For Working hard all over the system right. No one can deny that right such human fundamental as freedom of Expression is also one most violated rights. Respond to barrage attacks, harassment, worries, and gaps needs action from Lots actors. Important for the effectiveness of all responses will become exists framework strong normative in form law right basic man international For support expression.¹¹

From freedom put forward opinion We become more know What weaknesses and strengths in government processes or self We. Freedom opinion is one of effort to fulfillment of rights basic Humans based on the 1945 Constitution of the Republic of Indonesia. For freedom emit opinion No give rise to conflict We must be smart in expressing Meaning with good and right, not contain SARA, express an opinion with smooth language, and give top suggestions for the problem being criticized. Conflict on freedom opinion can influenced by yourself who doesn't accept the response, so created communication social not enough Good. In my opinion We are should accept the lack of That For corrected go away repaired No growth enlargement problem.

Opinionated means putting forward thought or emitting ideas. Thus, independence conveys opinion in circumstances free from pressure To put forward ideas or fruit good thoughts in a way oral or written and so on in a way free and responsible answer by provision regulation current regulation. In enforcement laws and concepts

1. Law Enforcement Against Legal Protection in Freedom Convey Opinion in Advance General.

The role of law enforcement in Indonesia is regulated in the Constitution that is:

a. National Commission on Rights Asasi Human (KOMNASHAM)

Authority The National Human Rights Commission is regulated in Point 292 Komnas HAM RI is an independent institution whose position is level with other state institutions that have function assessment, research, monitoring, and mediation

¹¹ O'Flaherty, M. (2012). Freedom of expression: article 19 of the International Covenant on Civil and political rights and the Human Rights Committee's General Comments no. 34. *Human Rights Law Review*, 12 (4), 627-654.

rights basic man. Objective The Republic of Indonesia's National Human Rights Commission as arranged in Article 75 of the Human Rights Law is:¹²

- 1) Develop conducive conditions for the implementation of human rights by Pancasila, the 1945 Constitution, the United Nations Charter, and the Universal Declaration of Rights Asasi Man;
- 2) Increasing the protection and enforcement of human rights for the development of the Indonesian human person as a whole and the ability to participate in various areas of life.

b. National Police of the Republic of Indonesia

Law No. 2 of 2002 Article 13 states the main duties of the Indonesian National Police as follows:

- 1) Look after security and order public
- 2) Enforcing law
- 3) Give protection, protection, and service to the public

c. attorney

attorney arranged in Constitution Number 11 of 2021 concerning the attorney Republic of Indonesia. attorney The Republic of Indonesia is an institution where the government has related functions with power the judiciary carries its state power in the field prosecution as well as other authority-based constitutions.¹³ Besides That prosecutors are too as government employees with position functional that have specificity and implementation duties, functions, and authority based on the Constitution.

d. Judge

Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Power judiciary is independent power For organize Justice To use straighten up law and justice". Independence or independence Already become something things that sticks even one characteristic power judiciary, as alluded to by Bagir Manan about power judiciary, that:¹⁴

¹² Standard Norms and Regulations regarding the Right to Freedom of Opinion and Expression were ratified through Plenary Session Decision No. 04/PS/00.04/IV/2021 April 5 2021 in Decision Number 16 and stipulated in the Republic of Indonesia Human Rights Commission Regulation No. 2 of 2021 April 20 2021.

¹³ Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia.

¹⁴ Bagir Manan, *Enforcing the Law is a Quest*, (Jakarta: Indonesian Advocates Association, 2009, page.

- 1) power judiciary is an independent body free from mixed hands and other powers;
 - 2) connection power judiciary with tool equipment of other countries, more reflects principle separation power, rather than distribution power.
- e. Advocate

Constitution Advocate arranged in Constitution Number 18 of 2003 concerning Advocate, Article 1 Paragraph (1) states: "Advocate is a person who works give service law, both inside or outside appropriate court condition based on provision Constitution". Article 1 paragraph (2) states: "Legal Services are services provided Advocate form give consultation law, help law, execute power, represent, accompany, defend, and do action another law for interest law client". Article 1 Paragraph (3) states: "Client is person, body law, or institution others accept service law from Advocates".

Enforcer regulated law in the constitution and laws that have been written down on that is Komnasham, police, prosecutors, judges, and advocates can do it handle the problem right freedom convey opinion in advance general during This Not yet walk effective, that is Still Lots happen incident law in handling demonstration yet complete until Now this, then can done alternative For rule out rule law and put forward aspect law progressive and legal integrative.

Progressive legal theory teaches that the law must make humans happy and the nation, starting from the reality that up to now the law has only been understood to the extent of the formulation of the law. Progressive legal thinking emerged because of dissatisfaction and concern with the performance and quality of law enforcement in society. According to Bernard L. Tanya, progressive law is a law that is pro-justice and pro-people. This means that in passing laws, legal actors are required to prioritize honesty, empathy, and concern for other people, and sincerity in law enforcement.¹⁵ Progressive law corrects the weaknesses of the modern legal system which is full of bureaucracy with the aim that law enforcement officials see regulations not only as written, but must have the enthusiasm to uphold justice.

The core of integrative legal theory is a combination of thoughts from Developmental Legal Theory and Progressive Legal Theory in the Indonesian

¹⁵ Bernard L. Tanya, (2010), *Legal Trori of Human Order Strategy Across Space and Generations*, Genta Publishing, Yogyakarta

context which is inspired by Hart's legal concept. Integrative legal theory forms a pyramid building of a legal system that is fundamentally different from the chaotic and disorder theory view of law. This legal theory views that within the pyramid building of the legal system, interactionist and hierarchical relationships are formed between value systems, norm systems, and behavioral systems in one unified social system.¹⁶

Based on progressive legal theory and integrative legal theory, it is hoped that law enforcement officers in Indonesia will not only be guided by written legal rules in resolving cases. If the application of written legal rules cannot provide justice and legal certainty, then these written legal rules can be deviated or abandoned. Law enforcement officers must be able to find their laws by their conscience to create a sense of justice and legal certainty for people seeking justice. So that realization *rule of law* in the Indonesian legal state.

2. Idea The Ideal Rule in Formation Regulation Legislation About Independence Convey Opinion in advance General

Arrangement hierarchy legislation in system law something country done with tiered in a way *top-down* or called with (Hierarchy legislation), the most rules tall become reference/derivative For rule Below it explains in a way existing techniques and regulations below it No permitted contradictory with the rules above. As can be explained in the theory of Hans Kelsen and his student Hans Nawiasky.

By theoretical, hierarchical norm law can linked with Hans Kelsen's theory about level norm law (*Stufentheorie*). According to Hans Kelsen, norms (including legal norms) are tiered and layered in a hierarchy (arrangement), where a lower norm applies, originates, and is based on a higher norm. Higher norms apply, originate, and are based on even higher norms, and so on until we arrive at a norm that cannot be explored further and is hypothetical and fictitious, namely the Basic Norm (*Grundnorm*).¹⁷

In provision law responsive There is good arrangement Independence Convey Opinion In advance General limited time implementation Independence Convey Opinion In advance General by Regulation Head Police, on the other hand, provision hierarchy regulations regulated legislation in Constitution number 12 of 2011 Regulations Head Police No including in Hierarchy regulation legislation. So it should

¹⁶Romli Atmasasmita , 2012, Integrative Legal Theory, Genta Publishing , Yogyakarta

¹⁷ Maria Farida Indrati S, *Legislative science: (types, functions, and content)*, Kanisius, Jakarta, 2007, page.

be regulated that head police must follow provisions of existing rules in the Constitution. Or does change/revocation of the old law become Constitution new about independence convey opinion in advance general with add chapter restrictions time in Independence Convey Opinion In advance General.

So obey the writer's provision arrangement related restrictions time and handling in independence convey opinion in advance general should arrange Also in provision Constitution convey opinion in advance general to be consistent with theoretical principles *stufenbau* hans kelsen. More rules can be arranged in a way technically appropriate to the provision system order hierarchy. Existing rules on lower existing rules below (rules delegation) are set in perkap number 7 of 2012 About System Method Maintenance Service, Security, and Handling Case Delivery Opinion In advance General.

Restrictions on the time in question are arranged in article 7 perkap number 7 of 2012 About System Method Maintenance Service, Security, and Handling Case Delivery Opinion In advance General.¹⁸ As for settings they as follows :

- a. In a place open between 06.00 until 18.00, time local; And
- b. In place closed between 06.00 and 22.00, time local.

And conditions other related Procedure Still the Head Republic of Indonesia State Police Number: PROTAP/1/X/2010 Concerning Countering Anarchy¹⁹ Point 15 part 2 explains perpetrators of anarchy can handled, and can done effort paralyzed with:

- a. Control weapon blunt and/or weapon chemistry between another tear gas, or tool other according to police standards; And
- b. Control with the use of weapon fire or tool other For stop action or behavior of perpetrator who can cause serious injury or death Alone or in public.

In terms of implementation demonstration, the anarchist police can use tools the that give rise to victims Good participant demonstration or from the party police, that's the way it should be No happen in an effort to convey opinion in advance general puts forward principles country democracy. The rule in use of dangerous tools to independence convey opinion in advance general arranged in a way separately and sometimes often used in complete security by party police in face participant action

¹⁸ Regulation head Police number 7 of 2012 About System Method Maintenance Service, Security, and Handling Case Delivery Opinion In advance General

¹⁹ Procedure Still Head Republic of Indonesia State Police Number: PROTAP/1/X/2010 Concerning Countermeasures Anarchy

demonstration.

About second rule on Good restrictions on time and use tools security by party police Not yet arranged in a way textual in provision in legislation, esp Constitution number 9 of 1998 concerning independence convey opinion in advance general. Here writer highlights in terms of restrictions set time in perkap number 7 of 2012 important entered in the Constitution. And of course, If entered into provision Constitution removes the meaning of the existence of “independence convey opinion in advance general” because has limited time. Possible more precisely “the law conveys opinion in advance general”

Then deep formation regulation legislation about independence convey opinion in advance general in handling action in convey opinion in advance general can clear rule that, so in convey opinion in the advance general public can know Limitation time and conditions technical others are done by party security in handling to action convey opinion in advance general. In the provision rule naturally No nothing was violated and all parties can follow the provisions applicable law. And of course law can protect all parties, including protection law to independence conveying opinions in advance general by article 5 point b of the law number 9 of 1998 concerning independence conveying opinions in advance general.

D. CONCLUSIONS AND RECOMMENDATIONS

Enforcement law to protection law in Freedom Convey Opinion In advance General in the context of the legal state in Indonesia is appropriate with the 1945 NRI Constitution in Article 1, paragraph 3. Duties and authority Enforcement law to Legal Protection in Freedom Convey Opinion In advance General that is carried out by the National Rights Commission Institution Asasi Humans (Konnasham), Police, Prosecutor's Office, Judges, and roles organization Advocate. Which all have a role each one is regulated in the Constitution. protection law to freedom convey opinion in advance general in the form of demonstration in a country legal, still found several ongoing violations Not yet complete For resolved until recently. So, even though Indonesian law must enforced as fair as possible by enforcer law by authority each one is regulated in the constitution and laws. Especially in terms of Enforcement law to violation Independence Convey Opinion In advance General that gives rise to the victim, okay verbal violence, injuries, even victim deceased soul world. Aspect law progressive and legal integrative as alternative as rule out

law written If No obtained justice as form *rules of law* in a country law in form protection law to independence convey opinion in advance general.

Independence Convey Opinion In advance General. In Constitution the obtained the rules are not yet explained the technical arrangement time and handling in conveying opinion in advance general, in fact, rule technical restrictions time and handling security in freedom convey opinion in advance general arranged in the Regulation Head Republic of Indonesia State Police Number 7 of 2012 Concerning System Method Maintenance Service, Security, and Handling Case Delivery Opinion In advance General. These are contained in Article 7 Paragraph (1) Point a and point b time implementation Independence Convey Opinion In advance General in a place open regulated and limited from 06:00-18:00 and on the site closed implementation Independence Convey Opinion In advance General regulated and limited from 06:00-22:00. Meanwhile No arranged in provision Constitution. So the rules in Constitution the need renewal law that is with add fill chapter about restrictions time and handling regulated security in law, accordingly with Hans Kelsen's thoughts in *stufenbau theory* in legal principles so as not to contradictory that is *lex superior derogate lex inferior*.

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