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Legal Status of Settlement Recommendation towards Indication of Human Rights Violations in Aceh

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Abstract

This research aims to study and explain the handling of alleged human rights violations in Aceh, the legal status of recommendations for handling alleged human rights violations, and the inhibiting factors in handling alleged human rights violations in Aceh. This is important considering Article 1 Number 8 of the Minister of Law and Human Rights Regulation No. 23 of 2022 concerning Handling Alleged Human Rights Violations (Permenkumham No.23 Tahun 2022), Recommendations are conclusions and efforts to resolve the results of

examinations of Human Rights violations submitted to the Relevant Party which must be implemented and followed up in order to resolve human rights violations. Recommendations are addressed to government agencies/institutions that are suspected of violating human rights with a copy to the reporter. The Head of the Aceh Regional Office of the Ministry of Law and Human Rights (Kakanwil Kemenkumham) cannot force the parties to implement the recommendations given.

Keywords: Legal Strength, Recommendations, Handling Alleged Violations, Human Rights (HAM)

Introduction

Indonesia is a legal country. One of the basic principles of the rule of law (*Rechtsstaat*) that applies today¹ is the protection of Human Rights (HAM), which is a legal guarantee for demands for enforcement through a fair process. The promotion and preservation of HAM within society play a crucial role in upholding the principles of a democratic rule of law. It is evident that the safeguarding and reverence for human rights are fundamental aspects of the rule of law.² From the moment of birth, every individual possesses inherent and essential rights and responsibilities.

The concept of HAM, in theory, refers to the inherent and fundamental rights that every individual possesses, bestowed upon them by a higher power and deserving of utmost reverence, safeguarding, and preservation. The very essence of HAM lies in the pursuit of ensuring the overall safety and well-being of humanity as a whole, achieved through a delicate balance between individual concerns and the collective welfare. Moreover, the duty to honor, protect, and uphold these HAM is a shared responsibility that falls upon both individuals and the various branches of government, encompassing both civil and military entities, as well as the state itself.³

Human rights, also known as HAM, are fundamental rights that are naturally possessed by all individuals. They are universal and enduring, and as such, they must be safeguarded, honored, preserved, and not disregarded, diminished, or confiscated by anyone. In addition to human rights, there are also basic responsibilities that exist between individuals and towards society as a

¹ Mokhammad Najih, Politik Hukum Pidana Konsepsi Pembaharuan Hukum Pidana dalam Cita Negara Hukum, Malang, Setara Press, 2014, hlm. 5.

² Suhaimi, Peran Penasihat Hukum Dalam Pemenuhan Hak Terdakwa Dalam Persidangan Online Di Era Covid-19, *Justitia: Jurnal Ilmu Hukum dan Humaniora*, Vol. 8 No. 3, 2021, pp. 255-263. Doi: www.dx.doi.org/10.31604/justitia.v8i3.255-263.

³ A.Bazar Harapan, Nawangsih Sutardi, Hak Asasi Manusia dan Hukumnya, Jakarta, CV. Yani's, 2006, Hal 33-34.

whole within the context of societal, national, and state life.⁴ HAM are inherent rights or privileges of citizenship that individuals possess from the moment they are born, bestowed upon them directly by a divine being whose existence is immutable and must be revered, upheld, and shielded by the government, state, and every individual in order to preserve human dignity and honor.

The basis for legal protection of human rights in Indonesia is contained in Paragraph IV of the Preamble to the 1945 Constitution (UUD 1945), Articles 28A to Article 28 J of the 1945 Constitution, and Act HAM No. 39 of 1999,⁵ where the Act HAM has a number of norms governing HAM issues are determined.⁶

According to Article 28 I (4) of the 1945 Constitution, the government has a clear duty to protect, promote, enforce, and fulfill HAM. This obligation is further emphasized in Article 71 of the Act HAM, which states that the government is obligated to respect, protect, uphold, and promote HAM as outlined in this law, as well as other legal regulations and international HAM laws that have been accepted by Indonesia.

It is the duty of the state and other entities with obligations to uphold HAM. Specifically, the state is bound by the legal principles and guidelines outlined in HAM agreements. Should the state neglect its responsibilities, those who have been wronged possess the right to lodge suitable complaints, which will then be presented to a competent court or adjudicator (such as a prosecutor) following the appropriate legal protocols and procedures.⁷

Respecting, protecting, promoting, maintaining and fulfilling HAM is the responsibility of the state, especially the government. Government affairs related to HAM are carried out by the Ministry of Law and HAM, whose mission is to carry out government affairs in the field of law and HAM to assist the President in managing the state government.

The handling of suspected HAM violations shall apply to any act committed by an individual, group, company, state machinery and/or government agency/institution, whether intentionally or unintentionally or due to negligence, and is unlawful, including the reduction, obstruction, restriction and/or abrogation of the human rights guaranteed by law to individuals or groups who have not obtained fair and correct legal solutions as provided by law or are at risk of not obtaining fair and correct legal solutions.⁸

Implementation of Handling of Alleged HAM Violations at the regional level is carried out by the Regional Office (Kanwil) of the Ministry of Law and HAM. Regional Offices in the Implementation of Handling of Alleged HAM

Violations have the function of handling HAM issues which are communicated and which are not/have not been communicated. Meanwhile, the task of implementing the Handling of Alleged HAM Violations is to receive and follow up on communications, examine alleged HAM violations and coordinate and provide recommendations.

Handling Alleged HAM Violations based on direct or indirect reports from the Community. Reports can be submitted directly to the Kanwil Kemenkumham Aceh or via the Complaint Post for Alleged Human Rights Violations at Regency/City Correctional Institutions (Prisons/Rutans) or Regency/City Immigration Offices or online via the simasham.go.id website. Reports received by the post for Handling Alleged Human Rights Violations are forwarded to the Kakanwil Kemenkumham to identify and examine the substance. In Article 4 paragraph (2) of the Permenkumham No.23 Tahun 2022, the Kakanwil Kemenkumham in handling alleged HAM Violations carries out the following tasks:

- a. Receive complaints;
- b. Identify suspected human rights violations;
- c. Check the completeness of the Complaint administration file;
- d. Examine the substance of alleged HAM violations;
- e. Determine conclusions on the results of investigations into HAM Violations in the form of a peace agreement;
- f. Determine conclusions on the results of examinations of HAM Violations in the form of Recommendations;
- g. Monitor the implementation of Recommendations at regional level;
- h. Convey and report the results of the handling to the Director General; And
- i. Providing technical guidance to the Human Rights Complaints Post.

The results of the examination and coordination of alleged human rights violations are in the form of recommendations. Article 1 No. 8 of the Permenkumham No.23 Tahun 2022 states "Recommendations are conclusions and efforts to resolve the results of examinations of human rights violations submitted to the Relevant Parties which must be implemented and followed up in order to resolve human rights violations." Recommendations are addressed to government agencies/institutions that are suspected of violating human rights with a copy to the reporter.

Recommendations issued by the Kanwil Kemenkumham Aceh were sent to the parties involved for follow-up. Kakanwil Kemenkumham Aceh cannot force the parties to implement the recommendations given. Article 35 (1) Permenkumham No.23 Tahun 2022. In the event that the Reported Party and/or related parties do not follow up on the Recommendations as intended in Article 33 paragraph (5) and/or the Reporting Party provides a response that the Recommendations have not been followed up, the Kanwil Kemenkumham submits Recommendations to the Reported Party and/or related parties at a higher level for further resolution. In the event that recommendations to the Reported Party and/or Related Parties at a higher level are not followed up, the Kanwil Kemenkumham delegates the resolution of the case to the Director General. In the event that recommendations to the Reported Party and/or related parties at a higher level are not followed up and/or the Reporting Party provides a response that the Recommendation has not been properly followed up, the

⁴ Abstrak UU Nomor 39 tahun 1999 tentang Hak Asasi Manusia <https://www.dpr.go.id/jdih/index/id/440> di akses pada 30 Agustus 2023.

⁵ Titon Slamet Kurnia, Reparasi terhadap Korban Pelanggaran HAM di Indonesia, Bandung, Citra Aditya Bakti, 2005, hlm. 23.

⁶ Suhaimi, Perlindungan Saksi Dalam Beberapa Tindak Pidana dan Pengadilan Hak Asasi Manusia, *Jurnal Hukum Samudra Keadilan*, Volume 15, Nomor 2, Juli-Desember 2020, pp. 264-276.

⁷ Idfhal Kasim Et, Hak Sipil dan Politik: Esai-esai Pilihan, Buku I, Jakarta, Elsam, 2001, hlm. 14-15.

⁸ Pasal 2 (1) Permenkumham Nomor 23 tahun 2022 tentang Penanganan dugaan pelanggaran HAM

Minister submits the Recommendation to the President. Judging from its function, recommendations for handling alleged human rights violations do not have judicial (executorial) rights so they do not provide legal certainty for the reporting party.

Recommendations for handling alleged human rights violations are carried out based on the willingness of the reported party, where the follow-up to recommendations is based on moral awareness that grows from the bottom of the heart to implement and good relations between agencies. Data on the number of recommendations submitted by the Kakanwil Kemenkumham Aceh can be seen in the following table:

Table 1: Recommendations for Community Communication Services for the Kanwil Kemenkumham Aceh

Year	Number of Complaint Reports	Number of recommendations	Followed up	Not followed up
2020	6	6	3	3
2021	4	4	3	1
2022	4	4	2	2
2023	4	2	2	-

Based on the table above, it can be observed that there is a change in the number of reports, recommendations and follow-up from 2020 to 2023. Where in 2022 the recommendations that are followed up amount to half the number of reports received, this indicates that there is a main problem as to why the recommendations were not implemented. Follow up by the reported party and the agency above the reported party. Therefore, we are interested in conducting research with the title "Legal Position of Recommendations for Human Rights Communication Services on Reports of Public Complaints against Human Rights Violations in Aceh".

Research Method

This type of research is normative juridical legal research, namely law is conceptualized as norms, rules, principles or dogmas.

So this type of research focuses on positive law inventory, legal principles and doctrine, legal discovery in cases in concreto, legal systematics, level of legal synchronization, legal comparison, and legal history.⁹

This form of normative juridical research is carried out as norms, rules or principles and dogmas. The normative juridical approach is carried out through literature study, but as long as it is necessary to enrich the research, interviews can be carried out to complement the literature study, and the studies and approaches include legal history, comparative law and legal philosophy.¹⁰

This study adopts the legislative regulatory approach. This approach is implemented by reviewing all legal provisions related to the issue (legal issue) under discussion. The laws and regulations used are the 1945, the Human Rights Act, the Order of the Minister of Justice and Human Rights on Dealing with Human Rights Violations, and other provisions related to the discussion.

The data source used in this study uses secondary data consisting of primary legal materials, that is, binding legal

materials, in this case, in the form of applicable laws and regulations. In addition to this, secondary legal materials refer to materials that help analyze and understand primary legal materials, such as the work of various legal circles, and tertiary legal materials, that is, legal materials that explain and illustrate primary and secondary legal materials. In addition, the data analysis used in this study is qualitative analysis.

Result and Discussion

1. Implementation of Handling Alleged Human Rights Violations

Indonesia as a rule of law is contained in Article 1 (3) of the 1945 Constitution. Tahir Azhari is of the opinion that although the explanation of the 1945 Constitution uses the term *rechtsstaat*, the Indonesian state does not adhere to the concept of a rule of law or rule of law.¹¹ The reason is that the concept of a rule of law is actually not a concept that was born based on Indonesian culture but based on western globalism, as stated by Satjipto Rahardjo who was quoted by Yance Arizona who stated that: "the rule of law is a modern concept that does not grow from within Indonesian society itself, but is import. The process of becoming a legal state is not part of the socio-political history of the Indonesian nation in the past, as happened in Europe." The rule of law is a structure imposed from outside. "In this way, building a rule of law is building the behavior of a rule of law, building a new civilization."¹²

According to the concept of *rechtsstaat* legal state proposed by F.J. Stahl, one of the important elements in a rule of law is the recognition and protection of HAM.¹³ Handling alleged human rights violations through HAM Communication Services is one of the efforts made by the state to fulfill the right to protection from HAM violations as part of the state's obligation to protect human rights. However, the legal basis for HAM Communication services in the form of a Permenkumham has legal force that is not as strong as a law following the hierarchy of statutory regulations. This condition can be a weakness in efforts to protect and fulfill HAM through services for alleged human rights violations.

HAM Communication Services are services for handling alleged HAM violations provided to the public regarding alleged HAM issues, both those that have been communicated and those that have not been communicated by individuals or groups. The aim of the HAM Communication Service is as an effort by the government to encourage the resolution of alleged HAM violations as a form of protecting and fulfilling human rights. This service activity is carried out by the Human Rights Communication Services Team which was formed at the Kanwil Kemenkumham. In carrying out its duties, this team is under the auspices of the HAM sector, and is specifically carried

¹¹ Jimly Asshiddiqie, Gagasan negara hukum Indonesia. Makalah Disampaikan dalam Forum Dialog Perencanaan Pembangunan Hukum Nasional yang Diselenggarakan oleh Badan Pembinaan Hukum Nasional Kementerian Hukum dan. 2011.

¹² Wijaya, Made H. Karakteristik Konsep Negara Hukum Pancasila, Jurnal Advokasi Volume 5, Nomor 2, 2015, hlm 199-213.

¹³ Azhary, Negara Hukum Indonesia, Jakarta, UI Press., 1995, Hlm 21.

⁹ *Ibid.*

¹⁰ Sri Mamudji, Penelitian Hukum Normatif Suatu tinjauan Singkat, Jakarta, raja Grafindo Persada, 1995, Hlm. 2.

out by the HAM Advancement Sub-Sector. Thus, HAM Communication Services are one of the important functions carried out by the Kanwil Kemenkumham in order to ensure the protection and fulfillment of HAM in its work area.¹⁴

However, there are exceptions for handling cases that are in the judicial process (first instance, appeal or cassation), as well as serious HAM violations in accordance with statutory provisions. Thus, the HAM Communication Service focuses on alleged HAM violations outside these categories, in an effort to provide protection and promotion of HAM in accordance with applicable legal corridors.¹⁵

The method used in Coordination and Consultation of HAM Communication Services is providing responses or brainstorming/discussing case analysis. Implementation of HAM Communication Services Coordination and Consultation Team Meetings carried out by the Kanwil Kemenkumham is carried out through: (1) Disclosure of juridical and sociological facts about the reporter's problem; (2) Analysis of the reporter's problem regarding alleged HAM violations; (3) Conclusions and suggestions for problem solving; (4) Making recommendations to stakeholders.¹⁶

The flow of the process for alleged HAM violations can be seen in the picture below:



Fig 2: Submission of allegations of HAM violations



Fig 1: Community Communication Services Infographics

The complaint about alleged HAM violations must use polite language and sentences and not contain words that insult the state, including state symbols.

In addition to alleged HAM violations that are communicated, Yankoham implementers can also identify alleged HAM violations that are not/have not been communicated, by collecting data and information originating from print and electronic media, as well as from government agencies/institutions, organizations, or members of the public. Please note that all complaints of alleged HAM violations will be included in the SIMAS HAM application. After receiving a disposition from the Center, the Kanwil Kemenkumham can take follow-up action regarding alleged HAM violations. Handling Alleged HAM Violations based on Permenkumham No. 23 of 2022 concerning handling alleged HAM violations which can be described as follows:

¹⁴ Wawancara dengan Hasballah, Kepala Subbidang Pemajuan HAM.

¹⁵ Wawancara dengan Husnila Pelaksana Yankoham.

¹⁶ *Ibid.*

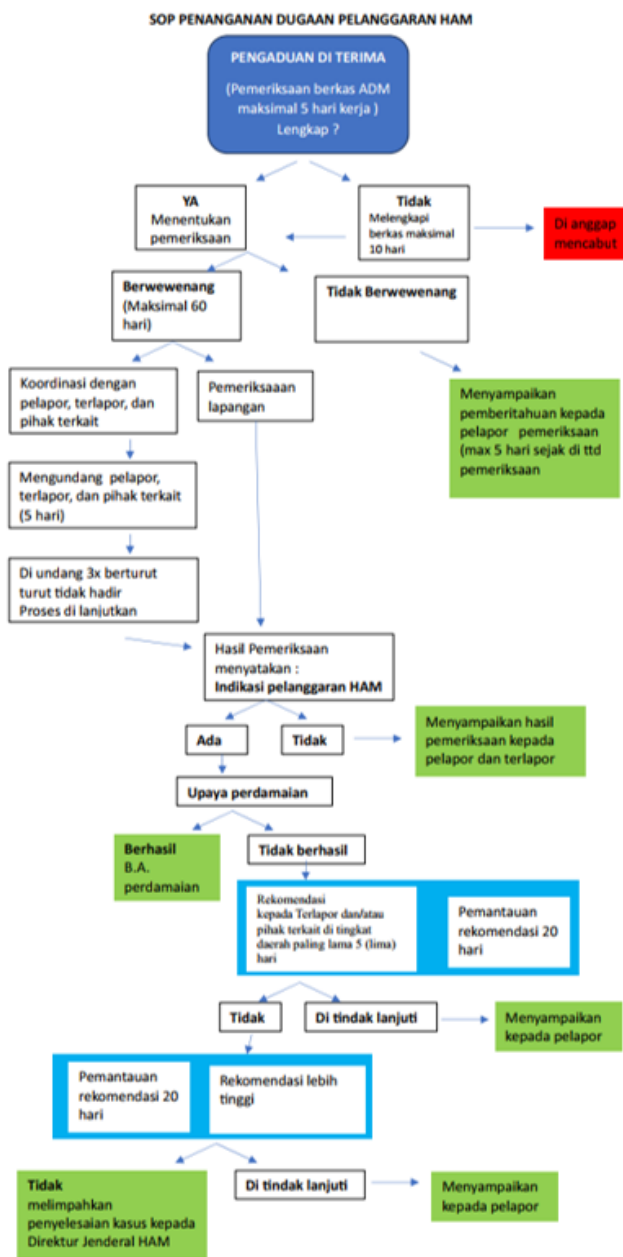


Fig 3

Follow-up Procedures for Alleged HAM Violations Based on Permenkumham No. 23 of 2022 concerning Handling Alleged Human Rights Violations Procedures for Handling Alleged Human Rights Violations:

1. Administrative examination is an examination of the files submitted by the reporter which consist of personal identity and data supporting the problem of alleged HAM violations. The administrative examination is carried out no later than 5 days from the receipt of the complaint. If the results of the administrative examination of the file are incomplete, the reporter can complete it within a period of 10 days, then the reporter is deemed to have withdrawn the complaint.
2. Substantial Examination is an examination of the substance of the report to determine whether the head of the regional office has the authority to continue the examination or not. If the Head of the Regional Office is not authorized to continue the inspection, the Head of the Regional Office shall notify the Complainant in writing within 5 (five) days and include suggestions for

the Complainant to submit the complaint to another competent agency.

3. Examination of Alleged HAM Violations is an activity to determine whether a complaint contains a human rights violation or not based on the results of coordination with the Complainant, Reported Party and related parties to ask for an explanation; and/or field inspection. The process of examining alleged Human Rights Violations is carried out within a maximum of 60 (sixty) days. The examination of alleged HAM Violations aims to determine:
 - a. Whistleblowers, Reported Parties, and related parties in alleged HAM Violations;
 - b. time, place, and chronology of alleged HAM violations;
 - c. forms of alleged HAM violations; And
 - d. government agencies/institutions that have the authority to resolve alleged HAM violations in question.

Based on the results of the examination of alleged HAM Violations, it was stated that there were indications of alleged HAM Violations, the Head of the Regional Office carried out peace efforts by presenting the Reporter, Reported Party, and/or related parties. Peace efforts can be carried out twice if the parties do not attend the first peace attempt. If the second peace effort is not successful, the Head of the Regional Office will submit recommendations to the Reported Party and/or related parties at the regional level no later than 5 (five) days after the second peace effort is declared unsuccessful.

Monitoring Recommendations, recommendations issued by the Head of the Regional Office are conveyed to the reported party and/or related parties for follow-up. If the Reported Party and/or related parties do not follow up on the Recommendations and/or the Reporting Party responds that the Recommendations have not been followed up, the Head of the Regional Office submits Recommendations to the Reported Party and/or related parties at a higher level for further resolution. Monitoring of Recommendations within a period of 20 (twenty) Days. If the Reported Party and/or Related Parties at a higher level do not follow up on the recommendations, the head of the Kanwil Kemenkumham submits a Letter of Recommendation to the Director General of Human Rights for further resolution at the Central level. The Directorate General of Human Rights forwards a Letter of Recommendation to the Reported Party and/or Related Parties at a higher level. In the event that the Reported Party and/or Related Parties at a higher level do not follow up on the Letter of Recommendation, the Kemenkumham shall submit a Letter of Recommendation to the President.

Complaints received, both verbally and in writing, will be followed up by checking the administrative files and examining the substance first. This is done to determine whether the case is an authority to continue the examination or not. The process of examining alleged human rights violations is carried out by:

- a) Coordinate with the reporter, reported party, and related parties to ask for an explanation; and/or
- b) Conduct field inspections.

Based on this mechanism, it is hoped that the process of handling alleged human rights violations can be carried out comprehensively by gathering information from various

parties and carrying out field verification if necessary. This is an effort to ensure that cases are handled carefully and in accordance with applicable legal corridors.¹⁷

The process of examining complaints of alleged HAM violations, the aim of which is to find indications of HAM violations that have occurred based on the complaints received. If during the inspection, indications of HAM violations are found, peace efforts will be made between the parties involved. If peace efforts are unsuccessful, the team will then make recommendations addressed to the reported party or related parties at the regional level.

The handling process starts from verifying indications of violations, followed by mediation efforts to achieve peace. If mediation fails, recommendations will be issued as a form of follow-up so that alleged HAM violations can be resolved by the competent parties at the regional level. This mechanism is part of efforts to protect HAM through non-litigation channels before further legal proceedings are taken if necessary.

Communication can be delivered both individually and in groups, in two ways, namely direct and indirect. The public or authorized representatives can come directly to the Kanwil Kemenkumham Aceh to convey their problems. They must fill in the form provided and attach related supporting data. Apart from that, communication can also be delivered indirectly via letters along with supporting data attachments. This means that the public or their proxies can visit the Regional Office, service posts at Correctional Institutions/Detention Centers or Immigration Offices directly, or send letters to the relevant agencies.¹⁸

This information shows that communication providers who come to the Kanwil Kemenkumham can ask questions directly and convey their needs in the information section. The information officer will direct them to the HAM Sector. Staff in the HAM Sector will first check the identity of the reporter, then ask them to fill in the form provided. For those who cannot come in person, they can send a letter to the office address. Once the requirements are met and the supporting data is complete, an inspection will be carried out on what is received.

Furthermore, the conditions that must be met by members of the public who want to communicate alleged HAM violations they have experienced are as follows: (1) Valid KTP/identity; (2) Fill out the form provided; and (3) Supporting data according to the problem to be communicated. If the person sending the communication cannot fulfill the requirements, they will be asked to complete them first. If these requirements cannot be met, then the communication cannot be followed up.

Communication from the public can be handled if the reporter completes the files and related supporting data within a maximum period of 10 (ten) days after the complaint is received by the officer. If the time limit is exceeded, the reporter will be deemed to have withdrawn the complaint he submitted.¹⁹ The information above states that the complainant is given a period of no later than 10 days after the complaint is received to complete the required documents. If this time limit passes, the complaint submitted will be considered withdrawn. Meanwhile, for cases of

alleged human rights violations that have not been or are not communicated, the Human Rights Communication Services Team (Yankoham) will carry out investigations.

The examination is intended to determine the parties; time, place and chronology of alleged human rights violations. Next, the Yankoham Team held a Human Rights Communication Services Coordination Meeting and formulated recommendations to be submitted to the reporter and the reported party. The recommendation was signed by the Kakanwil Kemenkumham and accompanied by a Coordination Letter containing allegations of human rights violations; input for government agencies/institutions; name of position and/or name of government agency/institution authorized to protect and fulfill human rights; and requests for information on developments and resolution of alleged human rights violations.²⁰

The number of recommendations issued by the Kanwil Kemenkumham varies each year, depending on the number of reports received from the public. If you look at the national number of cases reported on the Simasham page of the Directorate General of Human Rights in 2020, the number of complaints can be seen as follows:

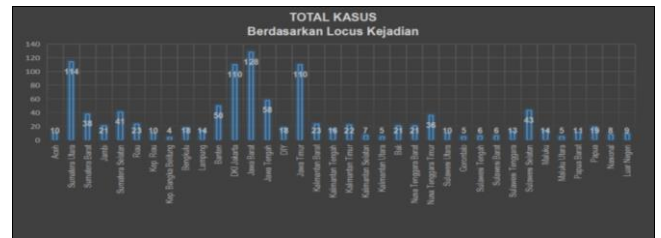


Fig 4: Distribution of Complaint Cases in 2020

Based on data from the Yankomas HAM Information System (SIMASHAM), the total number of cases reported with locus (location of incident) in Aceh Province amounted to 10 cases in 2020. Of the 10 cases received through Simasham, 3 cases were transferred to the Kanwil Kemenkumham Aceh to be handled, while the other 7 cases were handled by the central level Human Rights Communication Services (Yankoham) at the Directorate General of Human Rights. Apart from that, there were 3 other cases received by the Aceh Regional Office Team but were not included in the Simasham database because the complaints were submitted directly.



Fig 5: Distribution of Complaint Cases in 2021

Based on data from the Human Rights Command Information System (SIMASHAM), the total number of cases reported by locus (location of incident) in Aceh Province in 2021 was 9 cases. Of the 9 cases received through Simasham, 2 cases were transferred to the Kanwil Kemenkumham Aceh to be handled, while the other 7 cases

¹⁷ Wawancara dengan Husnila Pelaksana Yankoham.
¹⁸ Wawancara dengan Husnila Pelaksana Yankoham.
¹⁹ Pasal 25 ayat (4) Permenkumham No.23 Tahun 2022 tentang Penanganan Dugaan Pelanggaran HAM

²⁰ Wawancara dengan Husnila Pelaksana Yankoham.

were handled by the central level Human Rights Communication Services Team (Yankoham) at the Directorate General of Human Rights. Apart from that, there were 2 other cases received by the Aceh Regional Office Team but were not included in the Simasham database because the complaints were submitted directly.



Fig 6: Distribution of Reported Problems in 2022

Based on data from the Yankomas Human Rights Information System (Simasham), the total number of cases reported by locus (location of incident) in Aceh Province in 2022 was 16 cases. Of this number, 3 cases were handed over to the Aceh Kanwil Kemenkumham Aceh to be handled, while the other 13 cases were handled by the central level HAM Communication Services Team (Yankoham) at the Directorate General of Human Rights. Apart from that, there was 1 other case that was received by the Aceh Regional Office Team but was not included in the Simasham database because the complaint was submitted directly.

2. Legal Position Recommendations for Handling Customer Allegations on Human Rights

A recommendation is defined as providing a guarantee to the recipient of the recommendation so that the party receiving the recommendation will take legal action in the interests of the recommended party. If the recommender makes recommendations based on good faith, then the relevant personnel are not responsible for any consequences arising from third-party actions based on the recommendation. However, suppose the recommender finds that the recommendation given is incorrect, and the actions taken based on the recommendation will impact third parties, the recommender is legally responsible to the injured party results of actions taken based on recommendations.²¹

This concept shows that in the general legal concept, a recommendation is a legal document containing recommendations given by one party (consultant) to another party (recipient of the recommendation), and the recipient of the recommendation uses it as a means of adopting the basis of the recommendation. Recommendations do not create a legal barrier between the recommendation and the recipient of the recommendation unless the recommendation is not made in good faith, which causes undesirable consequences or harms third parties. If the recommendation is not based on good faith, and if the recommendation is detrimental to third parties, the consultant is legally obliged to be responsible for the consequences of actions taken following the recommendation.²²

Based on Article 1 point 8 of the Permenkumham No.23 Tahun 2022, recommendations for handling alleged human rights violations are "conclusions and efforts to resolve the results of investigations into HAM violations which are submitted to the relevant parties which must be implemented and followed up to resolve human rights violations." Recommendations are submitted if the peace efforts carried out by the Yankoham Team are not successful between the reporting party and the reported party. In other words, if the mediation process or peace efforts fail to reach an agreement, the Yankoham Team will submit recommendations to the relevant parties as a form of conclusion and attempt to resolve the case of alleged HAM violations.

Recommendations submitted to the reported party are monitored by the Yankoham Regional Office team within 20 days. If there is no follow-up, the team will submit recommendations to a higher level agency than the reported agency. If there is still no follow-up, the regional office Yankoham team delegates it to the Director General of HAM to convey it to the president through the Kemenkumham.

Recommendations are issued according to the needs of each agency. For example, in handling alleged human rights violations, recommendations are issued by the Kemenkumham at the regional level through the Kakanwil. Based on the theory of authority proposed by J.G. Brouwer, delegation authority is transferred from attribution authority from one administrative body to another administrative body. In this case, the delegator/delegans (the body that grants the authority) can test the authority on its behalf. Likewise, the authority to make recommendation letters is transferred from the Minister to the regional office, where the Kakanwil is responsible for handling alleged HAM violations at the regional level. The Kakanwil obtains the authority to issue letters of recommendation in handling alleged human rights violations in his area through a delegation of authority mechanism from the Minister as the holder of attribution authority. The Kakanwil is responsible for the implementation of this authority, and the Minister as delegator can test the delegated authority on his behalf.

Recommendations contain clarification and/or encouragement to resolve alleged human rights violations. This recommendation was issued after reviewing the case by presenting the parties involved in the case as well as the authorities authorized to resolve the issue of alleged human rights violations.

The parties involved in alleged human rights violations are invited at the case review stage, to provide clarification and explanations regarding the alleged violations being investigated.²³ The parties invited include the perpetrators who are suspected of being involved in the violation, as well as representatives from agencies that have authority and authority related to the case being handled. This process is carried out to obtain complete and accurate information from various perspectives before taking decisions or further actions. After conducting an in-depth study, a recommendation letter was issued containing clarification of the facts found as well as encouragement or appeals to the relevant parties to resolve the case of alleged HAM violations.

²¹ *Ibid.*

²² *Ibid.*

²³ Pasal 27 ayat (1) huruf a Permenkumham No.23 tahun 2022 tentang Penanganan Dugaan Pelanggaran HAM.

The recommendation letter functions as a means to provide clarification and encourage case resolution, by involving various relevant parties in the review process before the recommendation is issued.²⁴ Follow-up on recommendations submitted depends on the willingness of the recipient of the recommendation. In other words, the party receiving the recommendation has the freedom not to implement the recommendation if it is deemed inappropriate or cannot be implemented. This is because the Permenkumham No.23 Tahun 2022 does not specifically regulate the consequences or sanctions if the recommendation is not followed up by the recipient party. Thus, the recommendations submitted do not have legally binding force, and the party receiving the recommendation may decide not to implement them without any clear legal consequences.

The strength of recommendations for alleged HAM violations is morally binding. Morally binding is a provision that is only morally binding so as not to commit deviations, based on self-awareness. Meanwhile, the opposite of morally binding is legally binding. Legally binding means legally binding, where a provision is legally binding and has coercive power if someone violates the provision. Legally binding, if not implemented, has legal consequences in the form of criminal or administrative. This is different from moral binding which only gets moral sanctions.²⁵

Kakanwil through the Human Rights Communication Services Team (Yankoham) monitors recommendations that have been submitted to government agencies/institutions. In the event that government agencies/institutions do not follow up on the recommendations that have been submitted, the Yankoham team will submit the recommendations back to higher agencies. This recommendation to a higher agency is submitted no later than 20 days after the first recommendation is not followed up²⁶.

If the superior of the government agency/institution does not follow up on the recommendation to a higher agency, then the Head of the Regional Office will delegate the case to the Director General of Human Rights to be included in the Yankoham meeting at the central level through the Directorate Human Rights Communication Services.

The central Director General of Human Rights will submit a report regarding alleged human rights violations to the relevant government agencies/institutions at the central level. If the report does not receive a resolution from government agencies/institutions at the central level, the alleged human rights violations will be reported to the President through the Minister of Law and Human Rights.

The highest escalation mechanism in handling alleged human rights violations by the Yankoham Team. After going through efforts to submit the report to government agencies/institutions at the central level, if there is still no resolution, the Central Yankoham Team will submit the

report to the President as the highest government leader for follow-up.²⁷

The Yankoham Team at the Regional Office of the Menteri Hukum dan HAM, in carrying out its function of receiving public complaints, is not equipped with official Standard Operating Procedures (SOP). On the initiative of the Head of Human Rights, an SOP was created independently based on Permenkumham No.23 Tahun 2022. This independently created SOP is only applied within the Kanwil Kemenkumham, because there are no technical instructions or SOPs officially issued by the director general of Human Rights to handle complaints of alleged HAM violations from the public.²⁸

Based on data from the Yankoham team of the Kanwil Kemenkumham in Aceh, no report has been submitted to the President. Recommendations that are not followed up are submitted to the Director General of Human Rights and await direction. Sudikno Mertokusumo stated that legal certainty is a guarantee that the law can run as it should, meaning that with legal certainty, individuals who have rights are those who have received a decision from the legal decision itself. Without continuity regarding the handling of human rights violations, this creates legal uncertainty in resolving cases of human rights violations.

Without any follow-up on the recommendations submitted by Yankoham to the Director General of HAM, the process of resolving cases of human rights violations will be unclear and there will be no legal certainty. This goes against the principle of legal certainty, which aims to guarantee that the law works as intended and provides parties with the guarantee of obtaining fair and clear legal decisions.

The legal basis for HAM communication services is in the form of Permenkumham, which are not explicitly stated in the hierarchy of statutory regulations as regulated in Article 7 of Law No. 12 of 2011. This results in the Permenkumham on Handling Human Rights Violations not having a clear position in the hierarchy of legal regulations. Even though Article 8 (2) of Law No.12 of 2011 provides recognition of the existence of the Permenkumham on Handling Human Rights Violations and its legal force, there is still no clarity regarding its specific legal position.²⁹

The Human Rights Law authorizes the National Human Rights Commission (Komnas HAM) to carry out a mediation role in resolving cases related to human rights violations. On the other hand, the HAM Communication Service (Yankoham) does not have the same authority in mediating the resolution of alleged human rights violations. This limitation shows that Yankoham does not have the same power as Komnas HAM in dealing with human rights violations by with this law. This also applies to recommendations issued by Yankoham, where these recommendations do not have legal force like the recommendations issued by Komnas HAM.

²⁴ Wawancara dengan Husnila Pelaksana Yankomas.

²⁵ Kekuatan Mengikat Rekomendasi Ombudsman, <https://www.hukumonline.com/klinik/a/kekuatan-mengikat-rekomendasi-ombudsman-lt5cad59a0bd4f8/> diakses pada 20 Maret 2024

²⁶ Pasal 35 ayat 1 Permenkumham No.23 tahun 2022 tentang Penanganan Dugaan Pelanggaran HAM.

²⁷ Solidaman Bertho Plaituka. Penanganan pelanggaran ham oleh kantor wilayah Kementerian hukum dan ham nusa tenggara timur melalui Pelayanan komunikasi masyarakat. Jurnal rechvinding Vol. 6 Nomor 1, April 2017

²⁸ Wawancara dengan Husnila Pelaksana Yankomas.

²⁹ Juwita Putri Pratama Et.al, Eksistensi Kedudukan Peraturan Menteri terhadap Peraturan Daerah dalam Hierarki Peraturan Perundang-Undangan. Jurnal konstitusi. vol 19. Nomor 4 desember 2022, hlm. 867

Recommendations that have been issued by the Kanwil Kemenkumham Aceh can be followed up by the Aceh Women's Empowerment and Child Protection Service (DP3A) through the Aceh PPA UPTD as long as they are still within the scope of the Aceh DP3A's authority. So far, coordination between the Regional Office of the Ministry of Law and Human Rights and DP3A Aceh has gone well. DP3A Aceh considers and reviews these recommendations before taking further action by its duties and functions in protecting women and children in the Aceh region.³⁰

3. Inhibiting Factors in the Implementation of Handling Human Rights Customer Allegations

Based on legal system theory, the three components of the legal system according to Lawrence Milton Friedman were further explained by Ahmad Ali:³¹

- 1) Legal structure refers to all existing legal institutions and their apparatus, including, among others, the Police, the Prosecutors, the Court or Judges, and so on. In this case, the implementers of Community Monitoring and Visits (Yankoham) are 7 employees in HAM Division of the Kanwil Kemenkumham, with details of 1 employee as Yankoham implementer and 1 echelon 4 official. The number of human resources is limited this creates deficiencies in handling Yankoham cases. Therefore, it is necessary to increase the number of Yankoham implementers and improve the quality of human resources, especially in terms of education, considering that currently Yankoham implementers only have undergraduate educational backgrounds.
- 2) Legal substance (legal norms and legal principles), including court decisions. In this case, the legal basis for Yankoham is a Permenkumham No.23 Tahun 2022, which in the hierarchy of statutory regulations is too weak. Like Komnas HAM which is regulated by law, Yankoham also needs stronger regulations with a legal umbrella in the form of a law so that it has a stronger position in carrying out its duties and authority.
- 3) Legal culture includes opinions, habits, beliefs, ways of acting and ways of thinking, both from law enforcers and member of the public, regarding law and various phenomena related to law. In this context, the legal culture of Yankoham officers is in the spotlight, including their opinions, beliefs, habits, ways of acting and thinking in carrying out their duties and authority related to monitoring and enforcing human rights.

The services provided to the public are one of the benchmarks for their assessment of the image of a company or agency. According to Tilaar in Taufiqurakhman & Satispi,³² there are several factors that need to be considered in improving public services, namely dedication and discipline, honesty, innovation, patience, tenacity, human resources (HR)", and leadership. Meanwhile, another

opinion from Hardiyansyah,³³ states that there are 6 dominant factors that influence the implementation of public services, namely (1) work motivation of the bureaucracy and apparatus; (2) apparatus capabilities; (3) bureaucratic/apparatus behavior; (4) social supervision/control; (5) organizational restructuring; (6) communication, disposition and bureaucratic structure as well as organizational communication climate and information flow. These factors must be given great attention to achieve the goals of implementing good and quality public services.

The implementation of public services does not always run smoothly, some obstacles hinder the process, the same applies to human rights communication services. There are several inhibiting factors in the implementation of human rights communication services which can be described as follows:

1. Lack of human resources for Yankoham officers who are currently only staffed by 1 employee and 1 official. This limited number of personnel can hamper the performance and services provided.
2. Yankoham's legal basis is not strong, in the form of a Ministerial Regulation, so its position is weak in the hierarchy of laws and regulations. A stronger legal umbrella is needed, such as a law.
3. Limited budget allocated for Yankoham activities, which can hamper the performance and implementation of its duties.
4. Lack of understanding by Yankoham officers regarding their duties, functions, and authority can result in less than optimal services provided.
5. Lack of coordination with Law Enforcement Officials (APH) can hamper the case-handling process and necessary follow-up.
6. Weak quality of recommendation letters can be caused by various factors such as a lack of supporting data or in-depth analysis.

Conclusion

Human Rights Communication Services are services provided by the Kanwil Kemenkumham to the community regarding handling alleged HAM violations. The aim is to encourage efforts to resolve alleged HAM violations as a form of protecting and fulfilling HAM. This service handles complaints both communicated verbally/in writing and those that have not been/are not communicated. The process begins with an administrative examination and the substance of the complaint to determine the authority to handle it. If it meets the criteria, an inspection is carried out in coordination with related parties and/or a field inspection. If indications of HAM violations are found, peace efforts will be carried out first. If it fails, the team will issue recommendations to regional authorities to follow up. The number of recommendations issued by the Kanwil Kemenkumham varies each year, depending on the number of reports received from the public. There is a difference in the number of reports from the Simasham application data and the number of reports received by the Aceh Regional

³⁰ Wawancara dengan Rida Nurdin, Analis Hukum UPTD. PPA Aceh

³¹ Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Jakarta, Kencana, 2009, hlm. 204.

³² Taufiqurakhman. dan Satispi, *Teori dan Perkembangan Manajemen Pelayanan Publik*. Tangerang Selatan, UMJ Press, 2018, hlm 77.

³³ Hardiyansyah, *Manajemen Pelayanan dan Pengembangan Organisasi Publik dalam Perspektif Riset Ilmu Administrasi Publik Kontemporer*, Yogyakarta, Penerbit Gava Media, 2017, hlm 108.

Office Team because complaints are submitted directly so they are not included in the Simasham database.

Recommendations for handling alleged HAM violations issued by the Head of the Regional Office are suggestions or recommendations submitted to related parties to follow up and resolve cases of alleged human rights violations. This recommendation is issued if the peace efforts between the reporter and the reported person carried out by the head of the Regional Office are unsuccessful. Recommendations are non-legally binding and the Kakanwil does not have the authority to force their implementation. The legal basis and authority that Kakanwil have in handling alleged human rights violations is still weak and not as strong as the Komnas HAM as regulated in the Law. So that the party receiving the recommendation can decide whether to follow up or not, without any clear legal consequences. Recommendations function as advice or suggestions that are conveyed morally to the authorities to be followed up in the context of protecting and fulfilling HAM.

The implementation of HAM communication services by the Kakanwil in handling alleged human rights violations faces various obstacles and barriers. First, limited human resources both in terms of quantity and quality are one of the main inhibiting factors. In addition, a weak legal basis regarding the team's authority and work mechanisms also affects the effectiveness of carrying out its duties. Lack of support from relevant stakeholders and limited budget are also obstacles faced. Other factors such as inadequate understanding of officers, lack of coordination with law enforcement officials, and low quality of recommendations also weaken performance. These various inhibiting factors are interrelated and require comprehensive handling so that public communication services in handling alleged human rights violations can run optimally and be able to provide adequate protection and recovery for victims.

Suggestions

Good coordination between Yankomham implementers at the central level and regional offices is very important to ensure the smooth flow of data related to the fulfillment of human rights. Through good coordination, planned policies, programs and activities can be aligned between the center and the regions. This will create synergy and harmony of efforts in realizing the fulfillment of HAM. Regional offices can routinely report on the latest developments in the conditions for fulfilling human rights in their regions, while the center can convey the latest directions and policies to the regions. In this way, all problems and obstacles at both the central and regional levels can be identified and overcome jointly. Good coordination also enables monitoring, evaluation and improvement of the quality of human rights fulfillment to be carried out more effectively and in an integrated manner. Ultimately, close coordination can ensure smooth data flow so that efforts to fulfill human rights can be carried out optimally.

Revision of the Act HAM needs to be carried out in order to strengthen the enforcement and protection of HAM in Indonesia. One of the important points in the revision is the granting of authority to the Directorate General of Human Rights as the institution responsible for handling and resolving cases of human rights violations. With qualified capabilities, the Directorate General of Human Rights can play a more optimal role in carrying out inquiries, investigations and credentials of alleged human rights

violations that have occurred. The process of handling cases can also be faster and more effective with one door to resolution under the coordination of the Directorate General of Human Rights. Apart from that, the role of supervising and monitoring the implementation of HAM policies in all sectors can also be carried out more optimally. It is hoped that the revision of this law can strengthen law enforcement and provide legal certainty in efforts to protect and promote HAM in Indonesia.

Efforts to increase the capacity of Yankomham implementers at the regional level are very important to carry out. This aims to improve the quality of recommendations produced in the context of providing and protecting HAM. With capable capacity, regional Yankomham implementers can identify problems, analyze situations, and provide recommendations with more comprehensive and precise targets. The resulting recommendations will be of higher quality, more applicable and in line with real needs in the field. Capacity building can be done through various training programs, mentoring, and exchange of knowledge and best practices between regions. In this way, implementers can continue to develop competence in the field of HAM in accordance with the latest dynamics and challenges. It is hoped that the resulting recommendations can become valuable input for policy makers in efforts to promote, provide, protect and enforce HAM in the region.

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