

Radicalism and Violence in Mass May 1998 viewed from the Perspective of Criminal Law

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Abstract

Radicalism and violence contributed to May 1998 riots that caused chaos in Indonesia, especially in the capital city of Indonesia, Jakarta and other strategic cities. Part of radicalism such as, the value of emancipation affected the society, the radical fundamental approach to conflict, the commitment to change in society, and the political struggle to solve problems to the roots. This research is a descriptive research that describes May 1998 seen through the study of radicalism, violence, and criminal law. As a legal research, the approach used was legal socio-research. Furthermore, it would be analyzed using the normative approach because the act of riot is a criminal or a crime as regulated in criminal law, especially the Criminal Code (KUHP). Radicalism and violence were very close and complementary in contributing to May 1998 riots. From the perspective of criminal law, the riots contain many crimes that could be charged using the articles in the Criminal Code as crimes against public order are provided in Articles 154-157 Of the Criminal Code, the crimes of endangering public safety are provided for in Articles 187, 188, 191 - 194, 200 and 201 of the Criminal Code. Thus, Crime against the power of government is regulated in Articles 207 - 208 of the Criminal Code, crimes against morality are regulated in Article 281 of the Criminal Code. While the crime of persecution is set forth in Articles 351 - 358 of the Criminal Code, a crime causing a person to die or wound under Article 359 - 360 of the Criminal Code, theft crimes set forth in Sections 362 - 367 of the Criminal Code, rape and persecution crimes set forth in Articles 368 - 371 of the Criminal Code, and damages the goods set forth in Articles 406 - 412 of the Criminal Code

Keywords: radicalism, violence, mass rage, May 1998, criminal law

A. Introduction

The nature of Indonesian as always friendly and polite to anyone has already been known to foreign countries. Internally, feeling a kinship with other fellow citizens, externally respect to other nations. Such condition and situation shocked many people and did not believe that the May 1998 riot could happen in this Republic. Because if there is a problem always find the way of settlement through deliberation to consensus based on Pancasila and the 1945 Constitution. The consequences caused by the disaster were great that there were lots people became the victims and there was property loss. Even the second President of Indonesia, the Great General Soeharto, stepped down. Such mass riots can be categorized as radicalism. According to Satjipto Rahardjo in his book entitled "Other Side of the Law in Indonesia", which is a collection of articles written by Satjipto Rahardjo in Kompas newspaper from 1990 to mid-2002, radicalism is a way to solve problems to its roots until they are really resolved, appearing in totally transforming, disassembling, and breaking the forms,

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Which in practice can take place through coercion, the use of violence, and a total confrontation to the goals⁵ Coercion and use of violence are two elements that cannot be left behind in the process of radicalism. One of the prominent features of the reform process in Indonesia was the use of violence. The occurrence of violence as a form of protest, such as demonstrations from certain community groups, and campus communities, various criticisms, and protests and other boycotts while showed the ongoing socio-political conflict due to the government's inability to solve the problem. Radicalism was closely related to the violence that contributed to the mass amok 1998. Radicalism was a motor that moved the riots that there were loss of lives and property. Thus, it could be considered as a criminal act in the realm of criminal law.

B. Theoretical Framework

B.1. Review of Radicalism

Radicalism belongs to the classification of planning theory. John Friedmann developed four categories for this theory, they are social reform theory, policy analysis, social learning, and mobilization. While Hudson divided the planning theory into five categories which include synoptic, incremental, transactive, advocate, and radical. Walker proposed three categories: incremental, comprehensive, and structural. Then Faludi implicitly categorized planning into two categories that included comprehensive and incremental. Among the categories, there are some similarities, the Hudson category of transactional and radical similar to Friedmann's categories of learning and social mobilization.⁶

Radical planning is a model approach developed through the ideas of the Utopian movement, social anarchy, and historical materialism. The radical approach is the pioneer of the progressive theory, because planning is seen as a political activity that tries to change the status quo. Friedmann as cited by Sudharjo P. Hadi (2005: 31) labeled this strategy as social mobilization because it departs from collective action from below. While Burchell said that social mobilization emphasizes the politics of separateness and confrontation. The aim is to counter the status quo of oppressive power under capitalism⁷

John Friedmann (1987: 256) identified radical planning in four parts. First, the value of emancipation. Politically radical approaches pay attention to the working people who have no influence on the direction of the society, and which are suppressed and exploited by the capitalists. The social movement aims to free them from the marginal position in the society. Second, the view that history is a contradictory process in which the direction of social progress is open. Hence the radical approach is based on conflict rather than the model of harmony in the society. Third, commitment to bring about specific form of structural change in society. Fourth, the unity between theory and practice. Knowledge is viewed more as a stream rather than a supply of resources. The groups, than mentioned in the political struggle learn from the reality of change.⁸

The radical thinking of planning is required by the ruling class to maintain social accumulation and control in social conflict situations. Woodcock said that radical theory is an anarchic theory in a modified version of the natural world commemorated in the Renaissance and especially in the eighteenth century. In addition, another type of the theoretical theory of anarchy theory endorses the using of physical violence which is related to power.

B.2. about Violence

Clashes between government apparatus and popular reform activists are full of violent nuances. The state violated its people, called vertical violence (from top to bottom). While the resistance carried out by the citizens from demonstrations to violent acts is called vertical violence (from the bottom up)

Many theories discuss about the violence. One of them is the theory stated by Johan Galtung that is a theory that combines analysis-oriented actors with actors and structures. There must be a balanced interaction between violence occurs when humans are affected in such a way that their actual physical and mental realizations are below their potential realization. Violence is defined as the cause of the difference between the potential and the actual.

⁵ Rahardjo, Satjipto. 2003. *Sisi-sisi Lain dari Hukum Indonesia*. Jakarta: Penerbit Kompas

⁶ Friedmann, John. 1987. *Planning in the Public Domain: From Knowledge to Action*. New Jersey: Princeton University Press

⁷ Hadi, Sudharjo P. 2005. *Dimensi Lingkungan Perencanaan Pembangunan*. Yogyakarta: Gadjah Mada University Press

⁸ Friedmann, John. 1987. *Planning in the Public Domain: From Knowledge to Action*. New Jersey: Princeton University Press.

On one hand, human beings have the potential that is still in "theirs" and on the other hand, the potential demands to actualize that is by realizing and developing themselves and the world with the values they are holding.⁹

The notion of "actus" here includes activities, invisible activities (such as thinking, pondering, and other mental or psychological activities) and observable activities actions. This is the starting point in understanding violence as the cause of the difference between the actual and the potential. The basic presupposition is that what can or may be actualized must be realized, although in the reality not all potential then develops into actus. Galtung's understanding of violence is more determined in terms of its effects or effects on humans and does not distinguish violent acts (acts of violence) by acts of violence.^{10 11}

Johan Galtung also outlines six important dimensions of violence, namely: (i) Physical and psychological violence. In physical violence, the human body is hurt even to the point of killing. While in psychological violence is the pressure intended to reduce mental ability. (ii) The positive and negative effects of reward oriented system that is actually "controlled", is not free, open and tends to be manipulative in spite of giving pleasure and euphoria. (iii) The existence of the object. In certain acts, there remains the threat of physical and psychological violence, although it does not take a victim but limits human actions. (iv) The existence of the subject. Violence is called direct or personal if there is a culprit, and if there's no culprit then is called structural or indirect. Indirect violence is already part of the structure and manifests itself as an unbalanced power that causes the life probe will not be the same. (v) Intentional or not, focusing on consequences and not objectives, an understanding that only emphasizes the deliberate element is certainly not sufficient to deal with structural violence that works subtly and unintentionally. From the point of view of the victim, intentionally or not, violence remains violent. (vi) The visible and the hidden. Manifested violence, both personal and structural violence can be suppressed even if indirectly. While hidden violence is something that is not visible (latent), but can easily explode.¹²

B.3. Study of Criminal Law

Radicalism and violence in Amuk Massa May 1998 led to various criminal acts, which had to deal with criminal law. According to Moeljanto (2002: 1) criminal law is a part of the whole law applicable in a country, which provides the basics and rules to:

- a. Determine which action can't be done, shall be prohibited, accompanied by threats or sanctions in the form of a specific penalty, for whoever violates the prohibition
- b. Determine when and in what matters to those who have violated such restrictions may be imposed or criminalized as has been threatened.
- c. Determining by way of imposition of a criminal may be executed if any person is suspected to have violated the prohibition.¹³

Remmelink said that criminal law should be aimed at enforcing the law and protecting legal society. While Adami Chazowi said that there are two functions of the criminal law. First, it has a function to organize the life of the society by giving signs in the form of certain restrictions so that people are not free enough to do what they want without thinking other and behave wrongly only in order to achieve and fulfill their interests. Secondly, as a part of public law, criminal law serves as follows:

- a. Protecting the law's interests from any acts that infringe upon the interests of the law
- b. Providing the basis of legitimacy for the state in order to do run its function for various legal interests
- c. Arranging and limiting state power in order to carry out the protection functions of the legal interests

There are three types of the protected law interests, namely: individual legal interests (individuale belangen), public legal interests (maatschappelijke belangen), and the legal interests of the state (staats belangen)¹⁴

⁹ Windhu, I. Marsana. 1992. *Kekuasaan dan Kekerasan menurut Johan Galtung*. Yogyakarta: Penerbit Kanisius

¹⁰ Ibid. Page xxii – xxiii, 29, 64 - 66

¹¹ Thomas Santoso. 2002. *Teori-teori Kekerasan*. Jakarta: PT. Ghalia Indonesia. Page 168

¹² Ibid. Page 169

¹³ Moeljanto. 2002. *Asas-asas Hukum Pidana*. Jakarta: Rineka Cipta

¹⁴ Remmelink. 2003. *Hukum Pidana, Komentar atas Pasal-pasal terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia*. Jakarta: Gramedia Pustaka Utama

C. Research Question

From what was stated earlier, then the main problems of research can be formulated as follow:

1. How did radicalism and violence contribute to May 1998 Amuk Massa?
2. How is the May 1998 Mass Amok viewed from the perspective of Criminal Law?

Both formulation of the problem is expected to contribute thoughts to the development of Law Science, especially in the study of the relationship between violence and their contribution to May 1998 Amuk Massa in terms of criminal law perspective.

D. Research Method

This research was a descriptive research described Amuk Massa May 1998 from the study of radicalism, violence, and criminal law. As a legal research, the approach used was legal socio-research. Then proceed using the normative approach because the act of riot was a criminal or a crime as regulated in criminal law, especially the Criminal Code (KUHP).

Amuk Massa Mei 1998 was a black history in such an independent state occurred in big cities in Indonesia such as Jakarta, Medan, Makasar, Surakarta, and others. The focus of this study was the affected city, Surakarta, because during the New Order regime the city got a nickname as a short axis and was a national political barometer. Primary data in this study was the information or facts obtained directly through field research in the form of testimonials from the life witnesses, victims, and the law enforcement officers at the time settings of riots in May 1998. According to Yin Robert K (1984), the determination of the informants at research sites done as follow:

- a. Snowball technique (snowball sampling) where the informants are met through the instructions of the previous informant and so forth until the number and criteria considered enough by the researcher. The number of the informants needed is determined by certain criteria from a source informant who truly understands the problem under investigation
- b. Observation of participation (participant observation)
- c. Indepth interviews are used to obtain the data. Things that are difficult to obtain through interviews such as context and situations will be pursued by direct observation.¹⁵

Secondary data in this research were literature and documentation in the form of books, daily newspaper and magazine either published by private, government, or testimony and recognition of the victims which had been written.

E. Analysis and Discussion

E.1. Description Amuk Massa May 1998 in Surakarta

Amuk Massa May 1998 that took place in Indonesia started from the various crises that struck since mid-1997 where the rupiah crisis which was considered as monetary crisis turned into an economic crisis. It must be admitted that the economic crisis occurred in mid-1997 was heavier, more complessive, higher crisis costs, and had a wider negatif impact than the economic crisis in the 1960s especially during the transition from the Old Order to the New Order. This economic crisis not only forced Suharto to withdraw from his post as the president of Indonesia but also created a crisis of confidence and social political crisis since Black May 1998 cost many lives.^{16 17}

Welfare economics deals with the effects of economic phenomena - production, allocation, and distribution of material goods and services - on social welfare. There is no *prima facie* means of circumscribing a section of social welfare - to be labeled "economic welfare" - in terms of which the effects of economic phenomena may be evaluated. Wherever economic activity, directly or indirectly, affects the social order, we are in the realm of welfare economics.¹⁸

¹⁵ Yin Robert K. 1984. Case Study Research Designing and Method. Beverly Hill, London: Sage Publication

¹⁶ Tambunan, Tulus. 1998. Krisis Ekonomi dan Masa Depan Reformasi. Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia. Page vii

¹⁷ Arifin, MT.1998. Bara-bara Reformasi Solo dalam Perubahan dan Aksi Massa.Solo: Rekaman Lensa Peristiwa Mei 1998. Page 1 - 8

¹⁸ Gintis, Herbert. 1972. A Radical Analysis of Welfare Economics and Individual Development. Quarterly Journal of Economic. Harvard. Page 572 - 399

The occurrence of a lot of unrest in the New Order era was caused by the practice of state administration that had more power approach than legal approach. The law is used as a tool to legitimize the actions of the authorities, including violence against the people. Almost in every province in Indonesia domestic violence happened. The phenomenon of violence acts of torture in the dialectics of law enforcement in this country provided a clear description of how weak the position of citizens or civilians when they had to face with coercive apparatus sheltering behind the authority of the "power" of the state (especially the military)¹⁹

The history of Surakarta began with the transfer of the royal center from Kartasura to Surakarta. In 1743, Kraton Kartasura was damaged by the attack and occupation of the rebels and the Chinese. Paku Buwana II intended to build a new palace in the east of the old palace, and the choice fell on the village of Sala as a new palace venue. KRMHT Yosodipuro (1995) stated that Surakarta was a city founded on February 19, 1745, while M. Hari Mulyadi et al (1999: 19) mentioned that the displacement of the palace from Kartasura to Surakarta took place in 1746. Paku Buwana II then changed the name of Sala village to Surakarta Hadiningrat.²⁰

The emergence of mass riots in Surakarta often recurred, although the causes were quite diverse, that then was regarded as a "historical legacy". Among the experts arose a cross-section of opinions, especially regarding to the causes of May 1998 riots. Some grounded in "myths," for example, according to Peter Carey, "the belief that the ashes of the Chinese were older than the Javanese, so that the Chinese was more Chinese than Javanese ". Another assumption stated by Kemasang, that was the riot happened because of the political divide et impera of the Dutch East Indies government which led to the beginning of the Chinese-Javanese conflict. Meanwhile, according to social psychologists, the riots occurred due to the accumulation of conflicts caused by the difference of lifestyle among them. The New Order government narrowed the Chinese movement only in the economic field, especially business. While anti-Chinese sentiments maintained due to the collusion among several officials with some Chinese businessmen. In fact, the community cognition recorded the collaboration between bureaucrats, military, and entrepreneurs²¹

Surakarta has various names, such as batik city, culture, art tradition, sport, commerce, industry, entertainment, education, relax and "city that never sleeps". But the city that seems cool, calm and relax actually had a pretty horrible history and no stranger to violence, murder, and war. ²² Then there are also various slogans which regarded Surakarta as the first city for some events such as the city for the first Indonesian Congress, the establishment of the first Journalist Association of Indonesia, PON First Disability Patients, and so forth. There are even slogans that bring a national impact they are (i). Surakarta as a short axis which means easy to get into conflict related to SARA issue, (ii) Surakarta as a political barometer for Indonesia. Apart from these various names, since the movement from Kartasura to Surakarta, there had been twelve times conflicts, seven of them were related to riots with ethnic Chinese.²³

E.2. Radicalism and Violence in Contributing Amuk Massa May 1998

In the past decade, the concept of sovereignty has swiftly risen in popularity within anthropological circles, especially in relation to violence in postcolonial and post-authoritarian societies. The rationale of this is rooted in the aspiration to build on and further develop anthropological understandings of conflict and violence centered on the notion of sovereignty.²⁴ The tension here between seeing the other in politico-legal or purely human terms reflects a tension between a hierarchical and egalitarian mode of defining human obligations to others. On the one hand, some people refer to a distributive morality that makes obligation relative to status, social distance, or social identity;

¹⁹ Noegroho, Anggit. 1998. Rekaman Lensa Peristiwa Mei 1998 di Solo. Solo: Aksara Solopos

²⁰ M. Hari Mulyadi, dkk. 1999. Runtuhnya Kekuasaan Kraton Alit. (Studi Radikalisasi Sosial Wong Solo dan Kerusuhan Mei 1998 di Surakarta). Laporan Penelitian. Surakarta: Lembaga Pengembangan Teknologi Pedesaan (LPTP). Page 4

²¹ Ibid. Page 5

²² Mohammad, Jamin dkk. 2002. Penerapan Sanksi Pidana bagi Pelaku Kerusuhan Massa 14-15 Mei 1998 di Surakarta (Pendekatan Sosiologi Hukum terhadap Bekerjanya Penegak Hukum). Laporan Penelitian Dosen Muda. Surakarta: Fakultas Hukum UNS

²³ M. Hari Mulyadi, dkk. 1999. Runtuhnya Kekuasaan Kraton Alit. (Studi Radikalisasi Sosial Wong Solo dan Kerusuhan Mei 1998 di Surakarta). Laporan Penelitian. Surakarta: Lembaga Pengembangan Teknologi Pedesaan (LPTP)

²⁴ Oosterbaan, Martijn and Wil G. Pansters. 2015. Sovereignty and Social Contestation— Between Violence and Alternative Sociocultural Orders. *Journal of Conflict and Society: Advances in Research* 1 (2015): 125–128 © Berghahn Books

On the other, some invoke notions of common humanity. It would seem that people are always in a dilemma, caught between moral and legal, or emotional and political, ways of understanding the obligations to others.²⁵ The anthropology of violence shifted during the late 1980s from an emphasis on the structural and symbolic dynamics of violence to a focus on historical and social practices. The concern for violence exercised through political relations was replaced by attention to the everyday experience of violence, while central concepts such as state, power, ritual, mobilization, and resistance made way for terror, trauma, suffering, subjectivity, and resilience.²⁶ In Amuk Massa May 1998, the using of physical violence by the ruler against his people become the sources of the existence of radicalism which manifested in the form of students' movements and experts criticism toward government policies in the New Order setting. The regime's rulers stigmatize them as anarchy.²⁷

Causes for radicalisation ought to be sought not just on the micro-level but also on meso- and macro-levels: (1). *Micro-level*, i.e. the individual level, involving e.g. identity problems, failed integration, feelings of alienation, marginalisation, discrimination, relative deprivation, humiliation (direct or by proxy), stigmatisation and rejection, often combined with moral outrage and feelings of (vicarious) revenge; (2). *Meso-level*, i.e. the wider radical milieu – the supportive or even complicit social surround – which serves as a rallying point and is the 'missing link' with the terrorists' broader constituency or reference group that is aggrieved and suffering injustices which, in turn, can radicalise parts of a youth cohort and lead to the formation of terrorist organisations; (3). *Macro-level*, i.e. role of government and society at home and abroad, the radicalisation of public opinion and party politics, tense majority – minority relationships, especially when it comes to foreign diasporas, and the role of lacking socio-economic opportunities for whole sectors of society which leads to mobilisation and radicalisation of the discontented, some of which might take the form of terrorism.²⁸

This type of radical planning believe by the young people that enabled them to struggle, especially the university students as the spearhead to demonstrate for the fate of the workers, the abolition of dual function of ABRI, to conduct patterns of mass violence. The New Order ruler arrested radical leaders, even President Soeharto branded them as legitimate anti-government. Radicalism was also done by the rise of Indonesian students in 1998 through demonstrations. In the book "Student Sues: Portrait of Indonesian Student Movement 1998" with the theme "Student Leadership Has Never Wasted" it is written that the pioneering students and educated intellectuals in the reform movement of 1998 started from the movements of concern placed as moral movement on campuses, the voices of the students succeeded in transforming students moment into social moment, building strategic opinion and the movement belonged to the people widely because of the appearance of reform and succession in Indonesia.²⁹

The people were depressed and even suffered by the act of New Order government which justified the cruel acts to frighten the people. It had to be admitted that the success of the nation development was quite blinding the eye. Not only the people of Indonesia were amazed, the world even got amazed to see it. All the charms in fact were fake, after the monetary crisis turned into an economic crisis, spread to the political crisis and then transformed into a total crisis that devastated this republic. Reformation was inevitable, people moved, students put themselves at the forefront of the rulers. Physical conflicts could not be controlled because they had to deal with the security forces, where casualties fell unavoidably on both sides. Radicalism and the ruler who maintained the status quo met the radicalism of the people who wanted a changing happened in Indonesia.

Amuk Massa Mei 1998 seen from the perspective of six dimensions of violence of Johan Galtung, then could be mentioned that the fourth dimension the existence of the subject could be used to describe the violence in the events of May 1998. The violence was direct or personal because there were perpetrators, they were provocateurs and provoked masses.

²⁵ Jackson, Michael D. 2016. Am I My Brother's Keeper?. Conflict and Society: Advances in Research 2 (2016): 4–5 © Berghahn Books

²⁶ Robben, Antonius C.G.M. 2016. Rethinking the Anthropology of Violence for the Twenty-First Century. Advances in Research 2 (2016): 1–3 © Berghahn Books

²⁷ Hadi, Sudarto P. 2005. Dimensi Lingkungan Perencanaan Pembangunan. Yogyakarta: Gadjah Mada University Press. Page 32 - 36

²⁸ Schmid, Alex P. 2013. Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review. The Hague: ICCT Research Paper

²⁹ Fahrur Zaman Fadhly. 1998. Mahasiswa Menggugat: Potret Gerakan Mahasiswa. Pustaka Hidayah

The origin of May 1998 mass amorality was the indirect or structural hardness that works subtly and unintentionally as intended by the fifth dimension. Hidden structural violence occurred when the situation became so unstable that violence was not latent but could easily explode. Such violence was usually done by a military-backed country as it appeared in the sixth dimension. The ugly structure of appearing as an unequal power created an opportunity for mass amok. Amuk Massa May 1998 has seen from the perspective of criminal law considered as a criminal offense because it had violated individual legal interests such as the loss of life, also violated the legal interests of the community because security and public order were disrupted. The legal interests of the country at that time were not disturbed, but it was the country that harassed the ire of the masses so that the events of May 1998 threatened the security and safety of the state.

F. Conclusion

Radicalism and violence were intimately and complementary in contributing to May 1998 mass rampage. The elements of radicalism such as resolving the problem to its roots come in the form of totally transforming, dismantling, tearing down, and breaking down which in practice can take place through coercion, violence, and total confrontation with the goals faced. The theory of radicalism contains the value of emancipation, radical approach based on conflict and brings changes to the structure in society.

From the perspective of criminal law³⁰, May 1998 riots contained many crimes that could be charged using the articles in the Criminal Code, such as crimes against public order provided for in Article 154-157 of the Criminal Code, the crimes of endangering public safety as provided in Articles 187, 188, 191 - 194, 200, and 201 KUHP. Crime against the power of government as regulated in Articles 207 - 208 of the Criminal Code, crimes against morality as regulated in Article 281 of the Criminal Code. The crime of persecution as set forth in Articles 351 - 358 of the Criminal Code, a crime causing a person to die or wound under Article 359 - 360 of the Criminal Code, theft crimes set forth in Sections 362 - 367 of the Criminal Code, rape and persecution crimes set forth in Articles 368 - 371 of the Criminal Code, damages the goods set forth in Articles 406 - 412 of the Criminal Code

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³⁰ Moeljanto. 2002. *Asas-asas Hukum Pidana*. Jakarta: Rineka Cipta

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