

**THE RELATIONSHIP BETWEEN
STATE LAW AND HUMAN RIGHTS IN INDONESIA**

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Abstract

Laws are regulations made by the government. The rule of law is a state that enforces justice that deviates from the rules of a country. Human rights (HAM) can be interpreted as basic rights in humans. Human rights have been given since we were born, so no one has the right to rob human rights, whoever it is. The rule of law is enforced so that people can obey the rules of a country, one of which is to protect one's human rights. The rule of law with human rights is very attached. Because one indication to be called a state of law, among others, the enforcement of human rights, because a state of law without respecting and respecting the principles of human rights cannot be called a state of law.

Keywords: *State of Law, Human Rights, Law Enforcement, Justice*

1. INTRODUCTION

Diverse perceptions of human rights exist throughout the world, particularly in Indonesian. This is a result of growing international concern about human rights violations, and it has a direct impact on Indonesia to conduct their relations and cooperation with developing countries. It is universal in nature because it is seen as the bedrock of liberty, justice, and peace. As a consequence of its universal nature, its protection and promotion are the main responsibility of the government in collaboration with community members. If a violation of human rights occurs in a particular location / jurisdiction, it is regarded a problem and possibility for the community. Individual rights are increasingly being considered as encompassing not just political and civil rights, but also social, economic, and cultural rights. This shift in perspective represents a significant departure from the Indonesian state's conceptualization and implementation of human rights. While the term "rule of law" became popular after the publication of Albert Venn Dicey's book "Introduction to the Study of the Constitution from the Background and the Legal System that Supports It" in 1885, there is a distinction between the two main targets, namely the recognition and protection of human rights. Despite having the same aim, both continue to operate under their own systems, specifically their respective legal systems.

Rechtsstaat is a concept that emerged from the struggle against absolutism and is therefore revolutionary in its origin and nature. This can be found in the content or criteria

of the *Rechtsstaat* as well as the criteria of the rule of law. This can be found in the content or criteria of the *Rechtsstaat* as well as the criteria of the rule of law. Since World War II and the establishment of the United Nations (UN) in 1945, human rights have emerged as a relatively new concept that has become a regular issue of discussion. Because the concept of natural law is tied to the concept of human rights, the term human rights has taken the place of the phrase natural rights. Natural rights became a point of controversy, and the phrase "right of man" that was used later was thought to exclude women's rights from consideration.

Before delving into the nature of human rights, a basic concept of rights must first be established. Rights, by definition, are normative aspects that serve as behavioral guidelines, preserve freedom and immunity, and provide opportunity for persons to keep their dignity. The owner of the right, the scope of the owner of the right, and the party ready to carry out the right are the three parts that make up the basic notion of the right. In terms of interactions between persons or institutions, equality and freedom are important. Human rights are gifts from God, as a result of humanity being God's creation, and they cannot be taken away or eliminated by the government. The state is obligated to shoulder the burden of ensuring that all citizens' human rights are respected, fulfilled, and protected. The advancement of human rights is inextricably linked to the rule of law, because one of the indicators of a state of law is the implementation of human rights.

Due the topic of the rule of law and human rights is rapidly becoming a major issue in the international political arena, this paper discusses the rule of law and human rights (HAM) in the context of university citizenship education.

2. RESEARCH METHOD

The method used in this paper is the literature method that uses a series of activities related to the method of collecting library data, reading, and recording, and managing research materials.

3. RESULT AND DISCUSSION

3.1. Definition of Human Rights and the State of Law

Human rights are inalienable rights that each and every one of us, as individuals, societies, and states, has a responsibility to uphold and defend since they are a gift from God. As stated in Law No. 39/1999 on Human Rights, the concept of human rights is defined as a set of fundamental rights that are built into the very nature of human beings as God's almighty creatures, and as such must be upheld and protected by the state and its institutions, as well as by everyone else, for the sake of upholding human dignity and preserving its honor.

The essence of human rights is an effort to maintain the safety of human existence as a whole through a balance action, namely the balance between individual interests and the public interest as well as efforts to respect, protect and uphold human rights as a shared obligation and responsibility between individuals, the government (government apparatus, both civilian and military) and Country.

Some of the main characteristics of the Nature of Human Rights are as follows:

- a. Human rights do not need to be given, bought, or inherited;
- b. Human rights apply to everyone regardless of gender, race, religion, ethnicity, political views or social and national origin; and
- c. Human rights cannot be violated.

3.2. Human Rights Development in Indonesia

The understanding of human rights in Indonesia as a set of values, norms, concepts in society and a reference for action has basically been going on for quite a long time. The developments in human rights thinking include:

- a. The period before independence (1908-1945):

In the context of human rights thinking, the leaders of *Boedi Oetomo* have noticed the awareness of association and expressing opinions through petitions that were reviewed by the colonial government and in the writings of the *Goeroe desa* newspaper. Boedi Oetomo's form of human rights thought in the field of the right to freedom of association and expression. The debate on human rights thought in the BPUPKI session was related to the issue of the right to equality before the law. The right to work and an improper life, the right to embrace religion and belief, the right to associate, the right to assemble, the right to express one's thoughts verbally and mentally.

- b. The period after independence (1908-1945):

During the 1945-1950 period, human rights thought in the early period of independence still emphasized the right to independence (self-determination), the right to freedom of association through established political organizations and the right to freedom of expression, especially in parliament. The most important thing in human rights is that there is a fundamental and significant change in government from a presidential system to a parliamentary system.

- Period 1950-1959

The period 1950-1959 in the context of the Indonesian state is known as the period of parliamentary democracy. Human rights thought in this period gained a very proud momentum, because the atmosphere of freedom which became the spirit of democracy or palemental democracy gained a place among the political elite.

- Period 1959-1966

In this period the prevailing government system was a guided democracy system as a reaction to Soekarno's rejection of the parliamentary democratic system. In this system, power is concentrated and is in the hands of the president.

3.3. Understanding of Law

There are various definition of law that revealed by several expert, including: (Abdi, 2021)

- a. According to E.M. Meyers, law is all regulations that contain moral considerations, are aimed at human behavior in society, and become guidelines for state authorities in carrying out their duties.
- b. According to Leon Duguit, law is a rule of conduct for members of society, a rule whose use is on members of a society, a rule whose use of power when determined is heeded by a society as a guarantee of common interests and violations of it will cause a common reaction against the perpetrators.

- c. According to E. Utrecht, law is a set of regulations (government and prohibitions) that manage the order of a society and must be obeyed by that society. Meanwhile, S.M. Amin revealed that the law is a collection of regulations consisting of norms and witnesses, with the aim of realizing order in community relations.
- d. According to J.C.T. Simorangkir and Woerjono Sastropranoto, laws are coercive regulations, which determine human behavior in society, made by authorized official institution, and violations of which result in action, namely certain punishments.
- e. According to Van Kan, law is the whole rule of life that is coercive and aims to protect human interests in society.
- f. According to Wiryono Kusumo, law is the entire set of rules, both written and unwritten, which regulates the order in society and any violation of which will be subject to sanctions.
- g. According to Samidjo, law is a set of regulations that are coercive, containing orders, prohibitions or permits to do or not do something and with the intention of regulating the order in people's lives.
- h. According to Amin, law is a collection of regulations consisting of norms and sanctions and aims to establish order in human interaction, so that security and order are guaranteed.
- i. According to M.H. Tirtaatmidjaja, the law is all the rules (norms) that must be followed in behavior and actions in social life with the threat of compensation if they violate these rules.
- a. According to Wasis, law is a set of regulations in written or unwritten form, made by the competent authority, has a coercive and/or regulatory nature, contains sanctions for violations, is shown in human behavior with the intention that the lives of individuals and society are guaranteed security and order.

Furthermore, Sudirman Sartohadiprodjo cites various legal experts who define the law as follows:

- a. Aristotle, "Law in a narrow sense is law when society obeys and applies it to its members, while universal law is natural law".
- b. Grotius, "law is a rule of moral action obliging to that which is right".
- c. Hobbes, "where as way, properly is the word of him, that by right had command over others."
- d. Phillip S. James, "law is the body of rule for the guidance of human conduct which are imposed upon, and enforced among the members of a given state".
- e. Immanuel Kant, "Law is the totality of conditions with the free will of one person being able to conform to the free will of another according to the rule of law concerning freedom".

3.4. Rule of Law and Human Rights

Human rights are gifts from God, as a consequence of humans being God's creation, so they cannot be confiscated or abolished by the state. The state is obliged to bear the burden or responsibility for respecting, fulfilling, and protecting human rights for all its citizens.

It is impossible to separate the development of human rights from the rule of law, because one of the indicators of a state of law is the enforcement of human rights;

consequently, a state of law that does not recognize, respect, and implement human rights cannot be regarded to as a state of law. (Effendi, 1994)

"The state's responsibility for human rights respect is the state's obligation to refrain from acting or adopting policies that violate human rights. The responsibility for human rights fulfillment is the state's obligation to implement, provide, and carry out each human right through its actions and policies. While the responsibility to preserve human rights entails the obligation to prevent, stop, and punish violations of human rights."

Moreover, the concept of the state of law can be distinguished according to the concept of the state of law that developed in Continental European countries known as *rechtsstaat*, and the concept that developed in Anglo-Saxon countries known as the rule of law.

The rule of law according to the concept of *rechtsstaat* was built based on a raw civil legal system, according to Philipus M. Hadjon, the concept of *rechtsstaat* was born from a struggle against absolutism so that it was revolutionary. On the contrary, the concept of the rule of law developed evolutionarily.

According to Albert Venn Dicey's concept (in (El-Muhtaj, 2017)) of the rule of law in his magnum opus, introduction to the constitution, there are three fundamental elements in the rule of law, namely:

1. The supremacy of the rule of law, there is no arbitrary power in the sense that a person may only be punished if he violates the law;
2. Equal status before the law, this directive applies to both ordinary people and officials; and
3. Guaranteed human rights by law and court decisions.

Meanwhile, according to Julius Stahl, the concept of a formal legal state of *rechtsstaat* states that there are four elements of *rechtsstaat*, namely: (El-Muhtaj, 2017)

1. There is recognition of human rights;
2. There is a separation of powers to guarantee these rights;
3. Government based on regulations (*wetmatigheid van bestuur*);
4. There is an administrative court.

According to Sudargo Guatama, quoted by Bahder Johan Nasution (Nasution, 2011), states that the states of law or *rechtsstaat* includes:

1. There are restrictions on the power of the State to individuals, these restrictions are carried out by law;
2. Violations of individual rights may only be based on the rule of law (legislation principles);
3. There is protection of human rights (natural rights);
4. There is a separation of powers;
5. An impartial judiciary;

In line with the foregoing, Sri Soemantri (1992) stated that a legal state must fulfill the following elements:

1. The government in carrying out its duties and obligations must be based on laws or statutory regulations;
2. There is a guarantee of human rights (citizens);

3. There is a division of power within the State;
4. There is oversight from judicial bodies.

The existence of the above elements shows the existence of legal protection for citizens where one of the four elements is the guarantee of human rights for citizens. Hence, this means that the government must always uphold human rights, because this is the meaning of the state based on law.

As a legal state that upholds human rights, Indonesia regulates human rights in its constitution, namely the 1945 constitution, as well as the constitutions of countries in the world (Purbopranoto, 1976). Article 1 paragraph (3) of the 1945 constitution states that Indonesia is a State of Law. Therefore, the conclusion of the rule of law is a state that upholds the rights of citizens and protects citizens from arbitrary actions.

Then in the explanation of the 1945 Constitution it is stated that the Republic of Indonesia is based on law (*rechtsstaat*), not on mere power (*machtsstaat*). From the principles contained in the basic law, it means that the highest power in the State of Indonesia is the law made by the people through their representatives.

Muhhamad Yamin defines a state of law as a state that runs a government that is not according to the will of those in power, but according to written rules made by legally formed people's representative bodies, in accordance with the principle of the law and not menshall govern. In accordance with the spirit and determination of the 1945 Constitution's introduction, it is obvious that the state of law in question is not merely a formal state of law. However, the state of law that Indonesia will embrace is a meteril law state, often known as a modern law state or a state of history. According to manan, a state of equality entails the state or government acting not merely as a keeper of security or public order, but as the primary musician charged with the responsibility of achieving social fairness, general harmony, and the maximum possible prosperity for the people.

As stated in the fourth paragraph of the preamble of the 1945 Constitution, which reads: "to protect the entire Indonesian nation and the entire Indonesian homeland to promote public welfare, educate the nation's life and participate in carrying out world order." The goal to be achieved by the State of Indonesia is the realization of a just and prosperous society both spiritually and materially based on Pancasila, so that it is also called a legal state that has independent characteristics.

Although there are many views about the distinctive features of the Indonesian rule of law, it can be defined by the submission of the rulers and the people, to Indonesian law which is made democratically and based on Pancasila, and shows the recognition of human rights, in other words, the recognition of human rights. Human rights implies the obligation to provide legal protection for every citizen, the State cannot act arbitrarily to limit the rights and freedoms of every citizen.

Restrictions on the rights and freedoms of every citizen must be determined by law with the sole purpose of guaranteeing the recognition and respect of human rights. Thus, it is clearly seen that the function of the law here, apart from limiting the power of the government, is also a limitation on the rights and freedoms of the people which are carried out democratically.

Human rights have been known since the 20th century BC, although some scholars claim to be able to trace the simple concept of human rights to Stoic philosophy in ancient

times through natural law jurisprudence Grotius and *ius natural* from Roman law, it is clear that the origins of the modern concept of human rights can be found in the British, American and French revolutions of the 17th and 18th centuries.

Grotius further developed Aquinas' theory of natural law by severing its tistic origins and making it a product of rational secular thought. With this foundation then, in subsequent developments John Locke put forward ideas about the theory of natural rights, Locke's idea of natural rights is what underlies the emergence of a rights revolution in the revolution that exploded in England, the United States, and France in the 17th and 18th centuries.

The development of human rights internationally took place after the world experienced tremendous destruction as a result of World War II. Roosevelt's ideas, known as the motto, The Four Freedom to speech, freedom to religion, freedom from want and freedom from fear, were a form of his concern for World War II which later inspired the stipulation of the 1945 Charter of the United Nations and the 1948 Universal Declaration of Human Rights (Universal Declaration of Human Rights).

4. CONCLUSION

Indonesia is a state of law. The state of law is a country that upholds the rule of law to uphold truth and justice and there is no power that cannot be accounted for. Indonesia is a legal state as stated in Article 1 paragraph 3 which reads "The State of Indonesia is a special legal state for human rights in Indonesia." Initially, the 1945 Constitution only included a few articles due the differences of opinion.

The relationship between the state of law and human rights in Indonesia is highly respected. Guarantees for the protection of human rights and human rights enforcers are one of the elements that must be fulfilled by the state. This is even explicitly regulated by and stipulated by the 1945 Constitution as the basis for the constitution of the Republic of Indonesia. The protection carried out by the government in the field of human rights also means protecting the human rights of women. As one of the groups most vulnerable to being victims of human rights violations. Hence, it is necessary to pay attention to women's rights in Indonesia.

The presence of two institutions that are engaged in the protection of women's human rights, namely the protection of children, can work hand in hand to realize protection that runs well and efficiently. Those who have evil thoughts and human rights will realize that Indonesia is a country of law that upholds human rights, and is upheld by the government.

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