PERLINDUNGAN HAK ASASI MANUSIA DALAM PERSPEKTIF NEGARA HUKUM INDONESIA

PROTECTION OF HUMAN RIGHTS IN THE PERSPECTIVE OF THE STATE LAW OF INDONESIA

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Abstrak

Wacana perlindungan hak asasi manusia (HAM) selalu berkaitan dengan konsep negara hukum. Indikator sebagai negara hukum ketika tersedia instrument hukum yang menghargai dan melindungi HAM. Tujuan penulisan artikel ini adalah untuk mengetahui perlindungan HAM dalam perspektif negara hukum Indonesia. Tipe kajian atau penulisan artikel ini adalah studi pustaka (library research). Kemudian menganalisis secara kualitatif atau deskriptif dalam bentuk kata-kata atau kalimat. Berdasarkan hasil analisis, dapat disimpulkan bahwa konsep negara hukum erat kaitannya dengan perlindungan hak asasi manusia (HAM). Bahkan substansi negara hukum adalah adanya jaminan perlindungan hukum terhadap HAM. Indonesia sebagai negara hukum telah menjamin adanya prinsip perlindungan terhadap hak asasi manusia dalam konstitusi atau UUD 1945. Kemudian penegakan dan prinsip perlindungan hak asasi manusia tersebut dijabarkan lebih lanjut dalam berbagai undang-undang lainnya, seperti UU HAM dan UU Pengadilan HAM.

Abstract

The discourse of human rights (human rights) is always associated with the concept of the rule of law. Indicators as a legal state when the available legal instruments that respects and protects human rights. The purpose of writing this article is to investigate human rights protection in the perspective of the rule of law in Indonesia. Type of study or the writing of this article is to study literature (library research). Then analyze the qualitative or descriptive in the form of words or sentences. Based on the analysis, it can be concluded that the concept of the rule of law is closely related to the protection of human rights (Human Rights). Even the substance of the rule of law is the guarantee of legal protection for human rights. Indonesia as a state law has guaranteed the principle of protection of human rights in the constitution or the 1945 Constitution. Then the enforcement and protection of human rights principles are further elaborated in a variety of other laws, such as the Human Rights Act and the Human Rights Court.
INTRODUCTION

Discourse of the protection of human rights (human rights) was always concerned with how far the implementation of nation/State by the Government (the ruler) can be said to look at the rights of citizens (civilians). One of the indicators of referable is the availability of several instruments including the institution in a country that is considered a reward and protect human rights. Including Indonesia as one of the countries that are expressly stated in its Constitution or the Constitution of the Republic of Indonesia in 1945 (hereinafter the Constitution) that Indonesia as a State law.

The issue of Human Rights is a universal issue not restricted by boundary-boundary area, so each country should provide the protection of Human Rights through the establishment of a variety of instruments and institutions that guarantee the protection of Human Rights. Indonesia as a State of law in the post reform era of the new order regime has made various instruments and institutions of law enforcement and the protection of human rights. It can be seen from the results of changes or amendments to the Constitution expressly set in its own chapter of the principle of the protection of human rights.

Then the guarantee of protection of Human Rights in the Constitution was followed up again in various provisions of the Act to another, either indirectly referred to the Human Rights or other Act which specifically arrange Human Rights, such as law No. 39 of 1999 on Human Rights (hereafter abbreviated as UUHAM) and law No. 26 of 2000 on Human Rights Court (hereinafter abbreviated to UUPHAM).

Not only through national legal instrument, but in international law also had many set about respect and protection of human rights, such as the Universal Declaration of Human Rights of 1948 (Universal Declaration of Human Right = DUHAM), of the Covenant on Civil and political rights of 1966 (Covenant on Civil and Political Rights ICCPR =), of the Covenant on Economic rights, social, and culture (Covenant on Economic, Social and Cultural Rights ICESCR =). For this second Covenant on Indonesia has ratified it through Act No. 12 and law No. 11 of 2005. So was the Convention on the Elimination of all forms of
discrimination against women (The International Convention on the Elimination of All Forms of Discrimination Against Women), Indonesia has ratified through law No. 7 of 1984. As well as the Convention on the rights of the child (The International Convention on the Right of the Child) that Indonesia has also ratified through presidential degree (Kepres) No 36 in 1990. Still more instruments of international law that governs the protection of human rights.

A very progressive developments relating to the world's attention to the protection of human rights, can be seen with a successful United Nations (UN) establish institutional instruments as well as the protection and enforcement of human rights, namely the Rome Statute of the International Criminal Court, 1998. This instrument, known as the Rome Statute of 1998 of the International Criminal Court. If declarations, Covenant, Convention, and contains only the principles of human rights, whereas the Statute of Rome was already a formal international law because it contains a mechanism of enforcement against violations of human rights.

The existence of various instruments and institutions of Human Rights protection is an absolute for the country which declared itself as a State law. How is the relationship between the protection of Human Rights and the concept of a legal State is the focus of the discussion of this article.

MATERIALS AND METHODS ANALYSIS

In writing this article the author only uses materials such as books related material focus of this article. Type of study is commonly referred to as library research (library research). Then analyze the qualitative or descriptive in the form of words or sentences.

THE ANALYSIS AND DISCUSSION

The Sense And Scope Of Human Rights

Before going to untangle the sense and scope of human rights. As definition the law always gives rise to a difference of opinion, so there has not been an agreement that can be accepted by all scholars to be a universal standard.
Experts only gives a sense according to schools of thought which are adhered. Therefore in the literature of law science found the law varies depending on the understanding from the perspective of the school of thought.

So is the notion of human rights. The scope of the notion of Human Rights is vast, because the question of Human Rights is not limited by the boundary bulkhead of tribe, religion, and race. The boundary of the country, including social, political, and legal, because Human Rights are fundamental rights given by God Almighty to mankind without notice any bulkhead or the difference.

That is why The Universal Declaration of Human Rights (hereinafter DUHAM) or a statement about the world that the Human Rights proclaimed by the United Nations (UN) in 1948 in the beginning its Declaration stated that: the Universal Declaration of Human Rights as a basic implementation is common to all peoples and countries. The goal that everyone and every body in society continually seeks to heighten respect for rights and freedoms with the take action progressively to be nationally and internationally.

The concept of Human Rights is also influenced by the understanding-understanding that developed in each country. Human rights are based on the understanding that many liberals embraced by Western countries, like the United States, is a concept as a reaction against the harsh system of Government that absolutes when it (before 1776 American Declaration). In the proclamation of independence of the United States very clearly affirmed to uphold individual rights (liberty and possession). In contrast to the concept of Human Rights according to the socialist doctrine that emphasizes the meaning of Human Rights on the rights of the community. This concept is clearly giving priority to economic interests or well-being compared to the value of freedom. (H.A. Masyhur Effendi, 1994).

The existence of differences in the understanding of Human Rights was also raised by Samuel P. Huntington (2001) that the differences in the Human Rights problem between the West and the civilization-other civilizations can be seen when the UN Human Rights Conference, held in Vienna in June 1993. In the Conference there are two camps, consisting of the stronghold of Western Nations
with Asia-Islamic Bloc each have ideological differences and economic systems. They are different understanding of the nature of the universality of Human Rights and cultural relativism, priority relative to the economic rights and social rights with political and civil rights.

In the world of globalization today is actually the issue of Human Rights is no longer based on understanding the West (liberal-individualism) and socialism, but it leads to a deeper understanding of human nature (universal). This humane understanding according to Bahar Safroedin (1996) leads to the modern concept of human rights. In General, the modern concept of Human Rights can be interpreted as a right inherent to the human nature that when no, impossible someone will live as a human being. The modern concept is very clearly reflected in DUHAM. International legal instruments concerning Human Rights is becoming a common standard (common standard) for the community and the entire nation in the world in the respect and appreciation of human rights.

The notion of Human Rights that meets international standards is also provided by D.F. Scheltens (1983) and distinguish two notions that, first obtained mensenrechten is every human being as a consequence he was born into a human, both grondrechten is obtained every citizen as a consequence he became a citizen of a country. There is also a grouping of Human Rights according to international standards is divided into four parts, namely: Civil Rights, includes two parts integrity rights, like right to life and due process right, like equality before the court; Political Rights; Socio-Economic Rights; Cultural Rights.

In other languages of the modern concept of human rights, by Chandra Muzaffar (1995) termed a holistic Human Rights. According to Chandra Muzaffar the importance of a holistic approach to the Declarations of Human Rights covering the rights of economic, social and cultural rights and individual and collective rights in the country of nationality (national) and the rights in the international system, apart from civil rights and politics.

In 1948 DUHAM expressly given understanding and Human Rights Division as follows: (Darwan Prinst, 2001)
That human rights are the fundamental rights inherent in the human self is eternal, universal, and as a gift of God, including the right to family life, the right to develop themselves, the right to justice, the right to liberty, the right to communicate, the right security, welfare rights, therefore it should not be ignored or taken away by anyone. Furthermore, humans also have rights and responsibilities that arise as a result of the development of life in the community.

If the content is analyzed, then classification DUHAM respect for HUMAN rights is made up of social, economic and juridical so everyone is required to respect those rights. So the scope of Human Rights not only limited to civil rights and politics but also includes the right to social, economic, and cultural.

In addition to the above classification of Human Rights who notice the difference from the liberal and Socialist, there is also a classification of Human Rights on two types: the type of fundamental rights is minimal (non-derogable human rights) and of Human Rights should not be violated. According to Jawahir Thontowi (2002), fundamental rights at a minimum include: right not to be detained arbitrarily (arbitrary arrest); the right to a free trial and impartial (fair and impartial trial); the right to legal assistance (legal assistance); the right to the presumption of innocence (presumption of innocence), while basic rights which should not be violated, among others, the right to life, freedom from persecution, and of the treatment or punishment that is cruel, inhuman, or degrading, freedom from slavery and forced labor; freedom from imprisonment for debt, freedom of thought, conscience and religion is concerned.

Indonesia as one of the UN Member States have created the legal instruments (national law) about Human Rights which refers to DUHAM 1948. In the preamble of the national laws of Indonesia, namely UUHAM and UUPHAM mentioned that Indonesia has a legal and moral responsibility to uphold and implement the Universal Declaration of Human Rights established by the United Nations. There is also the notion of Human Rights listed in UUHAM and UUPHAM respectively in Article 1 point 1 is formulated as follows:

Human rights are a set of rights that is inherent in nature and human existence as being God Almighty and his grace is mandatory in high esteem respected, and protected by the State, the law, Government, and any person for honor as well as the protection of the dignity and the dignity of human beings.
Then with regard to the scope of Human Rights, then this Division will also appear when discussing the history of the development or the struggle of human rights. On this subject can be described in three stages as a generation raised by Karel Vasak was a leading French jurists. (Ignatius Haryanto, dkk., 2000). The Division is linked to the principle or motto of the French Revolution, the struggle for freedom (liberte), equality (egalite), and brotherhood (fraternite).

The struggle of the first generation of Human Rights include civil and political rights (liberte). The struggle of generations of Human Rights arise because countries in the 17th century and 18 led by kings who ruled absolutely. Aristocratic groups close to the ruling King has special rights (Special). See this condition eventually the community struggled to escape from arbitrary power. The community is demanding the right to life and the development of the non-life such as the right to protection from arbitrary arrest, the right not to be tortured, the right to argue, right thinking and religion as well as other juridical rights.

After that in the second generation in the 19th century, the struggle of Human Rights expanded horizontally, covering economic, social, and culture (egalite). Community struggles in this generation is centered on demands the right to work, the right to an opportunity to meet basic needs such as boards, clothing, and food.

Later in the third generation, toward the end of the 20th century the struggle of Human Rights known as the struggle to realize the rights of solidarity (fraternite). The struggle for Human Rights is no longer solely for the interests of the individual but it’s been a struggle for community groups, such as the right to development, the right to cultural identity, the right to peace, the right to a healthy living environment as well as the safety of the environment.

**The Concept of Human Rights Protection in The Country of The Law**

The concept is predicated on the recognition of legal protection under the laws of the State (rechtsstaat). Thoughts about the State of the law itself has long been discussed by philosophers, such as Plato in some of his work (Politeia, Politicos, and Nomoi) stated that the country should be free of the greedy and evil leaders. To realize this ideal state of mind according to Plato, then good citizens
as well as the organizer of the State (Government) should be regulated by law. (Azhary, 1995).

Then the State law from Plato's concept further developed by his student Aristoteles. According to Aristoteles in his work, Politica, argues that the concept of State law is related to the protection of human rights. According to a State that is both country ruled by the Constitution and laws of the independent. It further said by Aristoteles there are three elements of the rule of the constitutional process, first, the rule was implemented for the benefit of the public; Second, the Government carried out according to the law based on common provisions, not the law made the ignore arbitrary conventions and the Constitution; third, the rule of the constitutional process is the Government that carried out the will of the people, not the force/pressure. (Azhary, 1995).

In essence means to control Government is law and objects or targets that will be protected is people (civilians). Thus the concept of the State of law is closely associated with the legal protection of human rights. Even the substance of the State of law is the guarantee for legal protection of human rights. The philosophy underlying this amendment to the Constitution (third amendment) in addition to stating expressly the legal Indonesia as a country, as well as in the second amendment has been set up in detail on the protection of Human Rights in chapter XA (article 28A – 28J).

Then the concept of legal protection not only with regard to the substance of the provisions of the Act that governs the protection of Human Rights (the concept of preventive legal protection). But far more important is the existence of a legal mechanism setting in conducting proceedings against the substantive terms of the diversion. This concept is commonly referred to with the protection of the "law of repressive", i.e. the existence of a legal guarantee to resolve the cases of violations by those who commit crimes against human rights.

Based on the description above it can be concluded that the concept of State law in essence give emphasis to Government guaranteed a country from arbitrary government action. Means to control government action was legal and the object or target to be protected is people (citizens). The embodiment of State
law for real in the life of nation and State will take the consequences of that legal protection in a country already exists.

In addition to the two Western philosophers, Plato and Aristoteles, there is also the philosophers of Islam that elaborate on the concept of State Law, that Ibn Khaldun. According to Ibn Khaldun (H. Muhammad Tahir Azhary, 1992), there are two kinds of forms of State law, namely the Siyasa diniyah (nomokrasi Islam) and 'Siyasa aqliyah (secular nomokrasi). The second form of State principle difference of this law is that in Islamic nomokrasi the implementation of the life of a country based on Islamic law (Shari'ah), or legal outcome of human thought (ratio), while in the secular legal nomokrasi use only the results of human thought purely. The thought of State law which is enforced by the secular Western countries (other than the Islamic State).

There are other terms that are also related to the concept of State of law, namely the rule of law. According to Muhammad Tahir Azhary (1992), the concept of the rule of law developed in the Anglo-Saxon countries. The fundamental difference between the rechtsstaat and the rule of law is that the concept of rechtsstaat apply administrative judicial system, whereas the concept of the rule of law does not use the Judiciary Administration, because public confidence so great on a public trial. Applying the principles of the Rule of law everyone has the same position before the law, then the regular judiciary is considered enough to judge all things including unlawful actions by the Government, because the judges have integrity and are of very high quality.

In contrast to the opinion of Philipus Hadjon (1987) who still dispute the terms of State law with the term rechtsstaat used interchangeably and the rule of law especially if the term is associated with the concept of the recognition of the dignity and the dignity of human beings and also the mention of Indonesia as a State law. The reason is because in a period of political life of the old order and new order, the term is often used as a mere slogan. Therefore expressly Philipus Hadjon (1987) argues that:

*the State of law is not just a translation of the terminology of "rechtsstaat" or else "the rule of law", but it is a "concept"; and no other not already invoked too easily and take it for granted "legal State (Pancasila)".*
CONCLUSION

Very clear descriptions of the concept of State law closely related to the discussion on the protection of the law and the concept of Human Rights, even the substance of the State of law is the guarantee for legal protection of human rights. That's why Indonesia other than as expressly stated in the Constitution that the State law is also the results of the amendment to the Constitution that the two have been set up in detail on the protection of Human Rights in chapter XI.

Therefore, the conclusion can be drawn that the elements contained in the draft law States that include: recognition and protection of human rights, countries based on the theory of the trias politica, the Government held under law, no judicial State administration in charge of handling the case of unlawful acts by the Government (onrechtmatige overheidsdaad), legal certainty, equality, democracy, and a government that serves the interests of the public.

So was expressed by Frederick Julius Stahl that a formal legal State must satisfy four essential elements, namely: the protection of Human Rights; the existence of separation/Division of power; any Government action must be based on legislation in force; the existence of the State of the judiciary.

Operationally the legal protection concept can be interpreted as the availability of good material, legal instrument or formal which can be used by the State and the citizens of the community to resolve any cases that occur in the life of nation and State.

The concept of further legal protection according to Philipus Hadjon can be distinguished on two kinds, namely: preventive legal protection and legal protection that is repressive. The purpose of preventive legal protection is to prevent the occurrence of the dispute, while the repressive aims to resolve the dispute. The concept of legal protection of Philipus Hadjon is emphasized on the question of the administration of the State, because the alleged preventive legal protection so that the Government is compelled to be careful in taking decisions that are based on discretion. Then if there are already handling the legal protection for the people by the public, the judiciary has included categories of legal protection that is repressive.
**BIBLIOGRAPHY**


