



IMPLEMENTATION OF HUMAN RIGHTS ACCORDING TO THE 1945 CONSTITUTION

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A. Background

On August 17th, 1945 clearly stated that the system of government as a state based on law (rechtstaat), not based on power (machstaat). This implies, that the country including the government and other governmental agencies in implementing any measures, should be guided by the law. The pressure on the law (rechtstaat) confronted as opposed to the power (macht). State law requires that every action must be in accordance with and based on law, not based on the mere will of the governing authority and with the intent of limiting the power and aim to protect the rights of members of the public from arbitrary power. The principle of this system appear, as well as in the formulation of its articles clearly in line and an implementation

What is mentioned above illustrates the conception of State law adopted by Indonesia which are different from other countries. The differences are given the social, cultural and different structures that will provide a distinctive color to the idea of the state law that have been adopted, these differences would bring consequences such as problems in the Implementation of Rule of Law.

Thus The Rule of Law is a device rather than understanding and attitude shown to ensure excellence in the law on political power, economic dominance and social status. A legal system that embodies the Rule of Law is neutral, rational, formally non-partisan and not personal; a rule of law and not the people, not the clan rules of personal choice because it is the Rule of Law in fact a goal in addition to the soul of the legal system.

As a fundamental right which is obtained naturally and is a right bestowed by God Almighty, the rights will be prosecuted and championed by the man himself in accordance with applicable regulations.

From the foregoing it is clear that Indonesia adheres to a democratic system, in the sense of guided democracy and liberal democracy, but Pancasila democracy. Pancasila democracy is a democracy that is based on God, just and civilized humanity, the unity of Indonesia, which embodies social justice for all Indonesian people.

Thus the need for tolerance to achieve just and prosperous society which is essentially intended to support the Government's determination to bring about an era of law and at the same time to make a positive contribution to the realization of equity acquisition justice for all members of society.

The Republic of Indonesia proclaimed on August 17, 1945 clearly state the government system as a state based on law (rechtstaat) not based on power (machtstaat). His reign was also based on the constitution (basic law) is not absolutism (unlimited power).

This is shown in the history that even though the formulation stated is different, but the three Constitution in the preamble of the Constitution of 1945, in the Preamble to the Constitution of the RIS and in the Preamble to the Constitution Temporary (1950), Pancasila was still listed inside of it. Thus proving that Indonesia had been willed Pancasila as the state philosophy.

As we know that not all countries have the Constitution written, but there are also countries which basically rules stipulated in legal norms are not written, 1945 Constitution is the Constitution written that doesn't contain details about the terms of the human rights guarantee.

The rights means the rights inherent in human dignity attached to it as God's creation or the fundamental rights which the divine grace which means that also the rights of human beings by nature that can not be separated from essential, therefore human rights is sublime and personal.

Human Rights are the rights of humans since humans are born and live in a society.





Human Rights in the implementation does not distinguish the nation, race, religion or gender, because such right is human and universal.

Rights - human rights according to John Locke, Montesquieu and JJ Rousseau include:

1. Independence on yourself
2. Freedom of assembly and association
3. Freedom of religion
4. Write Habeas Corpus Rights
5. The right to freedom of thought and of the press.

Formal statement, that Indonesia is a country of law that can be found in the preamble of the 1945 Constitution in Alenia fourth that reads "then drafted national independence of Indonesia in an Act of the State of Indonesia". Then in article 4, paragraph (1) of the 1945 Constitution states: "The President of the Republic of Indonesia holds the power of government under the Constitution about the Oaths of President and Vice President, which reads: uphold the Constitution and execute all laws and regulations with righteous".

In addition, Indonesia also as a democracy or autocracy populist and not the state. In the Preamble to the 1945 Constitution, stated "that is formed in an arrangement of the Republic of Indonesia which sovereignty of the people. And in article 1, paragraph (2) of the 1945 Constitution states also are the hands of the people's sovereignty, and conducted entirely by the Assembly.

As a rule of law and democracy, Indonesia should always be oriented to the enforcement and compliance with the principles that have been decided by a congressional commission legal experts International (International Commission of Jurists) in Athens in 1955.

While a country that can be regarded as a state of law must have certain characteristics The terms of the rule of law has been clearly fulfilled by the Republic of Indonesia, among others, that the basic human rights recognized by the laws of our country. The Republic of Indonesia based on the law in carrying out the wheels of government guarantees or not

regardless of the direction and objectives as stated in the Preamble to the 1945 Constitution that:

To form a government of Indonesia which protect all the people of Indonesia and the entire country of Indonesia, to promote the general welfare, the intellectual life of the nation and participate in the establishment of world order based on freedom, lasting peace and social justice with based on:

Belief in God Almighty, just and civilized humanity, unity of Indonesia and Democracy, led by the inner wisdom of deliberations / representatives, as well as the realization of a justice for all Indonesian people.

So a state of law, is the law that became the rule. Ruling is that the language and understanding the other is called the "fide of law". Thus any actions and steps rulers and citizens, both individually and collectively should be based on the law.

In order to promote the general welfare and the intellectual life of the nation or in applying discretion government must always consider the two base interest, namely its usefulness (deematigheid) as well as its legal basis (rechtmatigheid). this intended to prevent tyrani, arbitrary government. **Uphold the Rule of Law in Society Freedom**

The most severe issue in effect whether or not rights, mechanisms to respected clan upheld by anyone also includes authority. Or in other words is an agency or agencies, both national and international that prosecute and punish human rights violators, the more so if in a country, a government".

Regarding the implementation of the Rule of Law in Indonesia there are several opinions neutral observers from abroad who served researching since the implementation of Indonesia proclaimed its independence, among others: The International Commission of Jurists has several times to send observers to Indonesia, Secretary General of the Commission, Sir Leslie Munro, among others, in order to discuss political prisoners, among others Syahrir and M. Roem order to be treated in accordance with the Rule of Law is getting tested immediately.





To realize the ideals of any statute law made by the state ideally should include three elements, namely certainty, usefulness and fairness. It is a sad thing that after such a length of Indonesia's independence, from ancient to the present Parliament is very slow to set up a variety of national law which result is the emergence of the gap between legal awareness

Act of 1945 constitution is the constitution of Indonesian people who were born amid the struggle for the national independence of Indonesia. It is the constitution that made by children of Indonesia which may be said the representative of the various thought and groups that exist in Indonesian society. The experience of living under foreign occupation to teach them, that the unity and integrity is important as a force for Indonesia.

Thus the manufacture or process of formation of the Act of 1945 constitution is basically characterized by several things, which are:

1. The fact of cultural pluralism
2. The fact of different ideas that have long been influential in the Indonesian society
3. The fact of different interests of groups of society in Indonesia
4. The fact of the threat from foreign invaders who want to recapture Indonesia
5. The existence of the same concern to establish an independent state, sovereign, which is able to protect the citizens of the community, the nation and the country of Indonesia.

Opening of 1945 Constitution which was a shared commitment among the founders of the Republic of the Republic mentions the principles which are the following:

1. Every nation has the right of freedom\
2. The State of Indonesia is an independent country, united, sovereign, fair and prosperous
3. The Government was established to:
 - a. Protect all the people of Indonesia and the country of Indonesian
 - b. Promote the general welfarec. Educating the nation.

4. Participate in the establishment of world order based on:
 - a. independence
 - b. lasting peace. social justice
5. The Republic of Indonesia is based on:
 - a. Belief In The One And Only God
 - b. Just and civilized humanity
 - c. The Unity Of Indonesia
 - d. Democracy, led by the inner wisdom of deliberations representative
 - e. Social justice for all Indonesian people.

Viewed from the perspective of Human Rights (HAM), Body of the 1945 Constitution and its amendments obviously contains many of Human Rights (HAM). The articles directly contains human rights which is:

Article 27 which includes:

1. All citizens are equal before the law and government and shall abide by the law and the government without any exception.
 2. Every citizen has the right for decent work for humanity.
 3. Every citizen has the right and duty to participate in the defense efforts of the state.
- Article 28, which includes:

Freedom of association and assembly, express thoughts and writing and set forth by law.

Article 29 (2) is the guarantee of freedom of religion, reads:

(2) The State guarantees the independence of each resident to embrace their religion and to worship according to the religion and belief.

Article 30 (1) of the defense of the country:

- (1) Every citizen has the right and duty to participate in the defense of the state enterprises.

While the right to receive education is stipulated in article 31, paragraph (I), which reads:

- (1) Every citizen has the right to receive education

Article 33 UUD 1945 is regarding rights than the social welfare in accordance with the principle of Pancasila is the V Principle. This article consists of three (3) paragraph:

- (1) The economy is based on the principle of family together





- (2) The branches of production for the state and the master fend controlled by the state.
- (3) Land and water and natural resources contained therein is controlled by the state and used for the greatest prosperity of the people.

Then Article 34 concerning the poor abandoned children who complete reads: Destitute and neglected children maintained by the state.

Back Sukarno declared that "freedom is not for the sake of liberty itself, but independence is only a requirement to be able to perform basic corrections in the social order and social order and economic relations in the society". "

If it is associated with one of the articles in the Act of 1945 concerning human rights, it is clear alignment of political aspirations for independence and economic aspirations to liberate people from the shackles of poverty caused by the process of structural exploitation both from within and from outside.

Recognition and protection of fundamental rights of the people in the legal field that are nominally set in the 1945 Constitution, Article 27 paragraph (1) and other regulations. Protection of the rights of the people of arbitrary by both rulers either economic ruler, political and others that have not been implemented optimally and well. Here and there still found many cases of how small communities legally blind and helpless, economically and politically treated arbitrarily without significant resistance.

Richard Falk, indicating that systematic violations on human rights has taken place and no less than 116 countries with suggested categories can be arranged in assess serious violations on human rights are:

1. Carnage
2. Official Racism
3. Terrorism in large scale
4. Totalitarian government
5. Refusal consciously to meet human needs
6. Penisakan kwuwakitas environment
7. The crimes of war.

In terms of legislation that already exists still have a lot of deviations such as:

1. It is not uncommon whilst retaining a continuous extended without any requirement under applicable law. Often forgotten detentions. Then the judge's decision adjusted to the period of detention, although the punishment should have been much lower if we see the second.
2. It is not uncommon to hear that a judge has decided issued a provisional arrest someone but prosecutors did not want to carry it out.
3. It is not uncommon that detention and removal without foundation or good reason.\
4. As pointed out by the Faculty of Law Symposium. May 1966, the field of the laws are not uncommon.
5. It is regrettable that not infrequently the National law or any other law only applied if for protecting someone.

Criminal deemed oriented guaranteed protection of human rights in the criminal justice process in practice implementation is still far from expectations. Cases of human rights violations and full settlement of political content. Interaction between officials with the New Order regime still occur in the midst of incessant questions about the authority of the judiciary as part independent judiciary power".

Development of new insight oriented environment or Implications verbal visible

1. The economy is structured as a joint venture based on the principle of family
2. Branches of production are essential for the state and who dominate the country are controlled by the state.
3. Earth, water and riches contained therein controlled by the state and used for the greatest prosperity of the people.

The description reads as follows:

In chapter 33 listed on economic democracy, production is done by all for all under leaders or viewing the community members.

According to Hatta controlled by the state in Article 33 UUD 1945 did not mean the state itself to





be an entrepreneur or "ondernemer". More correct to say that "state power to make regulations contained in order to expedite the economic way, laws prohibiting also the suction of the weak by others who have capital".

The ideal of cooperative Indonesia is against Indonesian cooperative individualism is opposed to individualism and capitalism fundamentally. Understand Indonesian cooperatives create a collective society, customs set in Indonesia.

The main focus of political economic analysis is the nature of interaction between the rulers of the economy in the community through a series of production and exchange. From the analysis will be obtained an idea of whether there is a mechanism that opens the room for a process of economic emancipation of the social strata that in structure or there is a mechanism that actually block the process of economic emancipation of the strata below.

B. Conclusions

It can be concluded as follows:

1. Human rights are the basic rights possessed by human beings by nature Despite the apparent guarantee the implementation and protection of human rights has gained a worthy place in the life of the nation and society, but in everyday practice there are imbalances that harm and is a violation of human rights.
2. Between the concept of the Rule of Law and *Rechtsstaat* have the same goal of protecting people from ill-handedness employers and require compliance by every citizen. Based on the above conclusion, it is clear that the implementation of human rights in Indonesia is still not performing well, despite being assured of the 1945 Constitution "

BIBLIOGRAPHY

1. Abdul Hakim Garuda Nusantara dan Nasroen Yasabari, Beberapa Pemikiran_ Pembangunan Hukum di

Indonesia, Alumni Bandung, 1980

2. Abdul Kadir Jaelani, Bantuan Hukum di Indonesia, CV. Badriyah, Bogor, 1982 AFKAR CIDES, No. 1, Jakarta, 1992
3. Adnan Buyung Nasution, Bantuan Hukum di Indonesia, LP3ES, Jakarta, 1982
4. C.S.T. Knansil, Hukum Tata Ne.-ara Republik Indonesia, Bina Aksara, Jakarta, 1984
5. Emanuel Subangun, Politik Anti Kekerasan Paska Pemilu 1999, Yayasan Alocita, Yogyakarta, 1999
6. J.C.T. Simorangkir, Hukum dan Konstitusi Indonesia, Gunung Agung, Jakarta, 1986
7. KERTHA PATRIKA, No. 47, Juni 1989
8. Marzuki Darusman SH, Konsep Hak-Hak Asasi Manusia, Usaha Nasional, Surabaya, 1996
9. Meriam Budiarmo, Dasar-Dasar Ilmu Politik, Gramedia, Jakarta, 1988
10. M. Hutahuruk, Tentang dan Sekitar Hak-hak Asasi manusia dan Warga Negara, Erlangga, Jakarta, 1983
11. Moh. Kunardi dan Harinaily Ibrahim, Pengantar Hukum Tata Negara, Pusat Study HTN Fakultas Hukum UI dan Sinar Bakti, Jakarta, 1983
12. Mulyana W. Kusumah, Hendardi dan Ruswandi, Demokrasi Terbenam, YLBHI, Jakarta, 1991
13. Mulyana W. Kusumah (ed), Laporan Keadaan Hak Asasi Manusia di Indonesia 1989, YLBHI, Jakarta, 1990

