



VIEW HAM TO PROBLEM SOCIAL IN ERA MODERNUMMI FADILLAH

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Abstract

Right basic man (HAM) is matter which important for enforced because its existence give guarantee principle equality (equality) for all over people man. Inequality between the fulfillment of human rights and the implementation of obligations Unbalanced human rights are still an interesting discourse in Indonesia. For this reason, this research was carried out with systematic approach literature review with the aim of proposing a human rights legal paradigm based on obligations human rights. From a legal research perspective, the nature of this research is categorized into in study prescriptive. Data in this study sourced from regulation/legislation, books and scientific articles from national and international journals relate with draft human rights and law Ham. Results from this study showthat upholding human rights must see the fulfillment of human obligations, because in general general somebody can demand right if has fulfil obligation. With By basing rights on obligations, human rights law will be balanced. It is hoped that this article can become a reference in the application of human rights law in Indonesia in effort build justice between rights And obligation basic man.

Keywords : Right basic man, obligation basic man, justice, legal paradigm

Introduction

Issue about democracy and gender, enrich treasure development world law in era global. So also case about right basic man (HAM), Which no inseparable from issue democracy and gender, occupy their own place in philosophical, theoretical and political dimensions practical. human rights are a timeless issue, to be explored from various perspectives for studied, including: (1) aspect legal which covers declaration general right asasi human/udhr (universal declaration of human rights), international covenant on right economy, social and culture/rights ecosob (international covenant on economics, social and cultural rights/icescr), and the international covenant on civil and political rights/civil rights (international covenant on civil and political rights/ iccpr), as well as from perspective and other human rights instruments at international and national levels; and (2) aspects sociolegal which covers field knowledge history, sociology, anthropology, and connection international. In the Indonesian context, de facto and de jure attention to human rights has existed since the beginning of the drafting of the 1945 Constitution, until the drafting of the GBHN in 1993. Legislative action Another way to strengthen attention and support for upholding human rights is, by the release of Tap MPR No. XVII/ MPR/ 1998 concerning Human Rights, Establishment Kohnasham through Presidential Decree Number 50 of 1993 and continued with the issuance of the Law Number 39 of 1999 concerning Human Rights. Establishment of Law no. 26 of 2000 concerning Justice HAM, nor Court Human Rights Ad Hoc For cases certain. soeHarAction de other jure by Indonesia can be seen from the ratification of several international conventions as a global human rights legal instrument. One of the agreements that is a reference in law HAM in world is UDHR on year 1948, Which provide framework to the next series of human rights conventions. After the amendments were made to the 1945 Constitution in 1999 – 2002, there was an escalation in increasing legislation regarding the protection of human

rights man. Constitution Indonesia (UUD 1945) post-amendment, can said as human rights constitution in Indonesia.⁴ So, in general it can be said that Indonesia is on an equal footing with other nations in facing increasing human rights problems is developing and is becoming a major concern of the world. Viewed from the perspective of moral principles, Rightshuman rights establishes certain standards regarding human behavior, human values, and is regularly protected as a legal right in national and international law. So that, whatever which relate with helplessness good in a way individual nor something group that concerns life, potential become problem HAM. However, in context implementation, although Indonesia has ratify And enforce instrument HAM, problem HAM Still still appear. Based on a number of study literature, problem in handling case HAM in Indonesia, influencedby preparation technical and implementation of mechanisms HAM certain in level national and sub-national, as well as intervention parties which own interests. Problems that always leads to the issue of fulfilling rights, and seems to forget another important side, namely fulfillment of obligations. so the conversation in question seems monotonous time to time. Whereas, combine both of them, right basic and obligation basic, clear isan interesting starting point for what is intended to be a comprehensive study of human rights alone. For that, this study addressed for build paradigm law ham which combining human rights and human obligations. it is expected that the results of this study may be erroneous one paradigm alternative in implementation law HAM in Indonesia.

Research Methodology

This article was prepared following a systematic literature review (SLR) approach. Reason he chose approach SLRs in writing article This is, Because objective from Writing articles is to obtain empirical evidence that supports the paradigm Human rights law in Indonesia, which is based on human obligations. These goals are aligned with the aim of the SLR approach, namely looking for empirical evidence that meets certain criteria For solve problem research. According to Tranfield, Denier, and smart, stages slrs includes planning the review, conducting the review, and reporting and dissemination. Data the empirical data used in this article are taken from statutory regulations, books, journal national, and international which furthermore analyzed in a way descriptive qualitative.

Result & Discussion

The concept of human rights in Indonesia the concept of human rights is the first thing that must be understood to be able to realize it into a more specific instrument. in formulating conception ham at least there is two component which must understood, ie draft right basic whichused in the conception or what people understand about human rights, and so on what things or objects will be protected through these human rights instruments. human rights in Indonesia started from the concept of freedom which was appreciated in terms "independence", is meant as stated in the First Paragraph of the Preamble to the Constitution 1945. Such freedom is based on human existence as a creature Lord, owner substance basic Which No can reduced (non-derogable) by Who just, Because transcendental qualities inherent in it. Therefore, everyone has the "right" to be giving Lord For life in advance earth, Good in form rights civil or political, nor rights economy, social, And culture. Characteristic transcendental as characteristic draft HAM in Indonesia, can seen also in regulation legislation, ie in definition HAM Chapter I Provision General Chapter 1 paragraph (1) Law no. 39/1999 and Law no. 26/2000 concerning Human Rights Justice which reads: "Human Rights Man is set right Which attached on essence existence man as creature Lord The Almighty One ...etc. his" Human rights in this initial concept are not much different from what is stated in Magna Charta, The Declaration of Independence in America, or which emerged in France; Which then gave birth to a universal UN agreement in the "Universal Declaration of Humanity Rights" (UDHR) in 1948. Based on the universality of the concept in Paragraph 1, So the concept of human rights in Indonesia falls into the category of human rights in the first generation be marked emergence International Covenant on Civil and Politics Rights (ICCPR). The independence achieved from colonialism was intended by the Indonesian people as a means to realize justice, prosperity and welfare of the nation. Based on goals the ideals of the nation as stated in the Preamble to the 1945 Constitution, it is no exaggeration that Indonesia from a human rights perspective has the aspiration to actualize that the people or "Children of the nation" have the right to a 'decent' life in both aspects economic, social and cultural. With the basic assumption of universality, it is not an exaggeration if Such a concept also fulfills the meaning of human rights for the second generation who rely on it birth International Covenant on Economics, Social, And Culture Rights (ICESCR)

There are elements in the Indonesian concept of human rights that have similarities with two covenants ICCPR as well as ICESCR, give meaning that substance HAM Indonesia That identical with substance from What Which

known as The International Bill of Human Rights. Board UN (United Nations) set The International Bill of Human Rights That consists on 5 (five) provision each: (1) Universal Declaration of Human Rights, (2) International Covenant on Economic, Social and Cultural Rights; (3) International Covenant on Civil and Political Rights; (4) Optional Protocol to the International Covenant on Civil and Political Rights; (5) Second Optional Protocols to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Indonesian concept of human rights has a basic element in the form of freedom (freedom) as follows stated in paragraph second. But freedom That Still looks faint. "And struggle movement independence Indonesia has come to moment Which happy with Happy Sentosa delivers the Indonesian people to the front gate of the independence of the Indonesian state, which is free, united, sovereign, just and prosperous". This formulation emphasizes aspects Spirit nationality Indonesia as Wrong One nation in world Which free from colonialism. To interest individual (in understanding right inhabitant country nor position), aspect HAM on initially seen Enough placed in 6 chapter just from stem body Constitution 1945, namely Articles 27, 28, 29, 30, 31 and Article 34.12 Placement that is not at the opening no means rights individual That No priority, but with something Meaning that These individual rights are derived from the norms of freedom contained in the preamble to the Constitution 1945. Matter important Which can understood from freedom Which loaded in Paragraph second That is Spirit nationalism And look after principle "Diversity Single Ika." Constitution Indonesia has the value of "protecting" human nature in a fundamental way on divine values, as well as protecting cultural existence, considering the diversity of traditions and community culture Which has become characteristic nation Indonesia. Regarding external influence as an impact of universality, the Preamble to the 1945 Constitution is good Paragraph First nor Paragraph Second, has Enough give framework for country For determine how the Indonesian concept of human rights will be realized. There are two frameworks important in the concept of human rights in Indonesia, namely the aspect of protection of rights that are individual (individual protection), and protection aspects country. Protection individual contain meaning that concept right basic individual nation Indonesia must maintained in framework state obligations For protect everyone its people. The state has an obligation to provide individual freedom of action and applies, both as a creature created by God and as a citizen . All rights and individual obligations agreed in "contract social" Which together strive to realize the nation's ideals, as reflected in the Fourth Paragraph of the Constitution 1945. In framework draft protection country, including also in inside problem environment And territorial Which must maintained. matter this actually in a way no direct become part important in HAM If related with development HAM generation fourth.

Basic Obligations vs Right Asasi

Legal development refers to comprehensive strengthening efforts in inside there is meaning revision, Good Which concerning revision draft (conceptual revised) as well as procedural revisions (procedural concept). The main thing in this matter is none other than revision at the concept level. Refers to the basic concept of human rights which contains three important elements: Responsibilities, Obligations, and Rights as already mentioned In the previous description, there are two points that are worth reviewing, namely the issue between rights and obligations. The need for the issue of the concept of equality of obligations and rights, gets serious attention because there is a tendency in a conflict, rights always get place top. It means, there is trend prioritize right just And rule out something matter Which not lost basics also, ie obligation.

Obligation and Right In Dimensions Philosophical

Meet two matter, "obligation And right", give rise to two perspective which diametrical. One views the obligation as being in one unit as a whole assumption, whereas Which other looking problem obligation That There is on part other. The first assumption has the consequence that the issue of rights is essentially more important than liability issues. Rights in this view take precedence, considering it as His gift. So it is inherent in every individual's life and cannot be removed just like that. What is meant by rights here are "special advantages" of humans that are not can be contested. Obligations in this context arise as an implication of rights, namely more directed towards efforts to fulfill (support) demands for human rights. Obligation in matter This is idea And at a time ideology For realize matter other, ie Wrong the only one in the form of rights. Henkin wrote and in this context have in common that: "The idea of human rights, however, is a particular idea in moral, legal, and political philosophy, and a particular politics ideology. The role and function of obligations encourage (to accelerate) the existence of rights as a mechanism which is epistemologically intended to obtain the phenomenon of responsibility (responsibility) to right Which nature essence intended. In practice life law, people who do not carry out their obligations to maintain

these essential rights, for example taking someone's life will require legal responsibility, for example through demands criminal Chapter 338, 340 of the Criminal Code And provision other. Assumption second precisely Far different. Right in view This arise as reason rational to support obligations. Obligations are the main gateway to seeing the order of rights with various implications. In economic, social and cultural aspects, this is recognized by Theo Huijbers: "... the obligation of each individual to build a life together, because of course when No There is that donation, those rights can not realized." A inhabitant country own obligation Which big to country, look after the existence of the state and the goals of the state itself, so that the state can grant rights to it For accept various obligation next. In field civil, on moment something engagement formed, in accordance with Chapter 1234 BW, engagement That become something Constitution which is binding on the parties involved.¹⁷ The main essence of an agreement is nothing else is a set of obligations to comply with the contents of the agreement, so that those rights can be fulfilled can appeared. Default is consequence law on No fulfilled something obligations.¹⁸ Humans are born carrying divine gifts in the form of obligations which are followed by various fundamental rights which are solely to support their respective obligations. He has the right to education, protection and independence, in order to fulfill obligations which he served as creature Lord.

Obligation and Right In Dimensions Theoretical

The (good) values of life are measured through the pattern of implementing those obligations alone for then matched with yardstick measuring to what extent right that can actualized. Context and content from both of them play role And function important Which real, that obligation basic is the gateway to realization rights. Prohibition is a form of command as well as an actualization of obligations basic. A driver forbidden For release "safety belt" during drive the vehicle, contain Meaning so that can obtain various right, for example comfort And security. At least, driver Which thereby That, will obtain freedom in the sense of not being stopped by officers in the field who could hinder them his journey. Even avoid it himself from various loss other. From the description above, it can be understood that the opinion arises that obligations basic in practice considered role as an indicator performance (performance indicators) Which According to Masyhur, it is divided into 2 (two): first, which includes individual duties and obligations to society (human duties and responsibility of the individual to the community); And second, obligation individual to individual other (duties of the individual to other individuals).

Obligation and Right In Perspective Islam

The fundamental commitment in Islam is to hold the highest and/or most rights Fundamentally, the most powerful is Allah SWT. Whatever rights there are, Allah has his own label ie "Maha". He Which arrange whatever including create man with accompanied fundamental provisions, namely the obligation to uphold a basic obligation: self-recognition of His creation as a "Maxim" of the Qur'an in Surah Adz Dzaariyaat verse 56 in full firmly stated: "And I did not create jinn and humans except for them worship Me." The meaning of this verse is that humans were first created with something The first obligation is to worship Allah the Creator and not glorify it right moreover first though matter the is His gift Also. The essence of obligation - as the Koran in its theological dogma states in a way deductive nor inductive give birth to obligations other with objects For example, there is an obligation to maintain survival, to protect oneself from disgraceful actions, improving one's quality in the inner and outer sense. Objects This is how we elaborate it and then call it inherent human rights in humans. Allah always uses the term "...it has been enjoined on you..." in many of his commands, both in the form of commands and in the form of prohibitions, nothing else is rationalization religious at a time rationalization sociological on existence man. In the Islamic view, rights exist following obligations. History of Adam and Eve which is required by God to acknowledge His power and obligation to occupy the earth and the environment as land life followed exists right For guard continuity life next. The creation of a pair is a religious symbolization of an obligation to look after sustainability descendants Which in inside will give birth to right basic for example, the right to life for a child as a result of marriage and so on Based on theological dogma in Islam, it can be concluded that basic obligations are obligations Which covers 3 (three) orientation, each:

- a) Obligation vertical, ie obligation substantive man, to the Creator (Allah) in frame obtain right from Allah;
- b) Horizontal obligations, namely the obligations of an individual towards other individuals within aspect society (society);
- c) Obligation internal (personal), ie obligation to himself Alone in frame fulfill other obligations that may arise as a result of changes in the environment, time, and circumstances. A human being is obliged to maintain and care for himself from various conditions can detrimental to him.

Third obligation the of course own phenomenon “self-oriented” in inside Andas if making the individual a central role in terms of obligations vertical, horizontal, let alone internal. However, this orientation is not actually the case as attitude For adore you man in context the individual but in in Islamput man as creature Which most perfect in between creatures other. Ideas that are oriented in individual aspects are actually a characteristic of existence rights based on western ideology. This can be seen from John Stuart's view of "Rights and Liberty" which argues that: “The idea of rights has strong roots in individual "liberty", ...a larger freedom which includes freedom of conscience, of thought and feeling, opinion and sentiment, and of individual autonomy...”. However, western and eastern ideologies are characterized by Islamic ideology as one form of eastern ideology, it must be admitted that at one point it can have similarities but that similarity No other as consequence exists effort universality problem right. Which Certain in development, He own equality when stages development applies in a way universal which can form myth as beginning and ends on stages knowledge.

Obligation and Right In Dimensions Political

When political connote policy so on moment thereby in a way automatic all policy in form rules law including rule law about HAM experience the process of having that becomes a rule that is full of political interests. In condition Thus, there is a wide opportunity for rights issues to become a political commodity The main point lies in human rights violations. Before the last presidential election This phenomenon was very visible when Wiranto was hit by the central issue of being a human rights violator case Timor Leste Which done by opponents its political. Even this power struck policy national For enforce principle retroactive in case Bomb Bali. In political perspective, obligation basic acted as subject And right as object. This means that anyone (in an institutional sense) is considered to be the party who fails to fulfill something forms of human obligations, for example protecting the safety of citizens, maintaining peace and and so on which are none other than the object of the human rights problem itself. Prosecutionsuch negligence is nothing but the implementation of political policy and thaton political power as well as various standard principles," Noellum Delictum Poena Sine Pravea Lega Poenali” in criminal law tends to be violated by accept the principle apply retroactively (ex post facto laws = retroactive principle) as stated by Robin C Trueworthy in paper title Retroactive Application of the Anti-Terrorism AndEffective Death Penalty Act of 1996 to Pending Cases. Not can avoided Then arise conflict in efforts to enforce rights What is meant is which can trigger the emergence various arbitrariness. It is from this political perspective that it will become clearer that it is actually a human obligation play role important in frame actualize rights Which during This become prima donna in field law. There is or No exists something obligation basic will influential big to What Which intended right basic. This It means, that problem Human obligations from a human rights perspective cannot be taken lightly. He plays between laws that change form in the political realm, and/or politics that change their form as strength on Name law. Country in aspect democracy has access obligations basic Which must given to its citizens, who within the social framework and institutional arrangements fulfill the following What marked by Elster: “(1) facilitation free reasoning among equal citizens by providing, for example, favorable conditions. for expression, association, and participation (2) tie the authorization to exercise public power and the exercise itself to such public reasoning, by establishing a framework ensuring the responsiveness and accountability of politics power to it's through regular competitive elections, conditions of publicity, legislative oversight, and so on.”

In framework Which more wide Again, political world has play role significant Forttriggering every country in the world, either voluntarily or coercively, to accommodate various regulation international in case obligation And right basic man. Something country must be willing to be "watched" by other countries in this context. Wirajuda (2001) illustrates with words: "One of the reasons for the increasing attention of the international community to human rights between other caused by the more progress technology communication Which the more close up relations between countries in a "global village". In such a situation, a violation Human rights that occur in a country will be very easy to follow and become a concern the entire world community. Therefore it is impossible for a country to "hide" And cover up happen violation HAM. To exists element political recognized Hassan: "However thereby need remembered that involvement Board Security is political decisions from the UN and sometimes there is political content that influences the decisions Board Security. However thereby, in a way general can said that involvement Board Security will occur if the country does not have the ability (inability), for example it does not exist government Which effective (ineffective government), government No will (unwilling) for example because there is a political interest in protecting officials/figures national to do prosecution to violation heavy HAM. Political in meaning policy explained in a way plain that government sell it In fact, that plays a role in what and how those obligations and rights are will be disclosed to the public. Various policies can be made at any time

placing obligations as the foundation for building rights and vice versa. Strategy from something called human rights depends on the government. Richard Falk wrote that: "For various reasons associated with public opinion and pride, governments are quite ready to endorse (even formally) standards of human rights despite their unwillingness to uphold them standards in practice..."

Effort Build Paradigm Law HAM Indonesia

The universalistic understanding of human rights that is often put forward in legal aspects is not something absolute, so is particularistic ideology. That means, it's possible something that contains the nature of universality, for example justice and so on. But that's it must reach the stage of implementing the substance of what is contained in the term That Alone. Implementation something generally No know universality Because He will very depending on the situation and surrounding conditions. At least in legal practice, a nation have different laws from other nations because there are differences in life history and its culture. Likewise, the concept of justice is also influenced by social views cultural differences between nations. However, in terms of social justice, globalization give big impact on equalization of perceptions between nations. Referring on understanding in on so Indonesian choice is draft HAM Which still in Spirit nationalism with still notice atmosphere HAM in draft international countries. To achieve such an idea steps are needed conceptual measurable (defined conceptual formation) Which its nature holistic No Partial accompanied stages continuous revision.

1. Effort On Stages Ideology and Constitution

Which intended ideology in here is corner look nation Indonesia to HAM Which the ingredients in a way normative juridical found in the nation's constitution. Ideology in a broad sense is not just what is stated in a paragraph fourth Which named Pancasila but all paragraph which exists in opening itself as a unit. Ideology cannot be changed, because it changes The ideology then changed as well as the Indonesian nation which was also accompanied by changes the substance of the nation's "social contract". Therefore, in the context of conceptual revision and procedural must start from the constitutional level

2. Effort On Paradigm Stages HAM

Paradigm must be acted as focus revision to dimensions revision next if it is seen that there is a development that must be accommodated by human rights. Development as an implication of improving certain sciences touches various aspects life in various sectors well individual, group or country.

3. Effort On Stages Policy and Legal Instrument

Policy is a realization or illustration of an understanding of ideology, which is ingredients found in constitution with awareness to existence paradigm which is growing. Such an image is then expressed in form regulations legislation as one of the instruments law. The emergence of a policy must go through stages in accordance with the rules there is as well as legal logic. Law is a legal instrument as well as a written representation wisdom. According to the rules, it must exist after there are things allows it to exist; The concreteness of the law must exist if the substance already exists in constitution. Whereas in accordance with logic law intended He There is Because there is already substance to it and therefore, it cannot exist in that state contradictory with substance previously or in on it (lex superior derogate inferior). If a conflict of substance arises, then the lower position must be eliminated or done revision to eliminate legal gaps.

4. Effort In Stages Implementation Law HAM

Based on Merilee G. Grindle's theory, the implementation of a policy is generally happen in countries third (develop) relate with two matter: context and contents (content). Context consists of (1) Power, interest, and strategy of actors involved (power, interest, And strategy para actor Which involved); (2) Institutions and regime characteristics (characteristics of institutions and regimes); and (3) Compliance and responsiveness (in accordance with rules and level of responsiveness). In the context aspect, implementing a revision, taking the example of an Amendment both the 1945 Constitution, regarding points (1) and (2) in the sense of power interest, as well as strategy including the mechanism has arranged in various instruction policy for example in GBHN and Proenas. What is stated in the Directive is indeed is material the important one For studied. But, regarding points (3) that matter must be observed in a way deep Because related with structure And culture law.

This might happen if the implementation of human rights is carried out without respect traditions that exist in a particular community group. Various human rights cases in forms of violation of customary rights, which involve land issues, are quite potential become a problem in upholding human rights in Indonesia. Some of these cases

include: a. When the residents of the village of Kanan learned that the contractor's bulldozer had destroyed it around 100 hectares of forest and field they as well as both area grave, they also angry. They have twice reminded PT Harapan Sawit Lestari (HSL) as well official local. That they will not give up any of their traditional land for plantations Palm oil. After a village meeting on July 18, they decided to took over the bulldozer. In the evening, the Canal community held a celebration customary law trials. The demands are very serious; for the Dayak population of Jelai Sekayu, defacing the grave area is the same as murder. The decision is appropriate local customary law, HSL must pay a symbolic fine for damage to forests and burial areas. The form is in the form of handing over traditional houses, tools musical instruments and antique vases in addition to food and drinks - worth IDR 150 million in form of money. The bulldozer driver agreed and stated that HSL would pay the fine on date Which has been determined. Instead of paying a fine and resolving the tension directly with community, HSL even involved the Ketapang regional government. The Regent then held meeting on date 10 August Which attended by DPR, HSL And local NGO Which selected. The Customary Council formed by the government was also present. There were no representatives from Canal because the community does not agree with third party interference. Meeting heats up and far from solving the problem, it becomes even more complicated. NGO local people are accused of being anti-development and considered terrorist instigators local communities and No recognize authority country (Down to Earth, 2002).

Conclusion

Placement words with order right And obligation, motivating birth corner The inaccurate view is that rights occupy a position above obligations. That right substance is at in on substance obligation, Still need studied more deep. Glorify The meaning of rights over obligations is more oriented towards western philosophy and paradigm. That matter actually contrary to more 'eastern' philosophies and paradigms focuses the issue of obligations above rights. Equality between obligations and rights is key main role in the implementation of human rights as intended in the context of the paradigm law Indonesia. Justice ideally carry meaning equality, in meaning "balance position" in frame realize circumstances "appropriate" for life man. Appropriateness animating in every breath the implementation of rights, while still seeing obligations as a benchmark measuring. Meanwhile, efforts to build a paradigm for Indonesian human rights law must be carried out in an integrated manner gradually. It means right basic man can materialized with Good If be equipped with building legal paradigm, as well as legal instruments. The legal building in question was realized in form institutional and internal form rule legislation. Institutional is a means of force (enforcement body) against existing rules, for arrange and assess to substance regulations which it contains.

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