

Natural Rights in Relation to Freedom of Democracy

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ABSTRACT

Freedom and independence from colonial oppression is a nature, inherent in every human being. This is the basis for the birth of various independent and sovereign countries throughout the world. It is as the instruments in the framework of liberation, namely democracy. The meaning of democracy, namely a government based on the will of the people, the sovereignty of the people, and thus guaranteed equal rights and the right of freedom. The problem in this study is how the implementation of basic rights related to democratic freedom? The purpose of the study is to analyze the basic rights related to democratic freedom, with normative juridical research methods. The results of the study that the implementation of natural rights in relation to freedom of democracy is an obligation that must be fulfilled, for example in the right to freedom of movement, travel and relocation, the right to freedom of expression or opinion, the right to freedom of choice and active in an organization or association. These natural rights are the rights that have been possessed by every human being since he was still in the womb. If seen from democracy in Indonesia which has the Pancasila ideology, democracy is inspired by Pancasila values, namely People's Democracy which is led by wisdom in deliberation/representation, which has the One Godhead, fair and civilized humanity, which is united in Indonesia and socially just for all Indonesian people. Consequences in the life of the state must recognize the existence of God Almighty, thus giving birth to people who have Pancasila morality. Thus the basic rights based on the Almighty Godhead can guarantee the implementation of a healthy democracy.

Keywords: *natural rights, freedom, democracy*

1. INTRODUCTION

The fundamental rights and freedoms must be linked to the life of a democratic state of law, where the life of the state is governed by a state charter called the constitution or the Constitution. Other fundamental rights and freedoms are called Human Rights. In essence, those rights go far beyond their recognition of the Constitution, or in other words, to the extent recognized by the constitutional law.

What is the difference between rights and freedoms (Recht en Vrijheid), as an obligation imposed on a democratic legal state, where in the life of a nation and its citizens there is a need for freedom and order? It rests on the definition of the term fundamental rights and freedoms as an embodiment of potential and potential qualities. On the basis of these attributes of human privilege, known in terms of religious homo, homo sapiens, homo faber, homo economicus, and socio homo, these potentials require assurances in community and national life.

Therefore, every human being has a natural desire for freedom, that is, the desire to convey something and that desire without being constrained by anyone. If these desires are diverse and contradictory, then the result is violence. So in the end who is strong, that's who wins. The freedom to express all desires, which in essence is for the strong, the physical or the psychic. Thus, no one is completely free, nor is anyone completely free.

When it comes to freedom, it is impossible to break free from human interests with other human beings in order to realize what is important. If all humans have interests or needs with the same object, then this will be a struggle for humanity.

John Locke (1632-1704), the first person to give birth to the theory of Human Rights, argues that human beings are social beings who are interrelated. To human beings the inherent rights of nature are the right to life, the right to liberty and property (life, liberty and property).

Given this background, then the key issue is how to implement basic rights related to freedom of democracy? The purpose of this study was to analyze the fundamental rights associated with freedom of democracy, by the method of normative juridical research. It is hoped that this study will be one of the reforms of the law, in order to create a law that is in line with the values that are evolving in society, as the integrative law of law is not a definite object (object). The law is invisible, but it must be felt.

2. METHODS

This research is a normative legal research (juridical normative) is a method of legal research conducted by examining library materials or secondary data. Secondary data analyzed in this study include: the 1945 Constitution, Law no. 42 of 2008 concerning Election of President and Vice President, Law No.15 of 2011 concerning Election Organizers; Law No.8 of 2012 concerning General Elections of Members of the People's Legislative Assembly, the Regional Representative Council, and the Regional People's Representative Council, Law No. 7 of 2017 concerning Elections, as well as the Constitutional Court Judge's Decision No.14 / PUU-I / 2013 . The analytical method used in this study is qualitative in nature, namely the truth of the data / final premise is determined by the researcher himself. The form of the results of the research will be presented in a prescriptive-analytical form.

3. RESULTS AND ANALISYS

1. Human Concepts and Human Rights

The discussion of Human Rights is incomplete without beginning with the concept of the human being as determined by its Creator, and the view of man towards man.

According to Islam, human beings are high beings, as depicted in the Qur'an, higher, and repeatedly elevated, but repeatedly degraded. Where it wants to be categorized, the right lies with the individual who decides the attitude. From a human point of view it can be said:

- Humans are the caliph of Allah Almighty on earth
- Humans have the highest intelligence capacity
- Humans have a close relationship with God
- Humans have a great set of heavenly elements
- Human beings of choice
- Humans are free and independent
- Humans are endowed with noble values and dignity
- Humans have moral awareness
- Man with a soul will never be at peace except by remembering Allah Almighty

The Creator through his apostles and the last Muhammad the Messenger of Allah. His sermon is a sermon themed on human rights, which contains the following basic tenets of human rights: The will of the prophet Muhammad Saw, beginning with: "I will give you a statement (declaration) which is a will, because I do not know if after this year (performing the pilgrimage) I still meet with you all where I stand today."

1. Every human being is responsible for his actions. A father is not responsible for the crime his son committed; so is the son to the father;
2. Everyone has the responsibility to safeguard the security of the soul and the safety of other human property, which is an essential condition for the development of world peace and prosperity;
3. Every person entrusted with trust and trust, both moral and material, shall take care of it;
4. Statements of abolition and its various forms that oppress the weak, which is one of the means of human oppression of man;
5. The affirmation of recognition of women's rights in general, the rights of spouses of reciprocal spouses;
6. The statement of a Muslim with another Muslim is relative and should help one another;
7. Declaration of abolition of national differences, skin, social standing, funds etc.

And the will ends with: "I leave you two affairs (holdings) if you hold on to both, then you will never be lost. They are the Book of Allah and the Sunnah of the Messenger". (Broni, 1978)

In this process several texts have been born which gradually stipulate that there are some rights that underlie human life and are therefore universal and basic. The text is as follows:

1. Magna Charta (Great Charter, 1215), a document that records some of the rights granted by King John of England to some of his subordinates for their demands. This manuscript at the same time limits the power of King John.
2. Bill of Rights (Law on Rights, 1689), a law adopted by the British Parliament after succeeding in the previous year held resistance against King James II, in a bloodless revolution (The Glorious Revolution of 1688).
3. Declaration des drafts de l'homme et du citoyen (Statement of the rights of human and citizens, 1789), a text that was coined at the beginning of the French

Revolution, as a resistance to the authority of the old regime.

4. Bill of Rights, a text compiled by the American people in 1789 (the same year as the French Declaration), and which became part of the constitution in 1791.

2. Freedom and Democracy

A. Freedom

Everyone wants freedom. Want to not be bound. Can express always his will and desire without anyone being restrained. Strangely, aside from his own expectations, there are also others - many, in fact, probably all people who have the same desire. It can be imagined how the consequences, if the desires are diverse, especially if many kinds are conflicting desires and wishes. The result is nothing but violence. Thus finally: who is strong, that is what wins. Thus, it turns out that the freedom to express all wills is only valid for the strong, strong, physical or psychic.

But what do we get from the above description? It turns out that no one has full freedom, nor does anyone have freedom at all.

In the end, if there is absolute freedom, which is said to be the same, it must be subject to a law, that is the law of freedom with all its manifestations. If humans are eager to seek freedom, they must also be willing to give up on the freedom he adores and praises. And the laws of freedom are formed. But what exactly is freedom and the law of freedom? War, battle or slaughter of humans by humans? Deprivation of human rights over other human beings? But since when have these rights existed?

Hypothetically, does the historical development show that at first the strongest can dominate anyone, and finally whoever feels himself incapable, he must submit to who is the strongest, the most able to assert his freedom, and whoever this is ultimately under one person, then unite, group, and later there will be other parties who proceed as they and groups arise.

These groups can arise because of their own initiative, but also because they react to other groups. At first irregular. Entirely irregular. Increasingly more self-regulating. A leader is formed or more precisely: a leader is formed, first single, then there are representatives. But the nature and nature of violence based on the freedom of the leader still persists.

United States President Roosevelt, on January 16, 1941, announced four basic human freedoms which must be respected at any time and at any time. The four basic freedoms known as "the four freedoms" are freedom of speech and expression (freedom of speech and expression), freedom of religion (freedom of every person to worship God in his own way), freedom from deficiencies (freedom from want), and freedom from fear (freedom from fear).

On this occasion, what will be explained is about freedom from fear. Because, the right to freedom tends to be increasingly violated today. In fact, it is no exaggeration to say, if this freedom is threatened, other human freedoms are also threatened. Just imagine, if a human being is overcome by fear, there is nothing more that can be done and no more calm that can be enjoyed. For example, if a person is threatened or forced to choose or adhere to an understanding, his freedom of thought is lost. In other words, the loss of democratic rights.

Likewise, if a person is forced to embrace a religion, his belief will also be damaged as a source of grip and peace of life. In other fields which also creates fear for the community, especially the small groups of people, it is often that they receive threats in the form of disruption of their rights so that their lives are disrupted. For example, there are still many lands where dispute status is forced to be taken unilaterally by certain people / parties against the law, and so on.

Another form of violation of the right to freedom from fear is that more and more crimes occur in the form of robbery, rape, and murder, which are carried out in a sadistic manner. In addition, extortion, extortion and the like are still found, which also creates fear among the public, especially small entrepreneurs. If in a country human rights violations are still free as stated earlier, it means that the country has not been disciplined or the law in that country has not been fully respected. And, no matter how high the country's yields or revenues, if human rights violations are still rampant, all those results have no meaning for the people.

Therefore, basic human rights in the form of guarantees of freedom from fear should be prioritized. Feeling free from fear is more guarantee of peace of life than successfully obtaining material income. Because, whatever has been achieved, if we are still overcome by fear, our income is also not useful. Say, Luta has a beautiful home, but we cannot sleep well in it because we are overcome with fear. Someone's happiness is marked by the serenity in his heart and the freedom to think and issue opinions. Intercourse between people or between nations can only be fostered if fear does not threaten their lives.

That is why, the basic right of freedom and fear has become one of the most important basic rights. President Roosevelt did not accidentally declare these basic rights without purpose. The deceased former American president had certainly thought how disastrous it would be to reach a human if there was rampant fear that haunted him. Violence in Nazi Germany, which destroyed mankind in Europe is an example.

Therefore, freedom of thought and expression, and other freedoms to continue life, need to be guaranteed and upheld. Because by allowing human rights to be trampled, it means providing opportunities for the spread of fear. And if that happens, that is, the increasing and the spread of fear, there will be no more life for humans to enjoy.

To prevent fear, as stated earlier is certainly not easy. Because, it is not enough to advise a person or group of people to get rid of their fears, if indeed they are facing threats or coercion. Also, it is not enough to encourage, even force, a party that is threatening others so that they stop the behavior that is not commendable.

What must be done is to eliminate the cause of freedom for someone to fear others. For example, employers / officials must be tightened by regulations that make it difficult for them to force others. Or for a product of law, it should not contain provisions that ensnare so that it appears to cause fear for the community, such as the Law on the Eradication of Subversive Activities (Law No.11 PNPS 1963). An official must know very well the limits of his authority so that he is encouraged to stop his freedom to act beyond the limits.

The rampant crime and violence in the community, which causes widespread fear, needs to be addressed immediately. In addition to taking awareness steps to get back on the right track (persuasive and educative approaches), the repressive steps also need to be improved.

Therefore, that basic human rights need to be guaranteed freedom from fear, because feeling free from fear guarantees peace in life.

B. Democracy

In this world there is some understanding of democracy where human rights stand on it. What is known as the word democracy is the embodiment of a cultural level, that is, a moral compass based on the recognition of personal values, the recognition of human freedom, and hence the right to physical liberty and spiritual freedom, the right to citizenship and the right to securities thing.

Therefore, what is called democracy involves linking moral values with actions and actions.

However perfected the order of the State is formally governed by all its constitutions and tools, democracy will not flourish if the people's own soul does not have the understanding and feeling needed for the fundamental growth of democracy as a holding of life. Democracy should not be viewed solely in terms of rights, but rather should be interpreted as the freedom of duty and the willingness to sacrifice one's self or group for the greater good, that is of public interest or national interest, and even more so in the interests of the human world.

The realm of democracy demands the realization that the self is a part of society, so that the democracy has a demand for everyone to be at risk or tolerant of others. Culture leads to differences in the exercise of rights and fundamental freedoms in a State that declares itself a democratic State.

In the Republic of Indonesia the democracy is Pancasila democracy. That the people of Indonesia have learned the habit of negotiating and agreeing to discuss common interests, have come to the forefront of public or community interests rather than personal interests and that their patterns are cooperative.

This kind of democracy is inspired by the basic philosophy of the Indonesian nation, not just as a homosexual community but the Indonesian people as a religious religion, where religion orders to act and act in accordance with the rights and obligations of achieving harmony in life. a society far from the nature of secularism, but with the foundation of the faith and good works (*amanuwaamilushalihat*).

C. Democratic Democracy

Pancasila democracy is a democracy that is colored or created by Pancasila, even one of the ideas of Pancasila, namely "Citizenship led by the wisdom of wisdom in representation / representation", is a brief formulation of the idea of Pancasila democracy. It should be noted, however, that the pallet of Pancasila is a unitary unit, which is inseparable, but that each contains four other seals, qualified by the other four seals. (S. Pamudji, 1981: 14)

So the democracy of Pancasila can be summed up in a complete and comprehensive manner as follows: Citizenship led by wisdom in the justice / representation of the Divine Divine, a just and civilized, united Indonesia and social justice for all Indonesian people. (Prof. Drs. Notonagoro, S.H., 1967)

This formulation is in line with President Suharto's views in his national address. 16-8-1967, among others, states: "... Pancasila democracy means Democracy, the sovereignty of the People is created and it is co-ordinated with others. This means that in exercising democratic rights must always be accompanied by a sense of responsibility to the Supreme God according to their religious beliefs, must uphold human values in accordance with human dignity and dignity, must safeguard and unite the nation, and should be used to achieve social justice. Pancasila democracy is based on a lack of understanding of family and mutual support ". (S. Pamudji, 1981: 14)

According to the above formulation, Pancasila democracy is also citizenship based and guided by the acknowledgment of the Supreme God, which is embodied in a high religious consciousness with many consequences. The first consequence is that in a nation's life it is denied the disobedience to the One True God, understanding the -ism and secularism. The second consequence is that there is a general decline of a-Theism and anti-religious propaganda in society. Further this recognition of the Supreme God has to do with the principle of a just and civilized humanity, which is that in the life of a nation it must be established and maintained in the highest human dignity and moral ambition of the people. The virtues of humanitarianism and the moral aspirations of the noble people have implications of tolerance, as well as in

religious consciousness. This means that in the country life is created equal opportunity for the development of religious consciousness for each group (religion) with mutual respect for one another. (S. Pamudji, 1981: 14-15)

The laws of the State, the laws and regulations of the State have enabled the creation of situations and conditions as outlined above. (S. Pamudji, 1981: 15)

Associated with the principle of fair and civilized humanity, democracy in Pancasila democracy must view humans as God's creatures who have religious awareness and awareness of norms, specifically justice norms. So the people who are integrated with a fair humanity means to realize the norm of justice in the life of the state. The situation here is the awareness to give to each of them, what is their right or part. Prof. O. Notohamidjojo suggested that there are six types of justice or justitia which can be summarized as follows in the following: (O. Notohamidjojo, 1970: 34-35)

- a) *Justitia Commutativa* or the state of exchange (the author), i.e. gives each of its rights or part of it on the basis of equality, where the price of sex is contra-performance, service is worth the compensation.
- b) *Justitia Distributiva* or justice divides (author), i.e. gives each of its rights or parts thereof on the basis of differences, where quality is taken into account.
- c) *Justitia Vindicativa* or proportional justice (the author), i.e. gives each of his rights or his share on the basis of their proportions, including the adjustment of the severity of the sentence to the severity of the violation.
- d) *Justitia Creativa* or justice creates (the writer), which gives each of them the right to freedom to create in accordance with the creative (creative) in the field of culture.
- e) *Justitia Protectiva* or justice protection (author), i.e. gives each of the rights of protection. Power that is in the hands of humans and is imposed on fellow human beings must be limited and monitored. This is the essence of *justitia protectiva*.
- f) *Legalist* or legal justice (author) which is to give each of its rights or parts thereof which have been determined by the laws and regulations of the state. Meeting the demands of the country's laws and regulations in order to realize public welfare is a social virtue.

The populace that is integrated with civilized humanity is that people who "maintain noble humanitarian character and uphold the moral ideals of the noble people" in which contains a high spirit of tolerance. Civilized humanity also means having flexibility in the association of life. (S. Pamudji, 1981: 16)

This just and civilized humanity also has an international aspect, which can be understood through the formulation of "taking part in carrying out world order based on freedom, eternal peace and social justice". Thus the Indonesian nationality is not a narrow and closed nationality, but a broad and open nationality, in the arena of the interrelation of the lives of other nations. (S. Pamudji, 1981: 16-17)

Associated with the Unity of Indonesia, the Pancasila democracy requires the integration of the nation and the Indonesian Blood Oath in all differences of understanding and conflict, besides demanding also a national identity as an independent and sovereign nation, national personality in relations between nations according to international law and

national stability which is a condition absolute for the development of the nation and state towards the creation of National Resilience. This means that no matter how we differ in political, economic, social, cultural and religious matters, we are required to have a high spirit of tolerance in order to maintain national integrity, identity, personality and stability. (S. Pamudji, 1981: 17).

Sila Persatuan Indonesia awakens the spirit of nationalism and patriotism, but again, not a narrow and closed nationality, but nationality is open to and related in international relations. With the existence of the Indonesian Unity it is clearly rejected or undesirable cosmopolitanism, which intends to negate, especially national identity and personality. (S. Pamudji, 1981: 17)

As a result, Pancasila democracy integrated with the principle of Social Justice for all Indonesian people means that Pancasila democracy (democracy and so on) is colored by demands for social justice which include the following matters: (S. Pamudji, 1981: 17-18)

- a) Every citizen is not only burdened with obligations, but also his rights are recognized.
- b) Recognize the right of equality in differences, personal rights in the family, the right to adequate payment for official or private services.
- c) Recognize the rights of political, economic, industrial and social organizations within certain limits.
- d) Recognize the rights of citizens or groups of citizens in the field of efforts to promote culture (arts, science and engineering), rural community development and the economy.
- e) Reject etatism in all fields because of the method of stopping creative power and preventing the creation of *justitia creativa* and *justitia protectiva*.

Thus it is clear that Pancasila democracy is not only political democracy but also economic democracy and social democracy. "Pancasila democracy is demanded for justice in all social and cultural fields, applies fairly to original social institutions and social institutions or organizations that are grown by socio-cultural differentiation, organized by citizens". (O. Notohamidjojo, 1970: 81)

From the description above it can be concluded that Pancasila democracy means democracy led by wisdom in consultation / representation, with religious awareness accompanied by a high spirit of tolerance, mutual respect for fellow religious people, who are required to give to everyone what is their right. Other than that the populist was also based on national integrity, identity, personality and stability, and not only in politics but also in the economic and socio-cultural fields. (S. Pamudji, 1981: 18)

Characteristics of Pancasila democracy in its material aspects are family and mutual cooperation that breathes in the Almighty God. What is meant by kinship is awareness of character and noble human conscience reflected in daily behavior, both as individual beings and as social beings to help one another. This family goal demands an attitude that prioritizes common welfare rather than individual interests, prioritizes the fulfillment of social obligations rather than the pursuit of personal rights, prefers integrating opinions with deliberation rather than emphasizing the opinions themselves to others. The kinship and cooperation were accompanied by high awareness and rejecting atheism. Therefore, these characteristics need to be emphasized by the characteristics in the formal aspect, namely decision making wherever possible based on deliberation to reach consensus. Thus there will be no "majority domination" or "minority tyranny" because the

majority / minority understanding is incompatible with the spirit of kinship and cooperation. (S. Pamudji, 1981: 18-19).

3. Implementation of Basic Rights in the Life of Democracy

Basically the meaning of democracy is that government, based on the will of the people, popular sovereignty. To realize the will of the people, the equality and freedom of rights must first be guaranteed. It is impossible to foster democracy if it does not eliminate discrimination. Why? Because, if there is still discrimination, it means that there are still certain people or groups of people who have rights that are not the same as others or are treated unfairly. Automatically their freedom of rights is bound. If this is the case, then freedom is not guaranteed and if so, it means that democracy is not alive (Baharuddin Lopa, 1999: 7).

Therefore, the two basic rights above must not be arbitrarily restricted. In other words, these basic rights must be guaranteed the same, because these two basic rights are interdependent (Baharuddin Lopa, 1999: 7).

The problem that always arises in implementing these two basic rights is the extent to which those basic rights are guaranteed not to disturb order. The application of these two bases without any purpose and without being carried out by regulation or by good standards, will not foster democracy but will instead give birth to anarchy. For this reason, there must be general standards that must be respected in order to foster a healthy democracy (Baharuddin Lopa, 1999: 7).

There are two forces that are always facing each other in efforts to foster democracy. On the one hand, under the pretext of democracy, it is often found a tendency to possess and implement freedoms that transcend borders, so there are times when less attention is paid to maintaining order or stability. On the other hand, there are rulers who always or tend to strengthen the regulation and even restrict freedom so that the government runs smoothly (Baharuddin Lopa, 1999: 7).

Because of these factors, a statesman who is able to think about how to create a balance between the two is needed. The author prioritizes statesmen, not politicians, because there are times when a politician, especially if those who only try to pay attention to the interests of their party or group, ignore the interests of the state or the interests of all people (Baharuddin Lopa, 1999: 7).

To avoid or overcome social clashes, there are times when authorities take shortcuts, because they may feel overwhelmed by the dynamics or aspirations of people that arise quickly, such as demanding justice, or demanding a better life, so often not being steadfast so in dealing with problems - sometimes problems leave common sense so that his personal desires are highlighted (Baharuddin Lopa, 1999: 7).

The actions of these authorities are usually in the form of silencing the aspirations of the people on the grounds for the maintenance of security and order. Whereas with such an approach, it is more unfavorable because in fact a wise and wise government is not building up aspirations even though the aspirations that arise are contrary to government policies that are being carried out (Baharuddin Lopa, 1999: 7).

The best according to the opinion of the writer in dealing with social upheavals, is not silencing but ensuring the channeling of aspirations to become input for refining and

even replacing government policies that are being implemented (Baharuddin Lopa, 1999: 7).

4. CONCLUSIONS

The implementation of basic rights in relation to democracy, that is, there needs to be a guarantee between equal rights and the right to freedom of these two basic rights with guarantees not to disturb order. The application of these two bases without any purpose and without being carried out by regulation or by good standards, will not foster democracy but will instead give birth to anarchy. For this reason, there must be general standards that must be respected in order to foster a healthy democracy.

If we see democracy in Indonesia which has the ideology of Pancasila, democracy that is imbued with Pancasila values, namely democracy led by wisdom in the deliberation / representation, which has the Godhead of the Almighty, with a fair and civilized humanity, which is united in Indonesia and socially just for all Indonesian people. Consequences in the life of the state must recognize the existence of God Almighty, thus giving birth to people who have the moral of Pancasila. Thus the basic rights based on Godhead can guarantee the implementation of a healthy democracy as well.

5. SUGGESTIONS

Efforts should be made to build a tradition of freedom, a tradition among all citizens, which is manifested in strict rules and law enforcement, that everyone is free to speak, free to embrace religion, and free to worship.

REFERENCES

- [1] Budiardjo. Miriam., *Dasar-Dasar Ilmu Politik*. Jakarta: Gramedia, 1985.
- [2] O. Notohamidjojo, *Demokrasi Pancasila*. Jakarta: Badan Penerbit Kristen, 1970.
- [3] Notonagoro, *Beberapa Hal Mengenai Falsafah Pancasila*. 1978.
- [4] S. Pamudji, *Demokrasi Pancasila dan Ketahanan Nasional*. Jakarta: Penerbit Bina Aksara, 1981.
- [5] Sudjana. Eggi, *HAM, Demokrasi dan Lingkungan Hidup Perspektif Islam*. Bogor: Yayasan As-Syahidah, 1998.
- [6] Tim Pengkajian Fakultas Hukum, *Deklarasi Hak-Hak Asasi Manusia*. Jakarta: Universitas Islam Jakarta, 1995.
- [7] M. Tolchan Mansoer, *Hukum, Negara, Masyarakat, Hak-Hak Asasi Manusia dan Islam*. Bandung: Alumni, 1979.