

# The Relationship Between Human Basic (Human Rights) Obligations and Human Rights

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## ABSTRACT

*In many discussions of Human Rights, it is rarely related to Human Basic (human rights) obligations. In fact, they complement each other to find justice. In the Greco-Roman era and the Middle Ages, the development of the School of irrational natural law laid the basis for obligations for humans that were rooted in metaphysics and divine values. When individual expressions are blazing, which is a feature of the renaissance, it changes from obligations to rights. The teachings of Aquinas (1224-1274), Hugo Grotius (1583-1645), Magna Charta (1215), Human Rights Petition (1628), British Human Rights Statement (1689), United States Declaration of Independence (1776) and the French revolution (1789) are the pieces of evidence for this shift. The change in the rationale is contradictory, so that between obligations and rights seems to have a conflict. Therefore, it is relevant to raise a question, namely how human rights were born and developed and how the relationship between human rights and human basic (human rights) obligations. The theory in analyzing the problems raised in this study uses the theory of balance and the theory of justice. While the methodology used in this study is the normative method of the law. The results obtained in this study in addition to providing answers to the problems raised also provide future direction, namely what should be done.*

**Keywords:** *Human Rights, human basic rights, obligations*

## 1. INTRODUCTION

At present, every country and even everyone is discussing Human Rights, both as subjects or objects. Very rarely there is a balanced discussion between human rights with human basic (human rights) obligations, even though the two are complementary and hand in hand.

Burns H. Weston said that the expression of Human Rights is actually relatively new, which has only entered everyday language since the Second World War. This phrase replaces the term "natural rights" which is partly disliked because the concept of natural law (which is closely related to it) has become a major controversial issue, and the phrase "the right of man" that arises later, which is not universally considered includes the rights of women ("Man" is male and does not include women) [1].

The Magna Charta of 1215 was a milestone in the inclusion of the rights of the nobility that must be respected by the king of England. Dardji Darmodiharjo, Shidarta stated that in the Magna Charta it was stated that the king could not act arbitrarily, and for certain actions, the king had to seek the approval of the nobles [2]. Over the years, Human Rights gained worldwide recognition after the American Revolution (1776) and the French Revolution (1789).

Human Rights gained recognition and became so important in the legal system in many countries after Franklin D.

Roosevelt on January 1, 1942 before the US Congress that identified 4 (four) freedoms, namely:

1. Freedom of speech and expression everywhere in the world;
2. Freedom of every person to worship God in his own way;
3. Freedom from want with economic understandings which will give every nation a healthy peacetime life for its; and
4. Freedom from fear, calling for such a worldwide reduction of armaments that no nation will be in a position to commit an act of aggression against any neighbour.

Furthermore, Human Rights became an important part of the United Nations marked by the Universal Declaration of Human Rights dated December 10, 1948. Before the Universal Declaration of Human Rights, Human Rights was born and developed in the thinking of irrational and rational law schools. Moreover, politically it has been implemented in the philosophical foundation of positive law both in the Magna Charta, the American Revolution and the French Revolution, as well as in the Universal Declaration of 1948. Before and at the same time as the freedom that underlies the thinking about Human Rights, actually there are also opposing thoughts to promote rights. But some thoughts

balance the rights and obligations that give birth to Human Rights and Human basic (human rights) obligations.

Therefore, it is worth mentioning the problem formulation as follows:

- How were the human rights born and developed?
- What is the relationship between human rights and human basic (human rights) obligations?

## 2. BACKGROUND

In legal research to uncover legal issues, namely how human rights were born and developed and the relationship between human rights and human basic (human rights) obligations using normative legal research methods. Piter Mahmud Marzuki [3] stated that "a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal problems at hand". Thus, the first step started from the legal issues raised above which are used as central point in starting the process of finding legal principles and legal doctrines in a more detailed and balanced manner in various legal facts and legal opinions between those who promote human rights and those who prioritize human basic (human rights) obligations. Based on these steps, an analysis is finally obtained, which is the point of thought and legal norms that should be formed. So this research provides answers to the above legal problems and provides legal solutions in the future, namely what should be.

Jeremy Bentham, whose opinion was quoted by Cranston as legal positivism, said that human rights are the child of law [4]. Thus, speaking about Human Rights more fundamentally must also speak about the law. Therefore, to discuss human rights it is also appropriate to discuss the history of law and the schools of law and the opinions of legal philosophers which include Human Rights.

The philosopher Marcus Tullius Cicero states "*yam societas ibi ius*" where there is a community, there is a law that started to develop since the existence of the community itself. The history of law has recorded from the schools of law since the ancient Greek Age beginning in the 6th century BC until the 5th century AD, namely the collapse of the Roman empire of Human Rights in the horizons of legal philosophy is inseparable from Legal schools of thought, that is, since ancient Greece and Rome. This can be seen in its history that human rights have existed since the school of law within the school of law itself. Therefore, a search for the existence of human rights thinking needs to look at the concept of legal philosophy that developed at the beginning of the development of law, namely in ancient Greece and Rome. T. Mulya Lubis stated that "Human Rights are closely related to the doctrines of the premodern natural law of Greek Stoicism [5]. In Greek times the idea of Human Rights was a natural right that originated in God. Natural law is seen here as a universal and eternal law [6]. In Greek times the idea of Human Rights was a natural right that originated in God. Natural law is seen here as a universal and eternal law. Ancient Greek philosophy which was influenced by Socrates, Plato and Aristotle, known as natural philosophers who believe in the existence of gods.

The writings of Aristotle and St. Thomas Aquinas, these doctrines recognize the legitimacy of slavery and servitude and in doing so, rule out ideas that are perhaps the most central of human rights as understood today as freedom and equality [7]. Furthermore, Aristotle Plato's students did not see human rights as personal rights. Plato could know that only a small portion of the population of Polis was truly free people as Polis citizens, i.e. only men of Greek nationality and included in the upper classes; People, women, children, slaves do not have any rights in Polis [8]. In ancient Greece, human rights were born, but only limited to Greek men and included in the upper classes. Thus, at that time, the development was more on obligations to kings and gods.

Furthermore, new philosophers emerged modern schools of natural law, which still adhered to the old school of natural law. This school of natural law was adhered to in ancient Greece, but was more modern, divided into schools of irrational and rational natural law. Irrational Natural Law figures include Thomas Aquinas, John Salisbury, Dante and others. For followers of this school of natural law, there is something that cannot be penetrated by reasons. Therefore, there are values and intellect that are beyond human power and that power comes from the most powerful namely God. Whereas the rational school of natural law said by Grotius natural law was obtained by humans from their minds, but it was God who provided the binding power [9]. Jeremy Bentham states that from imaginary laws such as natural law, there are imaginary rights. Therefore, human rights based on natural law are nonsense [10].

Human rights experience strong opposition from some legal experts, for example from the UK such as Edmund Burke, David Hume, Jeremy Bentham. Burke said in his work *Reflection on the Revolution in France* (1790). Even though he as an adherent of natural law has denied "Right of Man" can be derived from him. The Declaration of Human Rights and Rights of Citizens has proclaimed a frightening fiction about human equality, which, according to him, only serves to inspire untrue ideas and vain hopes in humans. Furthermore, Bentham stated that human rights are "illegitimate children" of the real law of real rights. That right comes from imaginary law. Hume agreed with Bentham that natural law and natural rights are metaphysical phenomena that are not real [11].

Other opponents are **John Stuart Mill**, **Freiderich Karl von Savigny** (founder of the school of history), **Sir Henry Maine** and other historians say that rights are a function of cultural and environmental variables that are unique to certain communities. While other legal experts such as **John Austin and Ludwig Wittgenstein** say that the only law is "an order from the sovereign" (an expression from Thomas Hobbes) and the only truth is the truth that can be ascertained through verifiable experience. Another challenger is **F.H. Bradley Marxist**, a British idealist states "The rights of individual today do not deserve serious consideration, furthermore community welfare is the goal and is the final standard".

Thus, from the opinions expressed above, it is evident that Human Rights based on adherents of the natural law school cannot be accepted because the main thing is the rest of the school of thought of natural law which is based on natural

forces, including God. Based on this school of natural law the recognition of the most basic things is obligations.

The shift of thought and political insistence on the idea of human rights became a necessity. It began to squirm when the shifting of natural law as obligations to the law as a right which is a characteristic of the renaissance. Systematic movements such as the teachings of Aquinas and Hugo Grotius; Magna Charta in 1215; Human rights petition in 1628.

Declaration of Human Rights 1689 in England. The American Revolution (1776) and the French Revolution (1789). Franklin D. Roosevelt's speech on January 1, 1942 before the US Congress and the United Nations Declaration on Universal Declaration of Human Rights on December 10, 1948, human rights have developed rapidly as a basic philosophy of recognition of fundamental rights held by humans. French Revolution in 1789 gave birth to French Declaration on Human Rights which is also called for "*La Declaration des Droits de l'homme et du citoyen*" (Declaration of the rights of the good and the citizen). The declaration was inspired by Jean Jacques Roesseau (1712-1778) and General Marquis de Lafayette (1757-1834). Inspired by French revolution, Thomas Jefferson formulated the United States Declaration of Independence known also as "*La Declaration des Droits de l'homme et du Citoyen*" on July 4, 1776. Article I of the French Declaration contains Rousseau's teachings as mentioned in his book "*Du Contrat social*". It reads "*Les Hommes naissent et demeurent libres et egaux en droits. Les distinctions sociales ne peuvent etre fonees que sur l'ntilete*" which means "Human are born free and remain independent and have similar nature of law. Differences in society can only be based on public interest." [12].

The United Nations Declaration on Human Rights dated December 10, 1948 was followed by two covenants namely (i) The International Covenant on Economic Social and Culture Right, and (ii) The International Covenant on Civil and Political Rights. Besides, there is another protocol, namely Optional Protocol for the Covenant on Civil and Political Rights. All three have been accepted by the UN General Assembly on December 16, 1966 which noted to its members to ratify.

Bums H. Weston acknowledges that there is no final answer regarding origin of human right, whether as a gift of divine, moral attributes or legal right. There is also no fixed answer whether human rights should be ratified by governmental institution, through customs, under social contract, based on principles of justice distribution, or as prerequisite for happiness [13].

James Crawford cited Hohfeld's statement that one's right means obligation of another [14]. When government is given credence to state rights, then it is expected for the citizen to perform obligations. Therefore, regulation of human rights is ideally in line with prescription of basic obligations.

Understanding human rights based on John Rawl's Theory of Balance suggests that there should be stability between personal and shared interests. Fairness between the two is what called justice [15]. Rawl further pointed out that people must return to the original position, a condition where humans confront one another [16]. By departing from his

original position, Rawl mentioned, people achieve original agreement related to distribution of living results under justice principle [17].

Therefore, human rights can be restricted to protect other people's (or community's) rights. Respect, recognition and approval of other people's rights can be called basic obligations.

Rowl's Balance Theory is in line with Theory of Justice mentioned by Thomas Aquinas. Fair, based on Justice Theory, means to obey the law and and to preserve equality, meanwhile injustice means to take more than one's fair share [18]. Thomas Aquinas divides justice into 2 (two) categories, namely general justice (*Justisia generalis*) and specific justice. General justice is justness according to the will of law, while special justice is based on equality or proportionality.

Specific justice is divided into: 1) Distributive justice (*justitia distributiva*), those applied to public law in general, for example the State appoints a judge only if that person has judiciary skills; 2) Commutative justice (*justitia commulativa*), giving priority to those with accomplishment than to non-performance; and 3) Vindikatif justice (*justitia vindikative*), fairness in terms of imposing a sentence or compensation due to criminal acts [19].

Theories above provides a conception that application of human rights must pay attention to general and special justice. Law drafting must also consider proportional equality. It means that formation of law on human rights must consider basic obligations.

Philosophy of law divides human rights into two mutually attractive poles. They are adherents of natural law teaching and liberty school. Adherents of natural law do not fully respect religious law. **Hazairin** said in his book "National Family Law, 1962 (Hukum Keluarga Nasional, 1062)" that *receptio in complexu* is theory of satan. However, it is recognized that modern natural law scholars are strongly influenced by religion (Kitabullah). Natural law is not based on *magical relegio* theory, to believe in the existence of supernatural forces outside oneself, as explained by **F.D.Holleman**. This way of thinking is essentially derived from **Irrational Natural Law** philosophy, which believes in eternal and universal law rooted in the Book.

Human rights are basic freedoms inherent to human being. Human rights represent basis of other rights and obligations [20] Meanwhile, rights are distributed into "right over" and "right to". The "right over" means authority worth freedom, while the "right to" is obtained after fulfilling terms and conditions of an obligation. Hazairin [21] asserted that obligation and right are like two-sided coin. It means that each obligation has implications for certain right. Performing obligation without getting right pictures tyranny, while receiving right without doing obligation means abitrariness. Based on this belief, Hazairin can be classified as natural law philosopher, whose ideas are based on the Book of Allah.

Regarding Unitary State of the Republic of Indonesia, human rights are regulated under:

1. The 1945 Constitution which took into effect on August 18, 1945. Human rights clauses are listed in Articles 27, 28, 29, 31, 32 and 34. Articles relating to

- human rights have been amended and/ or added based on Amendments to the 1945 Constitution in 2000;
2. The 1949 Federal Constitution of the United States of Indonesia Section V regulated basic human rights and freedoms and Section VI Articles 7 to 41 which covered the basic principles;
  3. Provisional Constitution of 1950 Sections V and VI Articles 7 to 43 which contained finish off formulation of rights and freedoms;
  4. Law Number 39 of 1999 on Human Rights;
  5. Law Number 5 of 1998 on Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
  6. Presidential Decree Number 50 of 1993 on National Commission of Human Rights.
  7. Presidential Decree Number 181 of 1998 on National Commission of Violence Against Women;
  8. Presidential Decree Number 129 of 1998 on Indonesian National Human Rights Action Plan;
  9. Presidential Instruction Number 26 of 1998 on Discontinuation the Use of Indigenous and Non-Indigenous Terms in Formulation and Implementation of Policies, Program Planning, or Implementation of Government Management Activities.

The 1945 Constitution essentially represents assurance of human rights based on philosophy developed at that time. It has accommodated Four Freedoms concept delivered by US President Franklin D. Roosevelt before the US Congress on January 1, 1942; namely (1) Freedom of speech and expression everywhere in the world, (2) Freedom of every worship God in his own way (freedom to embrace religion); (3) Freedom from want with economic understandings which will give every nation a healthy peacetime life for its inhabitants (freedom from deprivation); and (4) Freedom from fear, calling for such a worldwide reduction of armaments that no nation will be in a position to commit an act of aggression against any neighbour (freedom from fear of war).

On December 10, 1948 the Universal Declaration of Human Rights was born. At that time, the 1945 State Constitution of the Republic of Indonesia was in force. Eventhough substance of Human Rights in the 1945 Constitution was not as complete as those in the Universal Declaration, but the newly born Indonesian constitution had summarized main substances in general. Furthermore, it is clear that both the 1949 Constitution and the Provisional Constitution of 1950 as explained above are based on the Universal Declaration [22].

However, the amended Constitution of Indonesia more properly accommodate human rights and obligations of citizen toward nation. Individual obligations are stated in article 25E (every person has rights stipulated in the law); Article 28J (obligation to balance rights and those stipulated in the law); Article 29 (Every person obliges to respect other religion or belief); and Article 30 (Every person obliges to participate in state defense). In addition, there are State obligations as regulated in Article 28 (State obliges to protect rights of the people); Article 29 (State shall guarantee individual worship of God); Article 30 (States obliges defense efforts); Article 31 (State obliges to administer

teaching system); Article 32 (State obliges to promote culture); Article 33 (State obliges to promote economy); and Article 34 (State obliges to care for the poor).

Third Alinea of the 1945 Constitution is started with phrase "By the grace of Allah Almighty", an authentic evidence that the founders of this nation embrace natural law school that aligns human rights with basic obligations, as well as natural rights with natural obligations embodied in the 1945 Constitution.

### 3. CONCLUSION

1. The above study answers primary question on how human rights were born and developed. Human rights were sourced from Ancient Greek and Roman concept of law in the 6th century BC and closely related to doctrines of premodern natural law of Greek Stoicism. During that period, jurists were influenced by Socrates, Plato and Aristotle, known as nature philosophers who believed in the existence of gods. Natural law teachings believe that there are life aspects which cannot be penetrated by human reason and power but God. While Grotius introduced rational school. This teaching believe that natural law is obtained by humans through their minds, and it is God who gives binding power. Based on natural law teaching, human rights are naturally gifted by God. Whereas Bentham and David Home develop doctrines of legal fiction regarding human rights and equality. Human rights come from imaginary laws.

Human rights are upheld universally after the Magna Charta ratification in 1215; Human Rights Petition in 1628; Declaration of Human Rights in 1689 (England); the American Revolution in 1776; the French Revolution in 1789; and Franklin D. Roosevelt's speech before the US Congress on January 1, 1942 as well as the United Nations Declaration on Universal Declaration of Human Rights on December 10, 1948. Acknowledgement of human rights, and its disengagement from forces of nature, is in line with science development that led to secularism which assert the right to be free from religious teachings and distance people from the power of God. Even when human rights were invoked, there were still philosophers who contradicted the views of human rights with basic obligations.

2. Relation between human rights and basic obligations has long been known since Ancient Roman-Greek times, when basic duties were perceived as basic obligations. This is because at that time absolute munitions system culled the king as representative of God whom people considered their patron. In addition, flow of state of mind at that time was strongly influenced by natural law school which oblige people to perform cult practices or rituals as gods offering. Even though nowadays human rights have developed in various aspects of life, yet there are still philosophers who put forward the view of basic obligations.

During independence struggle period, The 1945 State Constitution of the Republic of Indonesia (the 1945

Constitution) adopted Four Freedoms as proposed by Franklin D. Roosevelt, President of the United States of America on January 1, 1942 before the US Congress. Furthermore, when the Constitution of the United Republic of Indonesia (Undang-undang Republik Indonesia Serikat) came into effect shortly in 1950, Indonesian Constitution adopted the Universal Declaration of Human Rights on December 10, 1948 [22].

In terms of legal philosophy, schools and theory, human rights and basic obligations always go hand in hand. However, during industrial revolution and renaissance era, issues on human rights are not popular due to political interests.

Preparation of the 1945 Constitution had developed similar thought of modern natural law embodied in Pancasila and body of the 1945 Constitution which recognize existence of a force beyond human reasoning, the power of God Almighty. It is mentioned in the 1945 Constitution that every person has natural obligation to worship God Almighty along with other obligations, even though it is still established as absolute rights. In this case, the 1945 Constitution provides harmonious foundation which guarantee human freedoms and application of basic obligations.

Drawing from description above, human rights obligation has existed since the birth of Human Rights during Roman and Industrial Revolution era. To date, human rights basic and obligations complement each other, this also applies universally, no exception in Indonesia

Basic obligation is closely related and comply with human rights in terms of legal philosophy, school/ teaching and theory. However issues on basic obligation are still underestimated in legal discussions. Therefore, insight on basic obligations should be raised in legal seminars of human rights development, especially in Indonesia.

Human rights are not unlimited, they can be restricted to other human rights. It means that development of human rights must pay attention to individu as creature of God the Almighty, personal being and social creature with balance human right and obligation. Therefore, study courses as well as governmental discussions on Human Rights, include in law drafting must also promote basic obligations, so that the two complement each other.

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