

Indonesian State of Law: The Essence of Human Rights Protection in the Establishment of Laws and Regulation

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Abstract:

The social life of the community contains a wedge of rights breaches committed both by individuals and by the state. Thus, the requirement for rights protection in the establishment of laws and regulations is affirmed. Law is the basis for the State of Law in social and state life. The establishment of laws and regulations is supposed to restrain excessive state authority and create limitations for each individual so that they do not violate the rights of others. The current State of Law paradigm has stressed the protection of Human Rights as being complementary in the functioning of society and the state. This is inextricably linked to the crucial role of Human Rights as natural rights that must be maintained and defended by all individuals and states. The protection of Human Rights has been made a part of the rights guaranteed by amendments of the 1945 Constitution of the Republic of Indonesia. Legislation programs in the establishment of laws and regulations must be oriented to be in conformity with Pancasila, the 1945 Constitution of the Republic of Indonesia, the National Medium-Term Development Plan, and must satisfy aspects of Human Rights protection. As a result, it is hoped that the goal of establishing laws and regulations that bring justice and benefits to the community would be realized in the development of the Indonesian State of Law.

Keywords: State of Law, Establishment of Laws and Regulation, Human Rights Protection

Abstrak:

Kehidupan sosial masyarakat memiliki kemungkinan akan terjadinya pelanggaran hak yang dilakukan oleh individu dimasyarakat maupun yang dilakukan oleh negara. Hal ini kemudian menegaskan adanya kebutuhan akan perlindungan hak dalam pembentukan hukum. Hukum menjadi esensi dasar bagi Negara Hukum dalam menjalankan kehidupan bermasyarakat dan bernegara. Pembentukan hukum diharapkan dapat menekan kekuasaan negara yang berlebih dan menetapkan batasan bagi setiap individu agar tidak melanggar hak individu lainnya. Konsep Negara Hukum telah menegaskan perlindungan Hak Asasi Manusia sebagai hal yang komplementer dalam kehidupan bermasyarakat dan bernegara. Hal ini tidak terlepas dari peran penting Hak Asasi Manusia sebagai hak kodrati yang wajib untuk dihormati dan dilindungi oleh setiap individu maupun negara. Melalui amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Indonesia telah merumuskan perlindungan Hak Asasi Manusia sebagai bagian dari Hak Konstitusional yang wajib untuk diimplementasikan. Program legislasi yang direncanakan dalam pembentukan hukum harus diarahkan agar sesuai dengan Pancasila, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Rencana Pembangunan Jangka Menengah Nasional, dan harus memenuhi aspek perlindungan Hak Asasi Manusia. Dengan demikian, diharapkan tujuan pembentukan hukum yang memberikan keadilan dan kemanfaatan bagi masyarakat dapat terlaksana dalam konstruksi Negara Hukum Indonesia.

Kata kunci: Negara Hukum, Pembentukan Peraturan Perundang-Undangan, Perlindungan Hak Asasi Manusia

I. INTRODUCTION

Community life is continuously changing and evolving. It turns into a social demand requiring adaptation to the circumstances. The societal demands that arise might lead to advances both in positive and negative directions. The occurrence of rights violations committed by persons against other individuals represents a negative direction. Violations of rights occur as a societal response to their wants, which always desire to be met, even if they violate the rights of others (can also violate generally accepted norms in society). There have also been instances where the state has violated the rights of individuals. This reality emphasizes the importance of laws that safeguard each person's interests and prevent the violation of their rights. Despite the essential necessity for law, it is true that it cannot be changed to fast accommodate changes in society. This is due to the fact that the law is merely an instrument that needs to be altered before it can be put into action.

The state establishes laws and regulation through the institution that is designated to do so. In the establishment of laws and regulations based on the constitution as the highest law, the state as the executor of sovereignty must be able to deliver justice and benefit to society (the 1945 Constitution of the Republic of Indonesia). Laws must be established and carried out as far as possible for the benefit of society as a whole, not for the advantage of particular individuals. Every norm set forth in a legal instrument must be capable of reflecting feelings of justice and bringing beneficial to society (Rosana, 2016). Equal rights for all people and protection for them and their property are the intended principles of justice. Due to its being based on the requirements and aspirations of the community's social life, the legislation that is created cannot ignore every aspiration of the populace.

There must be regulations that express a mutual respect for each person's rights in both relationships between individuals and other individuals as well as between individuals and the state. Protection of rights will be correlated with the need to uphold all standards and safeguard shared interests. This protects each person's "freedom" while also upholding their need to respect the rights of others. In order to avoid going too far, freedom must be maintained as a representation of social reality. Every person in social life must respect one another and offer chances for personal growth since they share the same ideals as other people. As a result, even while there is pressure on the demands and desires that arise, it shouldn't infringe on other people's rights. This places a focus on human rights, as understood in Pancasila.

One of the crucial requirements for ensuring social justice is the fulfillment of human rights as natural rights. Human rights are an evolving idea and value that are

founded on the observance, defense, and realization of natural rights that demand state protection. If the protection of human rights is not included in the state of law implementation, reflection and realization of the state of law will not be possible (Kusniati, 2011). Thomas Jefferson described Human Rights as God-given freedom inherent in the existence of every individual as a human being. The state is required to be able to create a social life that protects the implementation of these human rights (Wilujeng, 2013). Indonesia as a state of law requires that social and state life be governed by applicable law (the 1945 Constitution of the Republic of Indonesia). Therefore, it is necessary to establish a laws and regulation based on the protection of human rights. In the execution of Indonesian state of law, the establishment of order will give a better climate for life.

On this premise, this research will address the key questions concerning the role of laws and regulation in efforts to protect human rights. The purpose of this research is to identify the importance of human rights protection in the development of Indonesian state of law. This is due to the fact that human rights have become the most important aspect that must be maintained in the global development of the state of law concept. It is hoped that the Indonesian state of law would be able to apply it in the establishment of laws and regulation that is carried out.

II. RESEARCH METHODS

This is a qualitative research that use the Normative Legal Method. The Normative Legal Method is utilized because it evaluates applicable norms, rules, and regulations, as well as materials relevant to the research topic. This research will be based on secondary data collected from library research. The secondary data used consists of both primary legal material (Laws and Regulation) and secondary legal materials (Books, Journals, and Scientific Research) (Amiruddin & Asikin, 2006; Soekanto & Mamuji, 2003). The stages of research consist the following: first, formulating the problems to be discussed. Second, identify relevant laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, and Law Number 12 of 2011 concerning Establishment of laws and regulations. Third, search library materials including books, journals, and scientific articles. Fourth, analyze the legal materials gathered to solve the problems in this research. The data that has been obtained is then described using words with scientific logic.

III. RESULTS AND DISCUSSION

1. Establishment of Laws and Regulation

The concept of the state of law is based on the existing rule of law. The concept of the state of law can be understood from Plato's perspective that good arrangements must be the basis of state governance. Aristotle continued by stating that the establishment of the state of law depends on people in power having a just mind that judges the virtues and defects of a law (Badan Pengkajian MPR RI & Lembaga Penelitian dan Pengabdian Masyarakat Universitas Jenderal Soedirman, 2018). The state of law becomes an ideal state notion because the direction of state policy is based on law, which adapts to the development of society in its formation. The growth of the establishment of a state of law is based on the community's interests (Widyawati, 2022). The law turns become a tool for maintaining order in attaining state objectives, and everyone is required to abide by it. It also serves as the state's power restriction. Due to the importance of law in the concept of a state of law, its development must be based on the notion of justice rather than for the benefit of certain individuals. To establish legal order in state affairs, the law must establish the moral merits of an action.

Law is frequently equated with statutory regulations, referring to Hans Kelsen's belief that each rule of law is intimately tied to one another and has hierarchical levels, from the lowest to the highest (basic norms) (Kelsen, 2018; Soehino, 2005). As a result, the rules that are established are tied to one another and must adjust to one another in order to avoid disputes that lead to social disintegration. This relationship must be regulated by the state as a tool (agency) for society. Furthermore, Hans Kelsen defined legal order as an objective that must be accomplished in societal and governmental life. The law will eventually hold society and the state accountable for their acts (Soehino, 2005). Law order will be established if these tasks are adequately understood and carried out in accordance with the legal standards. The regular fulfillment of societal and governmental responsibilities, as well as the regularity of each legal document, is the state's obligation to incorporate in the establishment of law. The provision of societal welfare is the estuary of the state's obligations (Sukmana, 2016).

As a result of their static nature, laws are always generated at any time because its unable to react rapidly to changes in societal demands. The goal of lawmaking is to meet the needs of social and political life. Legislators must appropriately establish every norm contained in the law in order to meet the interests of society (Mawarini Sukmariningsih, 2014). According to Jeremy Waldron (2006), the purpose of law is to satisfy a sense of justice, hence the creation of law must take into account the values

of justice. Just and helpful law is highly valued by the community. The state, as the administrator of people's sovereignty, must prioritize fairness and expediency in the creation and implementation of law.

Law is the culminating result of a dynamic process that serves as a plan to accomplish particular objectives. Law actually serves as a tool to accomplish the true aim and is not a goal in and of itself (Nazriyah, 2002). Formation of law through a procedure carried out by state bodies that are granted the authority to decide and establish legal norms in a certain format. Upon completion of the formation process and subsequent approval, a new law is granted the legal authority to be considered binding (Hoesein, 2012). The legislative procedure is a step in the implementation of legal politics. Legal politics heavily influences the course of state policy throughout a given era of enactment of established legal laws. The quality of the legal documents produced is critical to achieving the state's objectives. Mainly, factors of welfare and human rights protection directed at every citizen are a desire in the execution of the state of law. The resulting legislation will be the basis for implementing any future policies (Putuhena, 2012).

According to Burkhardt Krems, there are two main aspects in the creation of laws establishing the content of regulations (*inhalt der regeling*) and fulfilling the form of regulations (*form der regeling*). Both are material and formal aspects that serve as the basis for the quality of the law that is established (Attamimi, 1990). T. Koopman considers that the establishment of law must prioritize its purpose in the construction of a modern state of law (Kurnia et al, 2007). The implementation of law and legal developments that shape the direction of state policy are inextricably linked to the function of law. If the law is good, it will serve as an enforcer of justice and will benefit society. In contrast, if the law that is formed is not good, it will cause various degrees of sorrow for the community. As a result, the implementation of good law based on the values of justice and expediency is expected.

There are several activities that are important for assessing the quality of legal formation. The quality of good legal formation will rationalize law as an object generated with the same quality as the passed process. There are various critical factors, according to M. Ilham F. Putuhena (2012), including

a. Legislatif Program Stages;

The Legislative Program is a management plan for establishing the law's objectives. Based on stages that have been examined and directed, the Legislative Program should be directed to comply with Pancasila, the 1945 Constitution of the Republic of Indonesia, and the National Medium-Term Development Plan. Furthermore, the synchronization of each Legislation must be carefully considered so that there is no

overlap between the rules to be formed and the regulations above and below them (Putuhena, 2012). Apart from that, the legislative program should focus on areas of human rights protection as they are critical in the establishment of law. The component of human rights protection emphasizes the protection of every citizen's personal self, which the state cannot neglect in the least. The Legislative Program, which is founded on Pancasila, the Republic of Indonesia's 1945 Constitution, the National Medium-Term Development Plan, and Human Rights, is expected to be correctly integrated in order to realize the formulation of just and beneficial legislation.

b. Research and Academic draft Quality;

M. Ilham F. Putuhena (2012) defines an Academic draft as a text resulting from legal studies or other research findings on specific legal issues that can be scientifically accounted for in Draft Laws, Draft Provincial Regulations, or Draft Regency/Municipal Regulations as a solution to society's. This stage is critical because it is essential to dissect problems and find solutions in the realm of law by developing more rational laws. The procedure must give a comprehensive elaboration by considering policy directions that may or may not be recommended in the establishment of laws and regulation (Putuhena, 2012).

c. The Quality of Discourse During Law-Making

At the time of debate and decision-making while formulating law, the quality of the discussion is crucial. The conversation that will follow will have a significant impact on the final rules' content. So that policy materials are not dependent on political transactions but instead promote a more logical choice of policy materials, the talks that are held must prioritize transparency and accountability. To develop sound and reliable norms, social involvement during the debate stage is crucial. The community also has a right to be informed about the legislative process by being given simple access to participate and offer suggestions (Putuhena, 2012).

2. The Essence of Human Rights Protection in the Establishment of Laws and Regulation

The concept of the state of law emphasizes the protection of human rights. This was also understood by Friedrich Julius Stahl who represented Continental Europe and Albert Venn Dicey who represented the Anglo Saxons. (Badan Pengkajian MPR RI & Lembaga Penelitian dan Pengabdian Masyarakat, 2018). The concept of the state of law includes human rights as a fundamental and integral component. The state has a responsibility to the community to protect human rights. The state has a duty

to recognize, protect, guarantee, and consider the most effective measures to preserve human rights (Khairunnisa, 2018). This is inextricably linked to the society's concerns for its individuals and their possessions. The state, as the largest organized entity, is society's biggest hope for human rights protection.

Human rights are fundamental to who we are as God's creatures, and they must be respected, supported, and protected by the state, the law, the government, and our fellow citizens in order to preserve our dignity (Law Number 39 of 1999 Concerning Human Rights). A. Mansyur Effendi stated that human rights can also be referred to as natural rights, human rights and fundamental rights. (Qamar, 2013). Human rights are the most fundamental rights that each person is entitled to due to their nature as God's creations (Hidayat, 2016). However, human rights are constrained by respecting those of others (article 28J the 1945 Constitution of the Republic of Indonesia). Each person has a responsibility for fulfilling this, thus it must constantly be taken into consideration when carrying it out.

The state has a responsibility to uphold the law and defend human rights. Therefore, different issues that need to be dealt with the existing legal norms must be accommodated by legal instruments. The law is the most crucial component in ensuring a balance between the affirmation of each person's rights and the performance of obligations. The law can stop arbitrary acts carried out by one person against another or by the state against its citizens (Kirana et al., 2021). The rule of law will underpin both state action and societal interactions. The normalization process, which is anticipated to produce formal validity and practical efficacy, underlies the relationship between the establishment of laws and human rights (Utomo, 2016). The goal is to create laws that are just, give legal certainty, and benefit society. Even though only legal certainty is assured to be attained, there is still hope that justice will be upheld and societally beneficial will be provided.

Articles 28A to 28J of the 1945 Constitution of the Republic of Indonesia define and protect human rights. The inclusion of human rights sections in this constitution is part of the 1998 reform demands (Hutagalung, 1999). There were numerous instances of the state violating citizens' human rights, which sparked demands for change. The law appears to be a document created purely to support the continuity of governmental authority. The protection of each person's human rights is now a key priority in the life of the country as a result of the inclusion of human rights in the Constitution. This is inextricably linked to the Constitution's standing as the supreme law, serving as the basis for all other laws that bellow it (Law Number 12 of 2011 Concerning Establishment of Laws and Regulations).

It is hoped that a good law based on the Constitution and the principles of justice and expediency would be put into place. Based on this, the state formulates legal politics based on the preservation of human rights through state institutions (government, parliament, and other state organizations involved in law making). Legal politics is the state's effort to accomplish three goals, which are as follows (Putuhena, 2012):

- a. Legal Establishment; This is done in order to enforce justice and preserve order.
- b. Law Enforcement; The state has a duty to carry out policies and uphold the law based on established legal norms through its state apparatus.
- c. Legal Developments; This is based on the society's legal consciousness, which is subsequently built upon by the rule of law. To keep the nation stable, law is essential because it represents the needs and desires of the citizens. In order for the state to contribute to the establishment of law, it is also vital for the state to foster public legal education.

Law's establishment, implementation, and development all work together as a single system. Therefore, it is crucial to apply legislative standards that are founded on the preservation of human rights. Thomas Aquinas emphasized that the law must be capable of promoting social welfare. This welfare takes the shape of upholding justice, peace, life peace, security, and life guarantees for citizens. Humans essentially want their own well-being. As a result, the fundamental purpose of the law is to uphold justice in the framework of desired social welfare (Rosadi, 2010; Sumaryono, 2002). According to Van Apeldoorn, the goal of law is to control social order and ensure that it is fair and peaceful. The protection of human rights in the establishment of law is also equivalent to the protection of human interests, deference, independence, defense of life and property, and deterrence of those seeking to violate the rights of others (Hidayat, 2016). The state must protect human rights because they are a fundamental right guaranteed by the constitution (Maylani et al., 2022). This makes it crucial to carry out the norm of the human rights protection in the creation of laws and regulation. The establishment of laws and regulation based on the protection of human rights would be a step forward in the development of Indonesian state of law.

IV. CONCLUSION

Establishment of laws and regulation aims to safeguard all of the community's rights as well as to control how individuals live their lives. These rights might take the shape of human rights (natural rights) or state-granted rights (constitutional rights).

The fundamental principles of human rights must be included into laws and regulation. Law is a critical foundation for establishing human rights protection. The state, which is the largest social structure, must be able to create laws that are effective. This is done in order to be able to safeguard each person's rights to respect, independence, protection of their lives and property, and defense against wrongdoing by the state or other people. The state, through the organs that make up the law, must adjust the development of people's lives in the establishment of laws and regulation. A good law is established not just to control individuals in society, but also as an instrument that fits all of society's interests, including the protection of human rights. This strives to bring justice and benefits for all people in the development of the Indonesian state of law.

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