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BOOK REVIEW

Human Rights and Power of State: A Book Review *Negara Hukum dan Hak Asasi Manusia,* Bahder Johan Nasution

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DATA *of* BOOK

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THE problems that will arise are understanding the concept of an ideal rule of law, how about the concept of human rights, protection of human rights, enforcement and how human rights are within the scope of National Law. The aim is to find the ideal concept of the rule of law, concerning the State of Law and the protection of human rights. The implementation of the concept of the rule of law is simply a state that places law as the basis of state power and the implementation of such power in all its forms under the rule of law.

In published by Mandar Maju in 2014 in the third print there are 14 subchapters which explain how the concept of state law and human rights. The presence of the State Law and Human Rights Book as a supporting material for the Law and Human Rights course and will complement and greatly provide knowledge and insight for law observers, students about the concept of the rule of law and the protection of human rights in Indonesia. By aiming to be able to provide an understanding of the concept of legal state legally, but also provide understanding at the theoretical and philosophical level. Whereas understanding of human rights are not only conceptual understanding but also understanding in the form of respect and protection of human rights which is implemented through the enforcement of human rights law. This book in writing uses Indonesian. The use of Indonesian as a language in writing this book is a good thing, considering that this book can be enjoyed by all readers not only law observers, students who are studying at the Law faculty and political thinkers who are interested in exploring the country's legal and human rights. But it also needs to be how the concept of the rule of law develops in Indonesia and its application in the international world, and also conceptual human rights from its substance in the amendment to the 1945 Constitution concerning the regulation of changes in human rights.

These fourteen chapters consist of preliminaries, concepts of thought about legal state thought, the theoretical foundation of the rule of law, Indonesia's rule of law, the concept of justice in the state of law, the concept of justice according to the Indonesian nation, understanding of human rights, philosophical and theoretical thinking about human rights humans, theoretical theories about human rights resources, rationalization of human rights from natural law to positive law, general statements about human rights, protection of human rights, human rights in national law and enforcement of human rights law in Indonesia.

In the first chapter which is an introduction, this chapter consists of two sub, namely the understanding of the rule of law and the relation of the state of law to human rights. In this sub-section, the introduction to the author explains the concept of the rule of law and the relationship between the state of law and human rights. In this sub-chapter the author reveals that there are still many debates regarding the notion of the rule of law itself. In particular what is meant by the rule of law in the real sense, we must first know fully the definition of the rule of law itself, because without understanding in advance the notion of the rule of law would be difficult to fully describe what is meant by the rule of law. Debate about the concept of Rechtsstaat and the Rule of Law concept, so many researchers and legal experts who wrote the existence of these concepts that debate. Embryonically the idea of a legal state was revealed by plato, he introduced the term nomoi that good state administration is based on good legal arrangements. Then Politea and Politicos. Then perfected by Aristotle. The debate about the concept of the rule of law, namely rechtstaat and rule of law, where rechstaat rests on the

European legal system, while the rule of law relies on the Anglo Saxon legal system or the Common Law system. The two legal systems have differences between the Rechstaat concept and the Rule of Law, where Rechstaat was born from a struggle against absolutism so that it is revolutionary, while the rule of law concept evolves evolutionarily. In this chapter the author discusses the differences in legal state systems. Basically, the two countries highlighted very sharp differences, where the concept of the state law rechstaat shows the role of government officials means that people must submit to the law and prioritize the principle of rechmatigheid (the principle of legality that requires government actions to be in accordance with the law), while the rule of law concept is control the government in protecting human rights using the principle of equality before the law.

We can examine the relationship between the legal state and human rights from the point of view of democracy, because human rights and democracy are humanitarian concepts and social relations that are born. The conception of democracy provides the basis and mechanism of power based on the principle of equality and human equality. The principle of democracy / popular sovereignty can guarantee the participation of the community in the decision-making process. For example Law No. 39 of 1999 concerning Human Rights, the Indonesian people understand the Universal Declaration of Human Rights 1948, is a statement of humanity which contains universal values that must be respected. The most important part of this introductory chapter is the sub-chapter on the relationship between the rule of law and human rights. The author answers the relationship between the legal state and human rights not only in a formal form in the sense that the protection of human rights is the main principle of the concept of the rule of law, but the relationship is seen in terms of material. Material relations are illustrated by the act of implementing the state must rely on the rule of law as the principle of legality.

In the second chapter, entitled the concept of thinking about the rule of law, the author discusses the concepts of recharge, rule of law, socialist legality, religious legality and Islamic nomocracy. The method used in this sub-chapter is the comparison method. The author makes comparisons with several concepts of rule of law, conceptual concepts that become the object of comparison of the authors related to an overview of the concept of thinking about the rule of law. Comparison of Rechstaat and rule of law concepts where the difference is that the two concepts are supported by different legal systems, where the characteristic of the rechstaat concept is administrative and characteristic of the Rule of law is Judical. The similarity is that the two concepts together emphasize the protection of human rights.

In the third chapter entitled the theoretical foundation of the rule of law there are several sub-chapters consisting of legal sovereignty theory, people's sovereignty and democracy, separation (division) of power and the theory of the rule of law with people's sovereignty. The author has brought various theories and thinkers pioneered by scholars, in the theory of legal

sovereignty pioneered by Krabbe who said that the legal position is above the state and because of that the state must submit to the law, then Hans Kelsen with the theory of stuefenbau. The theory of popular sovereignty pioneered the work of JJ Rousseau "Du Contract of Social", the concept of social contracting and the division of power including Thomas Hobbes, John Locke and Montesquieu. The meaning of the theory is people's sovereignty, that the highest power is in the hands of the people. With the comparison method between theories with one another it can be concluded that the weakness of the law sovereignty theory proposed by Krabbe is that the law obstructs one's legal feelings, even though it is very subjective.

In the fourth chapter entitled *Indonesia Negara Hukum* which consists of several sub-chapters namely the concept of the state of Indonesian law, the concept of the ideals of Indonesian law and the concept of Indonesian legal politics. The concept of the Indonesian law in Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a state of law, which is based on law (Rechstaat) not for mere power (machtsstaat). The superiority of the Indonesian state is a legal state, the 1945 Constitution as a basic law places the law in a decisive position in the Indonesian constitutional system, its weakness is to determine whether a country is a legal state/not, the right instrument is the country's constitution. The concept of the ideals of Indonesian law (rechtsidee) was pioneered by Rudolf stammler, and gustav. In the Indonesian state constitution the ideals of the law will not be separated from the development of the idea of Indonesian civilization since independence. The legal aspiration adopted by Indonesia is the basic ideology that originates in the opening of the 1945 Constitution as the highest legal source and as moral in the life of the nation and state. The concept of Indonesian legal politics in Pancasila is the source of all legal sources.

In the fifth chapter entitled the concept of legal state justice which consists of classical and modern thought, the concept of justice in classical thought is put forward by aristoles, plato, and agustinus. Then the modern flow of liberalism emerged which contained love of tolerance and freedom of conscience. The concept of justice is based on the flow of philosophers, the concept is a lot of debate about the meaning of justice. Justice has goals and characteristics.

In the sixth chapter entitled the concept of justice according to the Indonesian nation's view consists of sub-chapters namely according to Pancasila, the formation of national law, and as the idea of national law. For the Indonesian people, the relation between theory and justice based on Pancasila is a conception and the perception of justice must be in accordance with the feelings of a nation. The principle of Indonesia is a country based on law, the 1945 Constitution as a legal basis. Hans Kelsen's thought that legal order in the formation of laws is hierarchical and dynamic. He looked as a Stuefenbau. The question about what is Grundnorm? because Pancasila is a grundnorm or basic norm is the source of all sources of law that will be applied in Indonesia.

from the sub-chapters namely the term human rights, the history of the struggle for human rights, the struggle for human rights in developing countries. Human Rights, droits de I'homme, The term human rights cannot be separated from the development of human rights instruments, beginning with the universal declaration of human rights in 1948, preceded by the UN charter and then the 1948 declaration. Human rights conference in Vienna that human rights are universal, cannot separated and interdependent and interconnected. Magna Charta 1215, petition of rights 1628, Hobeas Corpus Act 1670, Bill of Rights 1689 and The Universal Declaration of Human Rights. In the course of history and the events behind the stages of human rights development through very long journeys, the essence remains one to promote the right to life, the right to freedom, the right to freedom. The concept of human rights struggle in developing countries concerns the origins of the philosophical basis and the way to formulate human rights. The author answers the question of why human rights are always related to development in developing countries? the reason is that most developing countries have approved the UN declaration on the right to development in 1986 and linked human rights to the decision-making process by developed countries as a condition of providing assistance to developing countries.

In the eighth chapter entitled philosophical and theoretical thinking about human rights consists of sub-chapters namely philosophical thinking about human rights, and theoretical. The author compares which thoughts are closer to the concept of human rights. Theoretical thinking has conceptual human rights and has exceeded three generations, theoretical thinking around the 20th century, where the thought is a modern thought, but the wave of problems faced today is no longer a crime of genocide, humanity or war but more rooted in poverty and underdevelopment.

In chapter Nine, entitled theory theory about the source of human rights consists of sub-chapters namely adherents of natural law, legal positivism, Marxist socialism, and the Indonesian nation. The author uses the comparison method, which seeks the advantages of each of these views. In the concept of natural law, one part is the right in the form of natural rights because in the rights to natural law there is a universal justice system. The positivism theories of the teachings of John Austin and Hans Kelsen, but their weaknesses were influenced by Jean Bodin's teachings on the sovereignty of the king. the advantages of this theory are not from God but the rights granted by the state. The view of Marx Max's Marxist socialism is to prioritize progress in the economic field of a political right and civil rights. the view of the Indonesian people on the source of human rights is that it is sourced from God, not from the state

In Chapter X entitled Rationalization of natural law to positive law consists of several sub-chapters namely the concept of natural rights in the view of adherents of natural law and positive law. the thoughts of Thomas Hobbes, John Locke, Montesquieu, Rousseau and Immanual Kant greatly influence the development of human rights. The view of human rights both

derived from western thought and the Indonesian view shows that human rights are recognized as their inherent rights in accordance with their dignity.

In chapter XI entitled the general statement of human rights which consists of sub-chapters namely the meaning and universality. The author reveals about The Universal Declaration of Human Rights and the Charter of the United Nations expressing the concept of justice, social progress, freedom. The Universal Declaration of Human Rights does not have the power to be legally binding but only as a moral obligation. The declaration to advance the norms in morality and rights that are formulated is not a legal right but a universal moral right. the conclusion of the rights is a description of the provisions of the provisions contained in the UN program and is an implementation of the UN Program.

In Chapter XII entitled protection of human rights consisting of sub-chapters namely human rights substance and respect for human right. The concept of freedom and guarantee of freedom cannot be separated from the system of values and principles that inspire. in a democratic society, freedom inherent in humans, guarantees of rights and rule of law form a trinity. respect and protection of human rights is not a moral obligation but a legal obligation. respect for human rights is an orientation for human rights regulation through optimal legal formation.

In chapter XIII entitled Human Rights in National Law which consists of sub-chapters namely Human Rights in the Constitution and Perpu. The MPR RI ratified the amendment to the 1945 Constitution, the first amendment was ratified in the annual session of the Republic of Indonesia MPR 2000, 2001, 2002. Changes in 2002 are listed in chapter XA on human rights. in accordance with the 1945 Constitution which mandates the promotion and protection of human rights in community life, as well as nation and state.

In chapter XIV entitled the enforcement of human rights law in Indonesia which consists of sub-chapters namely the protection and legal recognition of human rights and human rights courts. The idea of protection and respect was adopted into the notion of limiting power (the flow of constitutionalism), the flow of which gave a modern color to the idea of democracy, so that constitutional protection of human rights was regarded as the main feature that must be in every democratic state of law. Law No.26 of 2000 concerning the Indonesian Human Rights Court which has the authority to prosecute serious human rights violations, namely the ad hoc court. to ensure fair law enforcement and respect for human dignity, witnesses and victims are given legal protection through Law No. 13 of 2003.

The discussion on the State of Law and Human Rights in this book and in the form of its presentation make this book has more value to be read by all people, both academics, students, practitioners and the government, especially for Law Faculty students.