

The Types of Human Rights in Labor Unions Are Related To the Model of State Intervention in Indonesia

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ABSTRACT: Human rights are one of the pillars of the rule of law (*rechtstaat*), which is also a gift from God Almighty, who must be respected, highly respected, and protected by the state, government law, everyone for the honor and protection of human dignity. The beginnings of the development of human rights began in 1215 with the emergence of the Magna Charta (Great Charter), then the emergence of the Bill of Rights in England in 1869. In France through the French revolution (1789) produced a Declaration of *droit de l'homme et du Citoyen* (statement of human rights and citizens' rights). The purpose of this article is to analyze the types of human rights in trade unions associated with the state intervention model. The method used in this study is qualitative research with a normative juridical approach. The conclusions of this article are based on the type of human rights that are relevant to trade unions, namely: personal rights which include freedom of expression and right to gather, hold meetings. Human rights contained in the 4th (fourth) precept of Pancasila concerning issuing opinions. Article 28 of the 1945 Constitution, namely the right to freedom of association and assembly, issues thoughts with orally or in writing as stipulated in the law. Law Number 21 of 2000 concerning Labour Unions (Law 21/2000) which is the implementation of Article 28 of the 1945 Constitution. Indonesia adheres to a labour union model "coalition of state and party interference", namely labour unions and employers participating in determining or coloring the establishment of trade union legislation, the purpose of state intervention, is to create peace in industrial peace by protecting workers' rights by not ignoring the company's interests, namely business continuity.

KEYWORDS: *Human Rights, Models of State Intervention, and Labour Unions*

I. INTRODUCTION

Explanation of the 1945 Constitution concerning the Indonesian Government System, states that Indonesia is based on law (*rechtstaat*), not based on mere power (*machtsstaat*), one element of the legal state (*rechtstaat*) the recognition and protection of human rights means that the state guarantees and regulates the implementation of rights human rights, as well as regulating its restrictions, restrictions need to be made are for the public interest, the interests of the nation and the state, the emergence of ideas about human rights is basically a result of the development of the flow of rationalism. This thought is reflected in the works of Thomas Hobbes (1588-1679), John Lock (1612-1704) both from England and Montesquieu (1689-1755) Rosseau (1712-1778) from France. This rational school of thought frees the age from the confines of the feudal period held by absolute kings and church environments. In the field of politics this flow wants to find a rational basis for power. They reject the basis of absolutism, which is a thought that teaches power based on religion (divine right of the king) and therefore should not be contested. Instead the flow of rationalism argues that relations between people [1].

Human rights according to Law Number 39 of 1999 concerning Human Rights (Law 39/1999), are a set of rights that are inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts which must be respected, highly respected, and protected by the state, the law of the government and everyone for the honor and protection of human dignity [2]. Based on its type, human rights regarding freedom of association (forming trade unions) are included in the categories: Personal rights or personal rights 4 (four) Pancasila, human rights regulated in Article 28 of the 1945 Constitution which regulate the right to freedom of association and assembly, issue thoughts with oral or written as stipulated in the law, in the formation of Indonesian trade unions following a coalition of state interference and parties, meaning that trade unions and employers participate in determining or coloring or mem give input in the formation of legislation concerning trade unions carried out by the state, the purpose of state interference in the formation of trade unions to avoid arbitrary acts of employers against workers, in order to create peace in work and business (industrial peace) and the achievement of productivity or sustainability company business.

II. METHOD

The research method used in this article is qualitative research with a normative juridical approach that is studying and reviewing the principles of law, especially the positive law rules derived from library materials that are from the laws and regulations and provisions especially related article titles. Whereas, the types and sources of data in this article are obtained through: Library research, namely by collecting and studying secondary data related to the titles in this article. Secondary data which is used as the main data source in this study consist of: a) Primary Legal Materials relating to this research, including among others labor legislation, trade unions, human rights relating to the problems studied; b) Secondary Legal Materials, among others in the form of scientific writings from experts relating to the problems under study or relating to primary legal materials, including books on employment, human rights, trade unions and non-employment that support the research title this.

III. RESULT AND DISCUSSION

3.1 State of Law (*Rechtsstaat*), Rule of law and Human Rights

There are several foreign terms as an understanding of the rule of law, namely *rechtstaat*, rule of law, and *etat de droit*. At first glance, this term has the same meaning, but actually if studied further there are significant differences⁴ According to Philipus M. Hadjon, the *rechtstaat* concept was born from a struggle against absolutism so that it was revolutionary, on the contrary the concept of the rule of law evolved, the concept *rechtstaat* relies on the Continental European legal system commonly called the civil law or modern Roman law, while the concept of rule of law is based on the common law or English law.⁶ legal system. According to FriedrichJ. Stahl for the establishment of *rechtstaat* there must be 4 (four) elements: a) Human rights; b) Separation or division of powers to guarantee those rights; c) Government based on regulations; d) Administrative court in disputes [3].

Based on the statement from FriedrichJ.Stahl, human rights are one of the elements of *rechtstaat* or state of law, meaning that it is an obligation of the government to regulate the implementation of human rights, this means guaranteeing its implementation, regulating its restrictions in the public interest, the interests of the nation and state [4].

Human rights according to Law Number 39 of 1999 concerning Human Rights (Law 39/1999), are a set of rights that are inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts which must be respected, highly respected, and protected by the state, the law of the government and every person for the honor and protection of human dignity. Because humans are creatures of God Almighty, for that God Almighty bestows human rights to every human being so that humans can carry out the task of managing and maintain the universe with full devotion and responsibility for the welfare of mankind and to guarantee the existence of dignity and dignity and harmony (Vide. a Consideration of Law 39/1999).

3.2History of Human Rights

The beginnings of the development of human rights began in 1215 with the emergence of the Magna Charta (Great Charter), namely the struggle among British nobles who limited the power of King John. Likewise in the 17th century, when there was no hope that justice could be realized, the struggle to uphold human rights continued. Through the old upheavals and negotiations the Bill of Rights was finally accepted by King William III in 1689. The Bill of Rights was a draft law produced through a bloodless revolution (the Glorious Revolution of 1688) against King James II.

Similar struggles also took place in France and the United States. The French people vigorously opposed the King of the Bourbon dynasty who ruled with absolute power. Through the struggle known as the French revolution (1789) later it produced the Declaration of *droit de l'homme et du Citoyen* (statement of human rights and citizens' rights). In the same year, the struggle of the people of the United States succeeded in producing the Bill of Rights which later became part of the United States Constitution in 1791 [5].

The emergence of ideas about this right is basically a result of the development of the flow of rationalism. This thought is reflected in the works of Thomas Hobbes (1588-1679), John Lock (1612-1704) both from England and Montesquieu (1689-1755) Rosseau (1712-1778) from France. This rational school of thought frees the age from the confines of the feudal period held by absolute kings and church environments. In the field of politics this flow wants to find a rational basis for power, for that they reject the basis of absolutism that power is based on religion (divine right of the king) and therefore should not be contested. Instead they argue that the relationship between the people and the king is based on rational considerations [6].

To develop their ideas, they then gave birth to a new theory to face the period at that time. Social contract theory (community agreement). In this theory it is stated that humans have natural rights that need to be protected if humans want to live civilized and socially. To obtain such protection, humans are willing to surrender a portion of their rights to the king or leader on the basis of a kind of contract provided that humans are willing to obey the king, provided that their rights (human rights) are protected.

Likewise, according to Uwiyono, the thoughts and struggles to uphold the recognition and protection of human rights have actually begun since the seventeenth century in Western countries, as a reaction to the tyranny of rulers due to absolute power, conception of human rights in the seventeenth century is the starting point or the foundation of the conception of rights because the previous century (XVI century) prioritized obligations [7].

According to Burkett [8], the conception of human rights in the seventeenth century came from natural rights which flowed from natural law, natural law according to the Stoa and Cicero people and their followers was not the highest law. But if natural law is based on divine power, then on that basis natural law is seen as the highest law. Two rights highlighted in this century were political freedom and the right to exist (rights to be). Highlighting these two rights, because in the past the life of the country was dominated by absolutism so there was absolutely no freedom of politics. In social life like this, brutality occurs so that human existence is threatened.

In the seventeenth century, natural rights were rationalized through the concepts of social contracts, and made those rights secular, rational, universal, individual, democratic and radical. The right that is very much highlighted in this century is civil liberties and the right to have (rights to have). The prominence of these two rights is a logical series of rights that have been obtained in the seventeenth century. These thoughts are the colors of the American and French revolutions. Famous thinkers of this time, including John Locke, Montesquieu, J.J. Rousseau, John Locke is a pioneer of "liberalism" and "democracy" Montesquieu is a champion of political freedom and civil liberties, whose major work entitled "Esprit des Lois" has a major influence on the French revolution. J.J. Rousseau put forward the idea of a country known as the social contract (*du social contrat*) [9].

Human rights, human rights, natural rights, basic human rights, *droit de l'homme* (France), human rights (UK), *mensen rechten* (Netherlands), meaning of human rights in the United Nations (UN) document), which is "human rights could be generally defined as" which are inherent in our nature and can not live as human beings which in Indonesian means: inherent rights that naturally cannot live without rights-the right that every human being has naturally since human birth, these rights cannot be contested by anyone, if that right is violated, it will cause suffering and defamation of human dignity.

According to Boje and Furaker [10], human rights are "rights that enable people to live based on a certain dignity and dignity, according to Suwanto [11], human rights, are "basic rights or basic rights brought by humans from birth as God's gift The One and the basis of other basic rights and obligations.

According to Coleman [12], "... .. human rights claims are recognized as" as of right ", not claims upon love, or brotherhood does not have to be earned or deserve them, they are not merely aspirations or moral assertions but , increasingly, legal claims under some applicable law. (... .. human rights are retained demands known as "rights", not demands for love, or mercy, or brotherhood, or love, people do not have to receive or accept them. Claims are not only moral aspirations or statements but even lawsuits based on certain laws applied).

Article 1 The Universal Declaration of Human Rights regulates, the basic concept of human rights is the recognition that all human beings are born free and equal in terms of their rights and dignity, all human beings are endowed with reason and conscience to interact in a spirit of brotherhood. This basic conception gives birth to 3 (three) principles: a) Universal human rights that are inherent in every human being regardless of ethnic differences, race, gender, age, religion, political beliefs or forms of government; b) Human rights cannot be denied because it is not a state gift so that it cannot be eliminated or rejected by any political authority; 3) Human rights are subjective which are individually owned because of their capacity as rational and autonomous humans.

3.3 Types of Human Rights

a. Personal Rights, Economics (Poverty Rights), Rights of Legal Equality, Politics (Political Rights), Social and Culture Rights, Procedural Rights.

- 1) Personal rights or personal rights which include freedom of expression, freedom of religion, freedom of movement;
- 2) Economic rights or poverty rights, namely the right to own something, buy, sell and use it;
- 3) Human rights to get equal treatment in law and government or commonly referred to as rights of legal equality;
- 4) Political rights are the right to participate in government. Voting rights (choosing and being elected in elections), the right to establish political parties;
- 5) Social and cultural or social rights and culture rights such as the right to choose education and develop culture;
- 6) Human rights to obtain judicial procedures and protection or procedural rights, for example regulations in terms of arrests, searches, trials and so on.

b. Human Rights Based on Pancasila

The concept of human rights prevailing in Indonesia is the elaboration of a just and civilized humanitarian principle and encouraged by other principles of Pancasila. Human rights in terms of the Pancasila principles

have the following definitions:

- 1) Human rights according to the principle of "the One Godhead" contains an acknowledgment of the Almighty God and guarantees everyone to worship according to their respective religions and beliefs. God views the same towards humanity, humans must be fair to others, respect and not rob others of their rights. Human rights as the teachings of God. Godhead is the ultimate cause or the first cause. This means that the origin of all life teaches equality, justice, compassion and peaceful life;
- 2) Human rights according to the principle of just and civilized humanity. Fair and civilized humanity, is an attitude that requires the implementation of human values. In the sense of recognition of human dignity (dignity of man), human rights, and human freedom;
- 3) Human rights based on the principles of Indonesian unity, is the awareness of Indonesian nationality born of the desire to unite from a nation so that everyone enjoys their human rights without restrictions and fetters from any party that comes;
- 4) Human rights according to people's principles led by wisdom of wisdom in consultation/representation. According to the fourth principle, popular sovereignty means that the power in the state is in the hands of the people. The people's sovereignty is manifested in the form of human rights, among others: a) The right to issue opinions; b) The right to gather and hold meetings; c) The right to participate in government; d) The right to occupy office;
- 5) Human rights according to the principles of social justice for all Indonesian people. Every citizen has the freedom of property rights and social security, and has the right to get a job and health protection [13].

c. Human Rights in the 1945 Constitution

The 1945 Constitution regulates many of the rights of citizens, such as: 1) Human rights in the field of law, government, obtaining employment and state defense efforts, are regulated in Articles 27 paragraph (1) up to paragraph (3) of the 1945 Constitution) for example "every citizen has the right to work and livelihood that is like to humanity (Vide Article 27 paragraph (2) of the 1945 Constitution). 2) Human rights in politics and human rights are general in nature, regulated in Articles 28, 28A, 28B, 28C, 28D, Article 28E, 28F, 28G, 28H, 28I, 28J, for example the right to freedom of association and assembly, issuing thoughts with oral or written as stipulated in the law (Vide Article 28 of the 1945 Constitution). 3) Human rights in the field of religion and belief in God are regulated in Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution. 4) Rights and obligations to defend the state are regulated in Article 30 paragraph (1) and paragraph (2) of the Constitution 1945. 5) Human rights in the field of education are regulated in Article 31 paragraph (1) up to paragraph (5) of the 1945 Constitution. 6) Human rights to develop culture are regulated in Article 32 paragraph (2) of the 1945 Constitution. 7) Rights fundamental in the economic field, regulated in Article 31 paragraph (1) up to paragraph (4) of the 1945 Constitution.

3.4 Trade Unions and Types of Human Rights

As explained above, one of the requirements of the legal state (*rechtstaat*), refers to the types and models of human rights, human rights relating to unions, are personal rights which include freedom of expression. When referring to human rights based on the criteria of the Pancasila, human rights according to the principles of the people led by wisdom of wisdom in consultation or representation, which form their human rights, are the right to issue opinions and rights to gather and hold meetings, if referring to human rights based on the 1945 Constitution, is the right of every Indonesian citizen to associate, gather, issue thoughts both verbally and in writing, obtain work and livelihoods that are appropriate for humanity, and have the same position in law, constitutional rights of all Indonesian people (Vide Article Article 20 paragraph (2), Article 27, and Article 28 of the 1945 Constitution).

Law Number 21 of 2000 concerning Labor Unions (Law 21/2000) was approved by the House of Representatives (DPR) in July 2000, and came into force on 4 August 2000. In addition to the implementation of Article 28 of the Constitution 1945, is also an obligation that must be carried out by Indonesia after ratifying ILO Convention No. 87/1948 concerning Freedom of Association and Protection of the Right to Organize, while replacing various government regulations concerning registration of labor organizations, this law guarantees: a) the right of workers to establish and become a member of a union; b) union rights to protect, defend and improve the welfare of workers and their families; and c) protection of workers from discriminatory actions and anti-union interventions [14].

Freedom of association to gather, issue thoughts both verbally and in writing is a human rights of workers who cannot be separated from their habitat in the form of Industrial relations environment, freedom of association gathered to be developed in an industrial relationship, there is a correlation between industrial relations and freedom of association. or freedom of association to gather, to issue thoughts is one of the means to realize harmonious industrial relations (Industrial Peace), namely the creation of peace of work and business in the company which is characterized by a continuous increase in company productivity that correlates with the welfare of workers and families, industrial peace, there is a dynamic in the relationship between employers and

workers and their organizations (trade unions), in the sense of reciprocal communication in which it contains elements: a) Rights and obligations of the parties guaranteed rights implemented; b) If a dispute arises, it can be resolved internally by both parties; c) Strike and company closure (lock out) are not used to impose will.

Trade unions are one of the means of industrial relations as well as the realization of the human rights of workers in freedom of association to gather together, issuing thoughts both verbally and in writing. Workers as creatures of God Almighty, God Almighty gives human rights to every worker with the aim that workers through trade union facilities together with employers can carry out the task of managing and maintaining company management with full devotion and responsibility for the welfare of all parties involved in industrial relations (employers, workers and their families) while at the same time ensuring the existence of dignity and dignity of workers in order to create peace in work and business (industrial peace) [8].

3.5 Trade Unions and State Interventions

The working relationship between employers and workers can be seen from 2 (two) aspects, namely (i), juridical aspects. (ii). Sociological Aspects.

a. Juridical aspect

Juridically, the position of workers and employers is balanced, they have an equal position before the law (equality before the law). This is in line with Article 27 paragraph (1) of the 1945 Constitution, which does not differentiate human beings before the law.

b. Sociological aspects

With the signing of the Work Agreement (PK), it means that workers and laborers are mindful of employers, for 7 (seven) or 8 (eight) hours a day (40 hours per week, 173 hours per month: the author) the worker will follow where the energy is needed by the entrepreneur. With the signing of the PK the relationship between superiors and subordinates (Subordination) in which workers are subordinates, while employers as superiors are stronger positions, because socially and economically workers are weak. In this subordinated relationship, there is a tendency of the employer to take arbitrary actions against workers with the aim of obtaining the highest profit, on the contrary, although individuals are weak, collectively the workers have sufficient strength to pressure employers in an effort to protect their rights and their interests in getting a better welfare, while employers have a lockout to suppress the workers group. Because these two different interests are sources of conflict (industrial relations disputes). This conflict of interest attracts the government to participate in overcoming the problems of labor relations or industrial relations.

According to Uwiyono [7], There are several types or models of labor relations (trade unions) that are colored by government interference, namely 32: a) Weak state interference. The state does not regulate many work conditions, almost all work conditions and social security are handed over to the parties (employers, workers / laborers) or known as *laissez faire laissez aller / pazzler* slogan, freedom of association is highly respected, so many unions grow / labor union (multi Union System). The model of labor relations or industrial relations here is the "Contractualist Model" or "Conflict *Arbeid Verhoudingen* Model" with features (i), Adhering to the Multi Union System. (ii). Collective agreements (PKB) are the main legal source. (iii). The role of the state is very low. (iv). Uphold the value of freedom; b) High state interference. The existence of trade unions is limited to just one and is an extension of the state, the main source of labor law is legislation, individual freedom to regulate themselves is very limited, the state has the authority to determine all aspects of labor life (industrial relations) "From the cradel to the gawe", the freedom of workers and employers in determining work conditions does not exceed the standards of maximum or less than the minimum standards set by the state [15]. The labor or industrial relations model here is the Corporate Model "or" *Harmonie Arbeid Verhoudingen* Model "with characteristics: (i). With a single Union System. (ii). Legislation is the main legal source. (iii) The role of the state is very high. (iv). Do not uphold the value of freedom; c) Coalition of state interference and parties. Individual freedom is upheld, the trade union model adheres to the Multi Union System, the role of the state is very dominant in determining work conditions, the source of labor law (industrial relations) is legislation. Trade Unions and Employers' Organizations have little role in making CLA because maximum standards and minimum standards are determined by the state. The role of labor unions and employers participate in determining or coloring the formation of legislation in the field of employment. The model of labor relations and industrial relations here, is the "*Coalitie Arbeid Verhoudingen* Model" or "Contractualist and Corporate Model" with characteristics: (i). Adhering to the Multi Union System, (ii). Legislation is the main source of law (iii) States, Trade Unions, Employers' Organizations play an active role. (iv) uphold the value of freedom [13].

Indonesia for the model of labor relations (industrial relations) which is colored by the interference of the Indonesian government adheres to model number 3 (three), namely "coalition of state and party interference" because if referring to paragraph 4 (four) of the Preamble of the 1945 Constitution, which regulates the objectives Indonesia is a "public welfare" so that Indonesia adheres to the State of Prosperity ", according to Padmo Wahjono. In this type of prosperity country or *Wohlfahrt Staats*, the state is fully dedicated to the community. Prosperity of its citizens, for the benefit of all people and the state. So in this type of prosperity state the task of the state is merely to carry out the prosperity of the people as much as possible.33 for that through the

establishment of state legislation the active role in the field of labor but trade unions and employers or employers' organizations can determine or coloring the formation of legislation in the field of employment [15]. According to Husni [1], if the relationship between workers and employers (employers) is still left entirely to the parties (workers and employers), then the aim of creating social justice in the field of labor (employment) or to create social justice in the field of labor (employment) will be difficult achieved, because a strong party will always control the weak party (*homo homini lupus*), the employer (entrepreneur) as a socially and economically strong party will always pressure the workers who are in a weak or low position. On that basis, the government is gradually participating in handling labor issues (labor) through several laws and regulations in the labor sector (labor) intended to provide legal certainty to the rights and obligations of employers and workers. including in the establishment, implementation of rights and trade union obligations.

The purpose of government intervention in the field of labor or employment is to realize fair labor or labor because labor or labor legislation provides rights for workers as whole human beings, therefore it must be protected both concerning safety, health, decent wages (including the rights of workers or workers in freedom of association, assembly, issuing thoughts both verbally and in writing). In addition, the government must also pay attention to the interests of employers , namely business continuity.

IV. CONCLUSION

Human rights are a condition of the state of law (*rechstaat*), the beginning of the development of human rights began in 1215 with the emergence of the Magna Charta (Great Charter) in England and the birth of the Bill of Rights (Law of Rights) in 1869. French Revolution (1789) produced the Declaration of *Droit de l'homme et du Citoyen* (statement of human rights and citizens' rights). In the same year, the struggle of the people of the United States succeeded in producing the Bill of Rights which later became part of the United States Constitution in 1791. Human rights are a struggle to fight the tyranny of the rulers due to absolute power.

There are several types of human rights, regarding the types of human rights relating to trade unions are: personal rights, human rights according to the precepts of 4 (four) Pancasila, and human rights stipulated in Article 28 of the 1945 Constitution and implemented in Law 21/2000, Indonesia is a coalition model of state intervention and parties in the formation of trade unions, namely the state has an active role in establishing union legislation arrangements but trade unions and employers or employers' organizations can participate in determining or coloring the formation of regulations the legislation, in the formation of state legislation and trade unions, must also pay attention to the interests of employers, namely the productivity of the company for the continuity of the business that correlates with the welfare of workers and their families.

REFERENCES

- [1] Husni, L. (2014). *Pengantar Hukum Ketenagakerjaan*. Raja Grafindo Persada Depok, 2014.
- [2] Muhtaj, ME. (2017). *Hak Asasi Manusia dalam Konstitusi Indonesia, Dari UUD 1945 Sampai dengan Perubahan UUD 1945 Tahun 2002*. Kencana Jakarta.
- [3] Hadjon, PM. (1987). *Perlindungan Hukum Bagi Rakyat di Indonesia*. Bina Ilmu Surabaya.
- [4] Waluyo, B. (2016). *Penegakan Hukum Di Indonesia*. Sinar Grafika Jakarta Timur.
- [5] Setijo, P. (2010). *Pendidikan Pancasila Perspektif Sejarah Perjuangan Bangsa*. Gramedia Widiasarana Indonesia Jakarta.
- [6] Noval, SMR. (2017). *Hukum Ketenagakerjaan, Hakikat Cita Keadilan dalam Sistem Ketenagakerjaan*. Refika Aditama Bandung.
- [7] Uwiyono, A. (2018). *Asas-Asas Hukum Perburuhan*. Raja Grafindo Persada Depok.
- [8] Burkett, B. (2006). *The International Labour Dimension: An Introduction*. Cambridge University Press London.
- [9] Tim Imparsial. (2001). *Mengugat Hukuman Mati di Indonesia*. Imparsial Jakarta.
- [10] Boje, T. P and Furaker, F. (2003). *Post-Industrial Labour Markets, Profiles of North America and Scandinavia*. Routledge New York.
- [11] Suwanto. (2003). *Hubungan Industrial Dalam Praktek*. Asosiasi Hubungan Industrial Indonesia.
- [12] Coleman, J.S. (2010). *Foundation of Social Theory*. The Belknap Press of Harvard University Press.
- [13] Herdiawanto, H. (2018). *Spritualisme Pancasila*. Prenadamedia Group Jakarta.
- [14] Bronstein, A. (2009). *International and Comparative Labour Law, Current Challengers*, Palgrave MacMillan New York.
- [15] Busroh, AD. (2013). *Ilmu Negara*. Bumi Aksara, Jakarta.