

# THE EXSISTENCE OF HUMAN RIGHTS IN INDONESIA: THE FUTURE OF HUMAN RIGHTS ON DEMOCRATIC STATE

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## **Abstract**

*Human rights are fundamental rights, namely the basic rights possessed by humans that they carry since they are born that are related to their dignity and dignity as the creation of God Almighty, so that their existence is a necessity, cannot be contested, even must be balanced, respected and maintained from all kinds of threats, obstacles and disturbances from other humans. Because human rights are basic human rights or basic rights that have been born as a gift from God Almighty, this right is very basic in nature and human life which is very natural, that is, it cannot escape from and in human life. As a legal state, in the elaboration of human rights, the Indonesian state refers to the Pancasila and the 1945 Constitution. The Pancasila perspective and the 1945 Constitution on human rights must be carried out as a system which includes the movement of state life which is not only interdependent but also contribute to each other.*

**Keywords:** Human Right, Democracy and State Law

## **PRE-DISCOURSE**

The idea of human rights emerged in the seventeenth and eighteenth centuries in England, as one of the reactions to the innocence of kings and feudalists of that era against the people they commanded or the humans they employed. Britain has a tradition of longstanding resistance against all attempts by the king to take absolute power.

The development of the concept of human rights has long had very long historical roots, more than forty centuries ago. Although the new concept of human rights was officially used by the United Nations on

June 25, 1945 and believed to be born of the history of European society, the latest version states that the concept of human rights was also born and developed in the history of Muslim society. This is evidenced by the results of the study of the Center of Islamic Legal Studies which stated that in the Islamic period there had been recognition of rights and tolerance, as enshrined in the Medina Charter<sup>1</sup>.

The problems of democracy, state law and human rights always seem to be interesting to study and discuss, because this issue has a broad political impact on each country. Governments everywhere today are encouraged to redefine explicitly their position in a legal state that adheres to democratic ideology and upholds human rights. The people's reaction will emerge if there is a deviation in the application of these principles basically concerning a relationship between the government and the people.

Discussions about democracy, the state of law and human rights can take place abstractly by philosophers or concretely in real life contexts in society and the state by statesmen, politicians and the people themselves. These three principles in principle are not in conflict with each other. The abstract thinking of philosophers is often a reference for community and state leaders in their work. On the contrary, the behavior of the leaders of the community and the state and the response of the people and citizens to leadership, they have always been a reflection of the political thinkers and statesman.

Indeed, what is often a problem is the gap that is too wide between the ideal ideal and agreed with the real reality that is seen everyday. They are often opposed to each other. Philosophers and state leaders generally refer to ideal ideals. While the people and the people are more showing the reality of the rill. Indeed, these three principles do not have to be confronted with each other. Ideal ideals should serve as a guideline and benchmark for the dynamics of real political realities, while the political realm itself becomes a test and input stone for correcting and maintaining the dynamics of political ideals.

Democracy and human rights are conceptions of humanity and social relations that are born of the history of human civilization in all

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<sup>1</sup> Lihat Valin Singka Subekti (dkk)., *Politik HAM Di ASEAN: Dari Retorika Menuju Institusionalisasi*, Depok: Departemen Ilmu Politik FISIP UI, 2013, hlm. 23

corners of the world. Democracy and human rights can also be interpreted as the result of human struggle to maintain and achieve their human dignity, because until now only the conception of democracy and human rights has proven to recognize and guarantee human dignity.

### **HUMAN RIGHTS: IDEALITY AND REALITY DISCOURSE**

Literally what is meant by human rights are basic rights or basic rights. In this sense, human rights are fundamental rights, so that their existence is a necessity, cannot be contested, even must be protected, respected and maintained from all kinds of threats, obstacles and disturbances from other humans. Didin Nazmi Yunas argues that human rights are the basic rights possessed by humans that they carry since they are born which are related to their dignity and dignity as the creation of God Almighty which must not be violated, eliminated by anyone.

Thus, human rights are basic human rights or basic rights that have been born as a gift from God Almighty, not the gift of humans or rulers. This right is very natural for human life and life which is natural, that is, it cannot be separated from and in human life. Because it is a basic right, human rights are something that automatically starts life. John Locke argues that human rights are the rights that he carries since he was born into the world, in fact humans or babies who are still in the womb of a mother also have human rights. Leah Levin argues that the concept of human rights has two basic understandings, namely the first is the rights that cannot be separated and revoked are human rights because he is a human. These rights are moral rights originating from humanity human beings. Second, human rights are rights according to law and society itself, both nationally and internationally.

According to the Teaching Human Rights issued by the United Nations (UN), human rights (HAM) are inherent rights of every human being, without which humans cannot live as humans. The right to life, for example is kalim to obtain and do everything that can throw someone away alive. Without these rights their existence as human beings will be lost<sup>2</sup>.

In line with the above understanding is the initial statement of human rights (HAM) proposed by John Locke. According to Locke,

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<sup>2</sup> Lihat A.Ubaedillah dan Abdul Rozak, *Demokrasi, Hak Asasi Manusia, dan Masyarakat Madani*, Jakarta: Kencana Prenada Media Group, 2008, hlm.110.

human rights are the rights given directly by God Almighty as something natural. Because of its nature, there is no power in the world that can revoke the human rights of every human being. Human rights are the basic rights of every human being brought from birth as the gift of God Almighty, not human gifts or institutions of power<sup>3</sup>.

This historical dimension of human rights does neither exclude a dynamic understanding of human rights, which remains open for further development if necessary. On the contrary, taking the historicity of human rights seriously opens the eyes for similar injustices and calls for support of reactions to injustices leading to the claim for human rights. ‘The human rights abuses on the minds of the 1948 drafters occurred during the Holocaust, while today we can point not only to the Nazi atrocities, but to atrocities in Bosnia, Cambodia, Rwanda, Darfur and in other contexts’ (Morsink 2010: 36). Nor this historical dimension of human rights leads to the end of the universality of human rights due to their historical contingency, because the historical location and explanation of the genesis of human rights explain historic injustices in their exemplary character without any potential for a moral justification of human rights. The analysis of the historical development of human rights brings an added value to the human rights discourse, as it discovers lines of argumentation and processes from a historical perspective which opens valuable systematic insights. While in the historic dimension of human rights the question of the ‘how’ regarding the genesis of human rights is addressed, the question of the ‘why’ every human being is entitled to human rights remains open<sup>4</sup>.

This human rights is contained in Law Number 39 of 1999 on Human Rights. According to this Act, human rights are the set of rights inherent in the nature and existence of human beings as being God Almighty is His honorable, uplifted and protected state, law, government, and everyone for the honor and protection of the dignity and human dignity.

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<sup>3</sup> Lihat Ahmad Suhelmi, *Pemikiran Politik Barat: Kajian Sejarah Perkembangan Pemikiran Negara, Masyarakat dan Kekuasaan*, Jakarta: PT. Gramedia Pustaka Utama, 2001, hlm. 191

<sup>4</sup> Peter G. Kirchsclaeger, “The Relation between Democracy and Human Rights”, dalam *Globalistics and Globalization Studies Aspects & Dimensions of Global Views*, Volgograd: ‘Uchitel’ Publishing House, 2014. Edited by: Leonid E. Grinin, Ilya V. Ilyin, and Andrey V. Korotayev ISBN 978-5-7057-4028-4.

This thought is reflected in the works of Thomas Hobbes (1588-1679) of England and Jean Jacques Rousseau (1712-1778) of France.

1. Thomas Hobbes (1588-1679)

Hobbes argues that human life is separated in two epochs, namely the condition as long as there is no state of nature and the state after the state. Before the state of nature, Hobbes described a very chaotic state far from being in a state of security and prosperity and order. This situation is described by Hobbes with *Homo Homini Lupus* (one human being is a wolf for the other human) and between one human being and another human being are hostile to each other, fighting one another against each other (*bellum omnium contra omnes*). In this situation the law made by them is physically the strongest person so that the weak become interior creatures for others<sup>5</sup>.

2. Jean Jacques Rousseau

Rousseau was the first figure to use the term social contract with his own meaning and originality. The natural state according to Rousseau is illustrated by this condition that individuals are free and equal, all of which are produced by individuals and individuals who feel dissatisfied. Because the situation cannot be sustained, humans consciously end the situation with a social contract. Rousseau only knows one fruit of the community agreement, the *pactum unionis*. The *Pactum Subjektionis* who formed the government that must be obeyed was not known by Rousseau. The government according to Rousseau does not recognize the contractual basis, only political organizations are formed with social contracts. The government as the leader of the organization is formed and determined by the sovereign and its representatives. The sovereign according to Rousseau is that all his people through general will, this general will is absolute<sup>6</sup>.

One Muslim scientist, Abul A'la Al-Maududi, expressed his income about Human Rights (HAM). According to Al-Maududi, HAM is the right of every person who is by nature because he is a human being, who is bestowed by Allah SWT to every human being that cannot be revoked or reduced by any power or body. The rights referred to are eternal,

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<sup>5</sup> *Ibid*, hlm. 168

<sup>6</sup> *Ibid*, hlm. 245

permanent and eternal which cannot be changed and modified. That's why HAM has strict principles regarding equality, non-discrimination, indivisibility, but depends on fulfilling other things (interdependence) and responsibility, where everyone, the state and other parties are responsible for fulfilling human rights<sup>7</sup>.

In addition, there is a Western scientist who talks about human rights is H.J. McCloskey. According to McCloskey human rights, as other rights, are defined as "rights" (entitlements). Substantively, human rights have two main moral and political sides that are different, namely as rules relating to rights and obligations (righteousness) and rights as ownership (entitlement-right)<sup>8</sup>.

The concept of rectitude as human rights is based on the idea of moral truth where someone has the right to do something. While the concept of entitlement in human rights is related to the statement of someone who has rights. Therefore, in terms of universal human rights to get food (food to food) for example also includes rights in accessibility, availability, and food sufficiency as a condition for dignified life. The institutional rights are interpreted as human prerogatives in enjoying those rights which give the holders the right of ability to claim access to their rights. As a result, rights are the most appropriate value when someone does not have (object) "rights".

In relation to the rights entitlement, McCloskey describes in detail in four parts. First, all rights with what is referred to as a negative concept of a rights as one of them has been introduced in John Locke's political theory. Locke saw that humans naturally possessed the freedom and equality of the social contract, namely the people transferring some of their rights to the government (the authorities) to ensure goodness, comfort, enjoyment of life and freedom. The idea of the natural state of John Locke refers to a situation in which humans live in peace, policy, mutual protection, freedom, no fear of equality. Humans in natural conditions according to Locke are basically good, always obsessed with

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<sup>7</sup> Lihat Sayyid Abul A'la Maududi, "Sejarah dan Hak-Hak Azasi Manusia", dalam *Hak Azasi Manusia Dalam Islam*, Jakarta: Yayasan Obor Indonesia, 1995, hlm. 173

<sup>8</sup> Lihat Sidney Hook, "Renungan Tentang Hak-Hak Asasi Manusia", dalam Harun Nasution & Bahtiar Effendy (penyt.), *Hak Azasi Manusia Dalam Islam*, Jakarta: Yayasan Obor Indonesia, 1995, hlm. 15

<sup>9</sup> Lihat Valina Singka Subekti, *Op. cit.*, hlm. 24

making peace and creating peace, helping each other and getting to know social relations. The peaceful state of nature changes after humans find monetary and money systems. This is the source of human disasters according to the Locke. Before the discovery of money, the difference in wealth between fellow human beings was not so striking because people would not collect objects of their life needs beyond what they needed and consumed<sup>10</sup>.

Human rights are a theory-based social construct. Human rights practice is commonly understood as actions through which we advocate for the protection of human rights [...] Social action and behaviour which actually do respect human rights, through which we promote their protection, protest against their violation, and organise action or establish institutions that realise and protect human rights, remain guided by theoretical considerations. Indeed, the theory must not become an end in itself; there is something like a prohibition of self-gratification for human rights theory. However, a practice that renounces theoretical considerations will, like similar practices, become blind and runs the risk of getting lost or doing something wrong.

Second, Entitlement-rights as a positive concept of rights (positive concept of a rights) which becomes a person's moral authority to act. Third, the concept found in special rights (special rights) where the individual has the will to reject / accept something in getting something else. Fourth, the welfare concept of a right. This concept is not only positioned as a moral entitlement to act or the right to own it but also as the right to strive to realize goals, request assistance or fulfill the right to realize happiness.

The fact that human rights are always historically determined can be seen from two phenomena. First, because of changing conditions, the true meaning of registered rights is often expanded or reinterpreted in order to compensate for new situations. Justifications for actions deemed appropriate to fulfill the present situation are interpreted from or to the old formulas. The history of the interpretation of the First Amendment in the United States constitution is sufficient evidence. Second, when new declarations or human rights statements are disseminated, new rights are often prominently added without reason for interpretation. For example,

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<sup>10</sup> *Ibid*, hlm. 24

the right to rest, the right to work, the right to obtain social security in various forms, and the right to obtain citizenship. Of course, certain conditions are always relevant, especially the threats and dangers of despotic and arbitrary government actions. It is clear that some basic human rights are contained in all declarations such as the right to life, freedom, religious freedom, freedom of speech, freedom of the press and assembly.

Finally, whether a right becomes "human rights" does not depend on whether the right is included in the list or in the declaration or not. Any moral rights can emerge as significant human rights in social political life. Where human rights are recognized and implemented, this is evidence that these rights have legal force. This leads to the definition of human rights which is very complicated and full of obstacles.

There are many basic assumptions that can reinforce the following definitions of human rights<sup>11</sup>:

First, human rights are a "type" of existing rights. Thus human rights are not synonyms of the rights themselves. "Human rights" are classified as a type of "moral rights" even if "human rights" are also recognized as legal rights. Second, when we talk about human rights, if the word "human" has strength, then those rights cannot be disguised by the rights contained in animals, angels, if any, or the rights of companies or countries. Third, although theoretically every moral right can be a human right, at one time and in a certain place not every thing that includes moral rights or that is morally a right is considered as human rights. The declaration on human rights is always issued in the context of the demand for complaints. There are many actions that we consider to be true in special contexts, we will not put them in the category of "human rights" or "human rights". Fourth, if human rights are needed, these rights are justifications or the right reasons to do or avoid actions. And fifth, human rights are seen as general rights which are distinguished from special rights originating from special relationships with other people, whether in the form of agreements, status, or kinship. this view comes from the question Felix Cohen delivered to his fellow philosophers, during World War II.

This prescription shows that human rights are always seen as something "fundamental", "fundamental", or "important". Many

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<sup>11</sup> *Ibid*, hlm. 25

definitions of human rights state that human rights are the "power and security" of each individual.

Another definition concerns the so-called "negative" freedoms of the intervention of others, especially by the state. There are also definitions that formulate human rights as the demands put forward by individuals in which the community is ready to implement it. The province is largely inadequate to describe the substance of the meaning of human rights and moral rights.

In 1948 for the first time humanity on earth proclaimed their respect and beliefs about Human Rights. All nations agree to declare the same dignity, values and recognition that every human being on this earth has the same rights, no matter the sex, without distinguishing skin color. Human rights apply to all, whether a large nation, rich and advanced, or a small, poor, primitive and underdeveloped nation. That's when they agreed to make the earth more humane, humanist and egalitarian with respect for the most basic human rights.

In its development, human rights are no longer just a mere embodiment of individualism and liberalism as it used to be. Human rights are more understood as rights inherent in our dignity and humanitarian nature, regardless of race, ethnicity, religion, color, sex, age or occupation background. This view contains the significance that if human rights were perceived as mere embodiment of individualism and liberalism, then human rights were understood as inherent rights in human beings without distinction. Guided by the definition of human rights, the actual human right comes with the birth of mankind. As such, human rights have existed long ago. The emergence of human rights awareness along with the emergence of thinkers on human rights in the life of society.

The conception of human rights in Western Europe grew around the 17th century, when the class-class society of society and guilds (associations based on expertise) began to collapse and sovereign users began to control the broad geritor. Legal protection was given as protection by the gradual feudal group of its own group. Magna Charta Libertatum from 1215 was an old example of such protection, an agreement between the British feudal aristocracy and its landlords. Also Habeas Corups Act 1979 and the 1688 Bill of Rights constitute similar particulars.

John Locke (1632-1704) who was known as the liberal state father was considered the godfather of human rights who wanted the protection of the lives of freedom and wealth / property. The growth of human rights in Western Europe then in the United States is inseparable from the flow of liberalism and individualism in its constitution. John Locke's constitutional theory is aimed at protecting human rights with the most important property rights, while for those who do not have it, then the labor available to him is his property. The dilemma posed by Locke's teachings is that freedom is given to everyone, but the path to having that freedom is not outlined. This dilemma has the effect that in the event that all people can exercise their freedom, then here and there there are some people who cannot carry out their own freedom because they are pressured by the freedom of others.

The same thing happened in France with the Declaration of Decree of Iomme Homme et du Citoyen (1789), which clearly revealed the flow of individualism in the life of the Dutch state and other Continental European countries following it. In these Western countries, the concept of human rights always starts from rights that are not handed over to the state, therefore the state has no right to mix it or disturb it. Human rights in the West are inalienable rights, non-transferable rights.

The provisions that provide constitutional guarantees for human rights are very important and even considered to be one of the main characteristics of the principle of the rule of law in a country. But in addition to human rights, it must also be understood that everyone has obligations and responsibilities that also have the basic rights and obligations as human beings. The formation of state and government for any reason, should not eliminate the principle of rights and obligations carried by every human being. Therefore, the guarantee of rights and obligations is not determined by the position of people as citizens of a country. Everyone wherever he is, is also obliged to uphold the human rights of others as they should. This balance of awareness of the existence of basic rights and obligations is an important feature of the basic views of the Indonesian people regarding just and civilized human and humanity.

The Indonesian nation understands that The Universal Declaration of Human Rights which was initiated in 1948 is an agreement of humanity that contains universal values that must be respected. In this regard, the

Indonesian nation also views that the Universal Declaration of Human Responsibility initiated by the Inter Action Council in 1997 also contains universal values that must be upheld to complement the Universal Declaration of Human Rights. General awareness of Indonesian rights and constitutions and therefore need to be adopted in the formulation of the Constitution on the basis of basic understandings developed by the Indonesian people. Therefore, the formulation in this Constitution covers the legacies of thinking about human rights in the past and includes thoughts that will continue to develop in the future.

Therefore, in order to uphold human rights in Indonesia, facilities and infrastructure are needed in the form of institutions or institutions and legal regulations. In the institutional sector, the government has formed the National Commission on Human Rights (KOMNAS-HAM), the Women's Human Rights Commission, the birth of Human Rights Advocacy formed by NGOs and other Institutions. Whereas in the field of regulation or law, provisions concerning human rights have obtained a very strong constitutional guarantee in the Constitution, as found in the text of the second amendment to the 1945 Constitution, enacting Law No. 39 of 1999 concerning Human Rights, Republic of Indonesia Presidential Decree No. 50 of 1993, Republic of Indonesia Presidential Decree No. 120 of 1998. All legal instruments are supporting facilities for the protection of human rights.

## **HAM: DYNAMIC OF HUMAN RIGHTS ON DEMOCRATIC STATE**

The concept of human rights and democracy can be traced theologically in the form of human relativity and God's absoluteness. Consequently, no human is considered to be in a higher position, because only one is absolute and is prime, face, namely God Almighty. All humans have the potential to reach the truth, but it is impossible for absolute truth to be possessed by humans, because the truth is absolutely only God. Therefore, all human thinking must also be judged by relative truth. Thoughts that claim to be partially true absolutely, and others mean absolutely wrong, are thoughts that are contrary to humanity and divinity.

Humans are created by God Almighty with a set of rights that guarantee their degree as human beings. These rights are then referred to

as human rights, namely the rights obtained from birth as a human being which is the gift of the Creator. It is assumed that some of these rights are owned without differences on the basis of nation, race, religion, or gender and therefore humans must have the opportunity to develop according to their talents and ideals. Because every human being has an equal position with the same rights, the principle of equality and equality is the main thing in social interaction. But the reality shows that humans always live in social communities to be able to maintain humanity and achieve its goals. This cannot be done individually. As a result, social structures emerge, so that power is needed to run the social organization.

Power in an organization can be obtained based on religious commitment, elite ideological legitimacy or through pragmatic legitimacy. But the power based on legitimacy above naturally denies human equality and equality, because claiming a higher position is a group of humans from other humans. In addition, power based on the three legitimacy above will be absolute power, because the basic assumption is to place the ruling group as a party that has a special interest and knows more about carrying out state power affairs. Power established based on these three legitimacy will certainly be authoritarian.

The democratic conception provides the basis and mechanism of power based on the principle of equality and human equality. In the principle of democracy, humans are placed as the owners of people's sovereignty. The concept of human rights and democracy in its development is closely related to the conception of the state of law. In this conception, the law that rules is not human. The law is interpreted as a hierarchical unit of legal norms culminating in the constitution. This means that in a state law requires supermasi constitution. Besides the constitutional supermasi is a consequence of the concept of the rule of law, it is also the implementation of democracy because the constitution is a manifestation of the highest social agreement.

The state by itself cannot impose its will on the people, because the people are the source of state power. Every act of state control must first get the people's approval, both directly and through their representatives in a democratically elected parliament. The direction of formulating norms does not have to guarantee the greatest ease and opportunity for the people to show that they are sovereign. Freedom to express thoughts, both oral and written, must be guaranteed full because without freedom it

is impossible for the people to be able to state what they want, what they reject and so on. Thus in a democratic country there cannot be legal norms that can limit or reduce freedom of expression.

As the democratic principle is part of human rights, a democracy is built on the fundament of human rights. Democracy can also be seen as the institutional expression of the respect of the individual's autonomy, giving an individual the possibility to participate in the opinion-building and decision-making process of the legal system she/he lives in as a citizen.

At this point, one challenge of today's democratic societies appears to be the problem that within legal society not all right holders can participate in democratic decisions, for example, persons living in this particular legal society without citizenship of this particular state. Changes in the access to vote on the community level are first small steps to a solution of this problem<sup>12</sup>.

In addition, the principle of democracy can guarantee the participation of the community in the decision-making process so that every legislation truly reflects the sense of justice of the law and prevailing laws and regulations that may not be determined and applied unilaterally by and/or only for the interests of the authorities, because this is contrary to the principles adopted in democracy. Law is not intended only to guarantee the interests of some people in power, but to guarantee the interests of justice for all people. Thus, the legal state developed is not absolute rechtsstaat but demokratische rechtsstaat. In other words, in every state of law that is democratic, there must be guaranteed democracy, as in every democratic country must be guaranteed based on the law. Provisions that provide a constitutional guarantee of human rights are very important and even considered to be one of the main characteristics of the principle of the rule of law in a country.

Robert A. Dahl in one of his classic works, but quite monumental, *Polyarchy*, wrote eight constitutional guarantees which are the prerequisites of democracy, namely the freedom to form and follow organizations, the freedom of expression, the right to vote, the eligibility

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<sup>12</sup> Peter G. Kirchsclaeger, "The Relation between Democracy and Human Rights", dalam *Globalistics and Globalization Studies Aspects & Dimensions of Global Views*, Volgograd: 'Uchitel' Publishing House, 2014. Edited by: Leonid E. Grinin, Ilya V. Ilyin, and Andrey V. Korotayev ISBN 978-5-7057-4028-4

of public positions, the right leaders to compete in a healthy manner to win support and vote, the availability of alternative information sources, the existence of free and fair elections, the existence of institutions for the people and other (political) choice expressions.

However, these eight elements are only necessary conditions and are not sufficient conditions. Alfred Stephen and Juan J. Linz included political experts who considered that Dahl's eight institutional modules were important but not sufficient for the conditions of democracy. According to him democracy also requires a democratic constitution that respects freedom and provides protection against minority rights.

One way to measure the extent of a democratic country or not, the 'freedom' index constructed by Freedom House is very helpful. This credible study institute reports annually on the freedom of senses of countries in the world, which consists of two elements: Freedom relating to civil rights concerning freedom relating to political rights, civil rights to transport freedom of speech, assembly association, press freedom, and equality before the law. While political rights are more concerned with the right of citizens to participate in politics, namely participation in democratic elections, whether as voters or elected. This freedom index is usually used also to measure the level of democraticness of a country. This can be understood because freedom is a basic element of democracy.

From the explanation above, there are actually two main things that are important conditions and elements for a democratic country, namely a democratic constitution and respect for human rights and the rights of citizens.

## **THE PROSPECT OF HUMAN RIGHTS EXISTENCE IN INDONESIA: A CRITICAL REVIEW**

I conclude with emphasizing that democracy and human rights go hand in hand. This means that every human being has a human right to democracy. Can human rights also be realized in a political and legal system which is not democratic? No, human rights cannot be fully implemented if the political and legal system is not democratic as every human being's participation in opinion-building and decision-making processes is protected by human rights.

Every human being from his birth has free and basic rights and obligations. Therefore, the protection and respect for human rights is a

very important pillar in every country which is called the rule of law. Human rights in current situations and conditions must be interpreted contextually, so that human rights have meaning not only so far known as being free to speak, free to gather and free from religion, but also related to basic obligations and responsibilities, because in practice, human rights humans are always associated with injustice, poverty, arbitrariness, ignorance, and various other forms that contain elements of ignorance of human.

The Universal Declaration of Human Rights, which was established in 1948, is a general statement of humanity which contains universal values that must be respected. To complement The Universal Declaration of Human Rights, the ideas/concepts of the Universal Declaration of Human Responsibility initiated by the Inter-Action Council in 1997 must be upheld. General awareness of human rights and obligations animates our entire legal system and constitution. Therefore, it needs to be adopted into the formulation of our Constitution which is based on basic understandings that are self-developed according to needs.

In line with the ongoing democratization process, the implementation of human rights in Indonesia can be said to have made significant progress. This can be seen from at least an increase in indicators of civil and political freedom from year to year. Referring to the freedom house freedom index, Indonesia has undergone a change from a country that was previously categorized as party free to be full free, only within seven years after the 1998 Reformation movement began. the world. The conception of human rights and democracy in its development has always been related to the conception of the state of law. In this conception, the law that rules is not human. The law is interpreted as a hierarchical unity of legal norms, culminating in the constitution. This means that in a state law requires supermasi law which is a consequence of the concept of the rule of law as well as the implementation of democracy, because the constitution is a manifestation of the highest social agreement.

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