

## Book Review

# How are Human Rights in the Concept of a State? A Review Book 'Negara Hukum dan Asasi Manusia', Dr. Bahder Johan Nasution, S.H., SM., M.Hum., CV Mandar Maju, Bandung, 2017, 286 pages, ISBN: 978-979-538-382-6

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### DATA OF BOOK

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### A. Synopsis

For a long time the issue of the state of law and human rights has always been debated among state legal experts and political thinkers. The purpose is to find an ideal concept about the state of law and the protection of human rights. However, for centuries, the concept of the state of law and the protection of human rights that are considered ideal has always been a debate. Moreover, so far there has been an impression that understanding human rights protection is superficially understood because it is only seen as mere moral guidelines. That understanding is

wrong understanding, because the understanding is not only on the moral order but also on the legal order.

The facts show that, as a result of a superficial understanding of human rights, respect and also the enforcement of human rights are often not carried out properly as envisioned by a state of law. Based on this fact, this book has been compiled by referring to various literatures on constitutional law, political science and philosophy, which also describe the concept of the state of law and human rights, the concept of sovereignty and democracy, and the concepts of protection and the enforcement of human rights. Thus, the reader's understanding of the concept of the state of law and human rights can be understood in its entirety.

The understanding is not only in the concept of the state of law in legal formal way, but also in understanding more theoretical and philosophical concepts. Likewise, the understanding of human rights is also not only about conceptual understanding, but also understanding in the form of respect and protection of human rights implemented through the enforcement of human rights law.

## **B. The Review**

The term rule of law for Indonesia seems to have become a familiar thing. Because long ago, Indonesia established itself as a state of law. Even in the 1945 Constitution Article 1 paragraph (3) clearly reads "The State of Indonesia is a state of law". This book also states that the link between the rule of law and human rights cannot be separated. Because, one of the functions of the rule of law is to guarantee, protect and also uphold human rights.

The concrete form of the protection of human rights in a rule of law is contained in the laws and regulations as well as the state constitution which contains norms regarding human rights itself, and their enforcement is carried out by a body / court institution that holds judicial power . The 1945 Constitution has also been formulated that the provisions concerning human rights have received very strong constitutional guarantees.

In fact, to show its commitment to the protection and enforcement of human rights, Indonesia has its own provisions regarding human rights. This provision is contained in Law Number 39 of 1999 concerning Human Rights. In Article 1 of Law No. 39 of 1999 stated that, human rights are a set of rights inherent in the nature and existence of humans as God's creatures and are His gifts that must be respected, highly respected, and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity.

Provisions which provide a constitutional guarantee regarding human rights are very important and are even considered to be a main characteristic

of the implementation of the state of law system in a country. However, we also need to understand that besides human rights, every person also has a fundamental obligation. In this description, it appears that the relationship between the rule of law and human rights exists, but this relationship is not only a formal relationship (protection of human rights is only a main characteristic of the rule of law concept). However, this relationship must also be understood materially.

Material relations can be described with every act of state administration which must be in accordance with the principle of legality that also applies in a country of law. This concept aims to ensure that all actions carried out by those holding power are carried out with the aim of protecting human rights.

In addition, the author also gives a presentation to the reader regarding the concept of the rule of law. In fact, for readers to understand about this concept, the writer also gives several examples of legal state concepts in the world. For example, the concepts of *Rechtstaat*, Rule of Law, Socialist Legality, and Religio Legality and Islamic Nomocracy. Not only describing several other concepts about the rule of law, the author also exposes the theory of the rule of law. This is so that the reader truly understands the meaning of a law.

The term sovereignty can be interpreted as the highest authority. The use of this term in addition to the legal context, must be careful, because understanding of this term often leads to misunderstanding or misunderstanding. The author gives an example if it is said that a sovereign state does not mean that there is no higher power over state power. The author reiterates that in the theory of state there are several concepts of sovereignty theory, including the Theory of Sovereignty of God, Theory of State Sovereignty, Theory of People's Sovereignty, and Theory of Sovereignty of Law. The theory of Law Sovereignty is against the theory of state sovereignty which teaches that the state is above the law, because the state makes the law. The theory of law sovereignty cannot accept the power of a person or group of rulers to make laws based on their personal will which is then conceptualized as the will of the state.

According to the theory of law sovereignty, it is not the law determined by the state but on the contrary the state is determined by law and therefore the state is the product of law, so the state must submit to the law. Why is that? The answer is simple because law arises from everyone's legal awareness. The task of the state is to realize legal awareness in the form of positive legal provisions, in the form of legal regulations made by the community itself through its representatives in parliament.

Furthermore, we see Indonesia as a state of law. In its administration, Indonesia adheres to the theory of people's sovereignty, which means that the highest sovereignty in the country is in the hands of the people through their

representatives in parliament. Indonesia as a state of law can be identified by the submission of the authorities and the people to the provisions of the law in force in the Indonesian state, which is based on Pancasila. Law is a means to an end that all citizens and communities want to achieve.

In the first half of this book, the subject is indeed related to the concept and understanding of the state of law. However, in the last half of the chapter, this book talks about human rights and their relation to the state of law. The author considers that the issue of human rights is still a debate both at national and international levels. Because the author feels that human rights are relative, meaning that if there is a violation of human rights in one country, it does not mean that it also violates human rights in another country.

This book explains to its readers that human rights are very vital in the life of the nation. Because the authors believe that human rights are actually things that are owned by all humans in any hemisphere as a gift from God, so that it should be upheld and protected. However, the implementation of human rights also cannot be done freely, because if this is done freely, it will interfere with or even violate the rights of others. We must understand that the human rights we have are always in contact with the rights of others, because that is the rule needed to limit the implementation of our human rights and we must also obey these rules to create a harmonious condition in society.

The good things about this book, in my opinion, are in the explanation given by the author to the readers. The sentence used is also easy to understand, especially for lay people who previously did not understand about the law and various theories about law. The explanation given by the author is also relatively easy to understand and of course gives a lot of new knowledge to the reader.

In addition, the author has stated that this book also takes references from several sources and opinions of experts, so in my opinion this also adds to the treasury of knowledge contained in this book, and makes it even more objective in discussing a topic in this book. Although there are many references that use by the author, but the writer still writes the sources of the information, thus, the writer also understands ethics in quoting knowledge or opinions of others that are in accordance with the provisions of the existing rules about quoting knowledge from other sources. This is also a good thing for the reader, because by doing so, the reader can also understand that the act of plagiarism in creating a written work is illegal.

Another plus is that the paper used in this book is classified as good paper and not perishable paper. However, behind the advantages of this book, there are some shortcomings of this book. In my opinion, the weakness of this book is that the author does not use footnotes in providing sources of information, but uses bodynotes. Actually this is fine, but I prefer the footnote

because the source and the quote that the writer took, can be written more complete than just using bodynote.

The cover image that is used also in my opinion does not match the title. Because in the cover image, you can see the handcuffed-hand while holding the hammer. I do not understand the philosophical meaning of why the image was chosen as a cover. However, despite its shortcomings, this book is very worth reading because the discussion raised in this book is a good discussion. Readers (lay people) can get new knowledge about law, the concept of the state, and also human rights through this book.



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