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**PHILOSOPHICAL JURIDICAL STUDY
ABOUT THE RIGHTS OF FREEDOM OF PUBLIC PREVENTION**

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ABSTRACT

² Freedom to express opinions in public is a human right guaranteed by the 1945 Constitution and the Universal Declaration of Human Rights, which in its implementation often creates problems, gets stuck in problems of law enforcement or human rights violations. The following research aims to answer two (2) questions, namely how does the state regulate freedom of expression in public? How should these rights and obligations be exercised? ³ This research is a normative legal research with a statute approach and a conceptual approach. Using primary and secondary legal materials. It is analyzed descriptively and philosophically to find the meaning behind the arrangement. The results show (1) The right to freedom of expression in public must fulfill the principle of balance between the rights and obligations of every citizen with the goal of being able to realize responsible freedom. (2). In developing human rights, it means accepting human obligations or responsibilities, "human duties". Only individuals who are granted liberty and obligations by moral law can have rights. Rights should not be understood only as claims on other people, but also contain ¹⁷ an obligation to respect the rights of others. Rights always imply obligations. All obligations, like all rights, derive from law, because all obligations are moral imperatives and all moral imperatives arise from law.

Keywords: Philosophical juridical; right of freedom; expressing opinions in public

Introduction

In state life, the ²⁰ rights and obligations of citizens as well as the rights and obligations of a person in his personal life have historically never been perfectly formulated, because the state organization is not static. This means that the state organization experiences development in line with human development. The two concepts of citizen / human rights and obligations go hand in hand. Human rights and obligations are logical consequences of the rights and obligations of the state. Humans cannot develop their human rights without living in state organizations. The ²⁷ implementation of citizens' rights and obligations is one indicator of the success of the growth of democratic life. The democratic government system, ²⁶ guarantees human rights as well as the rights and obligations of citizens as an important element of democracy besides the rule of law [1]

¹ Freedom of expression in public is a human right guaranteed by the 1945 Constitution and the Universal Declaration of Human Rights. The 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the UUD 1945) Article 28 stipulates that "freedom of association and assembly, expressing thoughts orally and in writing and so on shall be stipulated by law". Article 28 E paragraph (3) regulates the right to freedom of expression. In a constitutional state that is democratic, it is necessary to create an order of life in a society, nation and state that is just and guarantees human rights, for that we need an atmosphere that is safe, orderly and peaceful; and these rights are conveyed responsibly " (Law No. 9. Of 1998).[2]

Notonagoro states that rights are the power to receive or do something that should be accepted or carried out only by certain parties and cannot be by any other party which in principle can be sued by force. [3]

"Rights and obligations are something that cannot be separated, but there are conflicts because rights and obligations are not balanced. To achieve a balance between rights and obligations, namely by knowing our own position. As a citizen should know their rights and obligations. An official or government must also know their rights and obligations. As already stated in the applicable laws and regulations. "

Yudi Latif (Kompas, 2020) describes the prerequisites for freedom in a rule of law:

"During the reform era, the momentum of open public space was born. This is marked by the strengthening of civil rights, freedom of opinion, assembly and association. However, democratic values cannot be upheld easily in the midst of a strong feudalism culture, low levels of education, wide economic disparities and weak rule of law. The development of democracy and political reform without the support of orderly law and socio-economic justice are often accompanied by social conflicts, disintegration and ethno-religious violence. In other words, strengthening democracy requires freedom along with justice. " [4]

The results of the Kompas (2020) poll, the majority of respondents thought that efforts to protect human rights had not improved. The respondent responded positively to the aspect of freedom of expression, half of the respondents agreed that the freedom of civilians to express their opinions was guaranteed and protected by the state. However, the issue of freedom of expression still faces challenges during the pandemic. The case of demonstrations which were tinged with chaos and violence related to the rejection of the Job Creation Law is a concrete example. The opinion of respondents 68.2% that the party who is trusted to fulfill human rights, especially freedom of opinion, is the full government. [5]Based on the data above, the question arises how the state regulates freedom of expression in public? How should these rights and obligations be exercised?

Research methods

⁹ This research is a normative legal research with a statute approach and a conceptual approach [6] by first seeking the views of scholars and legal experts, the concept is then combined with Law No. 9 of 1998 regarding freedom of expression in public. Using primary and secondary

legal materials. Analyzed in a descriptive philosophical way to get the meaning behind the arrangement according to the research objectives.

Discussion

A. The rule of law and democracy and human rights

Logemann argues that "The state is an organization of power. Therefore, in every organization called the state there is always an organ or equipment that has the ability to impose its will on anyone who resides within its territory.[7] " Meanwhile, the characteristic feature of constitutional democracy is the idea that a democratic government is a government that has limited power and is not allowed to act arbitrarily against its citizens. "There are several values that underlie the practice of democracy which should ideally be carried out in every country, as stated by Henry B. Mayo Democracy is based on several values, namely: "(1) Settling disputes peacefully and in an institutionalized manner (institutionalized peaceful settlement of conflict). (2) Ensuring the implementation of peaceful change in a changing society. (3) Organizing orderly succession of rulers. (4) Limiting the use of violence to the minimum (minimum of coercion). (5) Recognizing and considering natural diversity in society which is reflected in the diversity of opinions, interests and behavior. (6) Ensuring the upholding of justice. " [8]

Several institutional instruments are needed to implement these democratic values, namely (a) Responsible government. (b) A representative assembly of the people representing groups and interests in society and which is elected by free and secret elections and on the basis of at least two candidates for each seat. (c) A political organization that includes one or more political parties. (d) The press and mass media that are free to express opinions. (e) A free judicial system to guarantee human rights and defend justice. "(Ni'matul Huda, 2021). The emergence of the rule of law concept was motivated by reactions to abuses in the past. "Therefore, the elements of a rule of law have a close relationship with the history and development of society of a nation. The rechtsstaat concept rests on a continental legal system called civil law, while the rule of law concept rests on a legal system called common law. The characteristics of civil law are administrative, while the characteristics of common law are judicial. " [9]

The rechtsstaat characteristics are: "First, the existence of a basic law or constitution which contains written provisions regarding the relationship between the ruler and the people; second, there is a division of state power; third The rights of people's freedoms are recognized and protected. The four characteristics above clearly show that the central idea of rechtsstaat is the recognition and protection of human rights based on the principles of freedom and equality. The existence of a constitution will provide constitutional guarantees of the principles of freedom and equality. The existence of a division of power to prevent the accumulation of power in one hand which is very prone to abuse of power, which means rape of freedom and equality. " .According to A. V. Dicey, as quoted by Ni'matul Huda, there are 3 meanings of the rule of law: `` (1) Absolute supremacy or predominance from regular law to oppose the influence of arbitrary power and to eliminate arbitrary, prerogative or broad discretionary authority from the government. (2) Equality before the law or the same

submission²³ of all groups to the ordinary law of the land implemented by the⁵ ordinary court; this means that no one is above the law; there is no state administrative court; (3) The constitution is the result of the ordinary law of the land, that constitutional law is not a source but a consequence of individual rights formulated and affirmed by the judiciary. " [10]

Mokhammad Najih (2021) in the Constitutional School; Advancement of¹⁸ Human Rights in Indonesia, the Law and Human Rights Council of PP Muhammadiyah said that: "Rights come from the Arabic language *haqqa, yahiqqu, haqqaan* which means true, certain, real, permanent and obligatory. Therefore *haqq* is the authority / obligation to do / not do something. The word human comes from the word *assa, yaussu, asasa* which means to build, establish, place, origin, principle, base, foundation. Therefore, human rights are everything that is fundamental & fundamental in nature which is always attached to its object. Humans from the Indonesian word which means ummah, a creation³ of God who has wisdom. So human rights are defined as fundamental rights in humans. " In Law no. 39 of 1999 "Human rights are: a set of rights inherent in human nature and existence as a creature of God Almighty, and are His gifts that must be respected, upheld, and protected by the state, law, government and everyone for the sake of honor. and protection of human dignity. "[11]

Furthermore, in the next description, Mokhammad Najih (2021) classifies briefly and in detail the Types of Human Rights: (1). Personal rights: freedom⁴ of expression, freedom of religion and freedom of movement; (2) Economic human rights (property rights⁴): the right to own something, buy, sell and use it (3) Political rights: the right to participate in government, the right to vote (to be elected and to vote in a general election), and the right to establish a political party (4) Human rights to receive equal treatment in law and government (rights of legal equality). (5) Social and cultural rights: the right to choose education and the right to develop a culture (6) Human rights to receive judicial procedures and protection (procedural rights): regulations on detention, arrest, search and trial. " Based on the description above, human rights contain the main principles, namely: "(1) Indivisibility; (2) Interdependence and interrelation; (3) Universal and inalienable; (4) Equality and non-discrimination (equality and non-discrimination); (5) Participation and contribution; (6) State responsibility and rule of law. "[12]

¹⁸ B. Freedom to Express Opinions and Human Rights in Indonesia

UU no. 39 of 1999 concerning Human Rights states that "(1) human rights are basic rights that are naturally inherent in humans, are universal and lasting, therefore they must be protected, respected, defended, and must not be neglected, diminished or deprived. by anyone; (2) apart from human rights, humans also have basic obligations between one human being against another and towards society as a whole in the life of society, nation and state; (3) the Indonesian nation as a member of the United Nations has a moral and legal responsibility to uphold and implement the Universal Declaration of Human Rights established by the United Nations, as well as various other international instruments concerning human rights that have been accepted by the state. Republic of Indonesia. "

The concept²⁵ of human rights refers to Law no. 39 of 1999 is "a set of rights inherent in the nature and existence of humans as the being of God Almighty and is a gift that must be

respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of dignity. human." Freedom of expression is a human right which is one of the basic conditions for the implementation of a democratic government under the Rule of Law. This right is needed to uphold justice and truth, promote public welfare, and educate the nation's life and can support supervision, criticism, and advice on government administration.(www. komnasham, 2021). The 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the UUD 1945) Article 28 stipulates that "freedom of association and assembly, expressing thoughts orally and in writing and so on shall be stipulated by law". Article 28 F paragraph (3) regulates the right to freedom of expression. The next arrangement is in the Law of the Republic of Indonesia Number 9 of 1998 concerning Freedom of Expressing Opinions in Public (hereinafter abbreviated as the Law on Freedom of Expressing Opinions in Public). [13]

The definition of freedom to express opinions in public is "the right of every citizen to convey his thoughts orally, in writing, and so on freely and responsibly in accordance with the provisions of the prevailing laws and regulations in front of the public, or other people, including in places where can be visited and / or seen by everyone. " "(Law No. 9. Of 1998). "What is meant by" the delivery of opinions in public "is the delivery of opinions orally, in writing, and so on. "Verbal delivery of opinions" includes: speeches, dialogues and discussions. "Expressing opinions in writing" includes: petitions, pictures, pamphlets, posters, brochures, leaflets and banners. What is meant by "and so on" include "silence and hunger strikes. "(Law No. 9. Of 1998) Its implementation must fulfill the principles of: (1) balance between rights and obligations; (2) deliberation and consensus; (3) legal certainty and justice; (4) proportionality, namely placing all activities in accordance with the context or purpose of these activities, whether carried out by citizens, institutions or government officials, which are based on individual ethics, social ethics, and institutional ethics (5) the principle of benefit. "[14]

In the reciprocal relationship between the rights and obligations of citizens, that every citizen has rights and obligations towards his country. On the other hand, the state has an obligation to provide protection for its citizens. The status of the citizens' rights can be summarized as follows:

1. Positive Status : The positive status of a citizen is giving him the right to demand positive action from the state regarding the protection of soul, body, property, independence and others. Therefore, the state established judicial bodies, police and prosecutors, and others that would carry out the interests of its citizens in the violations related to the aforementioned problems.
2. Negative status : The negative status of a citizen will guarantee him that the state should not interfere with the human rights of its citizens. The intervention is limited to preventing arbitrary acts from the state. However, in certain circumstances the state can violate the human rights of the people if the actions are solely for the public interest

3. Active status : This active status entitles everyone to participate in government. Therefore, every citizen who has fulfilled the requirements is given the right to vote and be elected in general elections;
4. Passive status : Passive status is an obligation for every citizen to obey and obey all orders of the state. For example, if the state is in a state of war, all citizens according to certain conditions are obliged to defend the state.[15]

Freedom to express opinions in public needs to be regulated in statutory regulations with the aim of (a) responsible freedom can be realized as one of the implementation of human rights in accordance with Pancasila and the 1945 Constitution; (b) the existence of legal protection in expressing opinions (c). the participation and creativity of every citizen can develop as an embodiment of rights and responsibilities in democratic life; (d) able to balance social responsibility in the life of society, nation and state, without neglecting the interests of individuals or groups. "In line with the aforementioned objectives, the legal signs must have autonomous characteristics, be responsive and reduce or leave repressive characteristics. By adhering to these characteristics, the Law on Freedom of Expressing Opinions in Public is a regulatory provision, so that on the one hand it can protect the rights of citizens in accordance with Article 28 of the 1945 Constitution, and in the other hand can prevent pressures, both physical and psychological, which can reduce the spirit and meaning of the process of openness in the formation and enforcement of law ". Citizens' right to express their opinions in public can expressing thoughts freely, namely expressing opinions, views, wishes, or feelings that are free from physical, psychological, or restriction against the objectives and obtaining legal protection including security guarantees. The obligations and responsibilities of citizens in expressing opinions in public must: a. respecting the rights and freedoms of others, namely participating in maintaining and protecting the rights and freedoms of others to live safely, orderly and peacefully; b. respecting generally accepted moral rules means respecting religious norms, morals, and modesty in public life; c. obey the laws and provisions of the prevailing laws and regulations; d. maintaining and respecting security and public order means actions that can prevent harm to public peace and safety, whether involving people, goods or health; e. Maintaining the integrity of the nation is an act that can prevent enmity, hatred or humiliation against ethnicity, religion, race and between groups in society (Explanation of Article 6 of Law No. 9 of 1998).

Albert Hasibuan described that "(1) Human rights are understood in terms of relationship or "relationship ". The right affirms the proper relationship between an individual and his community, or between a group of people and their society. Rights are not individual matters that a person or group of people possesses separately, or in isolation. It must be seen in relation to society as a whole, and at the same time society or a community in relation to the rights of an individual; (2) Developing human rights means accepting human obligations or responsibilities, "human duties". One cannot speak of human rights without the direct implications of society's obligation to respect them; (3) Human rights are understood as one unit and cannot be separated. This understanding shows that in the end there is only one right, namely the right to be human, or "right to be human". (4) Human rights according to Pancasila and the 1945 Constitution are "enlightened", concerning humans. " Jacques Maritain, in his writing "The Rights of Man", states that human rights are owned by a person

due to the fact that he is a human being, "things which are owned to a man because of the fact that he is a man" [16]

The obligations and responsibilities of government officials in the implementation of public expression of opinions by citizens, as regulated in Article 7 and its Elucidation (Law No. 9 of 1998) include protecting human rights; respect the principle of legality; respect the presumption of innocence; and provide security. Letter d What is meant by "implementing security" is all efforts made to create a safe, orderly and peaceful condition, including preventing disturbances or stresses, whether physical or psychological, originating from anywhere. Various forms of delivery can be made, for example, through demonstrations or demonstrations; parade; general meeting; and / or free platform., which is conducted in places open to the public, except: within the presidential palace, places of worship, military installations, hospitals, airports or seaports, train stations, land transportation terminals, and vital objects. national; and must not be done on national holidays and it is prohibited to carry objects that can endanger public safety. Explanation of Article 9 of Law No. 9 of 1998 :

"within the presidential palace" are the presidential and vice presidential palaces with a radius of 100 meters from the outer fence. The exception to "military installations" covers a radius of 150 meters from the outer fence. The exception for "objects of national importance" covers a radius of 500 meters from the outer fence. Letter b What is meant by national holidays are: 1. New Year; 2. Nyepi Day; 3. The Day of Jesus' Death; 4. Isra Mi'raj; 5. Ascension of Jesus Christ; 6. Vesak Day; 7. Eid al-Fitr; 8. Eid al-Adha; 9. Birthday of the Prophet; 10. 1 Muharram; 11. Christmas Day; 12. 17 August "

Implementing these laws and regulations requires consistent law enforcement, which among other things is determined by the factors of the law itself, state administrators and citizens' legal awareness. If one of the three factors contains weaknesses, it is likely that the realization of human rights and these rights and obligations cannot be achieved optimally [17]

C. The essence of rights and obligations of citizens

Rights play an important role in the position of humans towards state life because humans are legal subjects. K. [18], rights are claims made by one person or group against another or against society. People who have rights can claim that others will respect those rights. Therefore rights are legitimate claims or justifiable claims. This is because simply saying claims is not enough. It turns out that in our life we often encounter claims that cannot be justified. Meanwhile, [19], in a broad sense, is in the form of an invitation, which is called a feeling of generosity, compassion and others. For example, rights that arise on the basis of mutual love. Meanwhile, in a narrow sense, according to him, rights are in the form of absolute demands that cannot be contested. For example, the right if someone lives in a situation of danger. The components of a right mainly lie in their personality, liberty and responsibility. Only individuals who are granted liberty and obligations by moral law can have rights. Beings that act spontaneously and without freedom or responsibility do not need this right [20]

Source of rights, as stated by H.L. A Hart that rights in the modern sense can only arise after the recognition of the freedom and autonomy of every human being. Conviction of

human dignity as free and autonomous beings is an absolute prerequisite²¹ for the recognition of their rights. The source of human rights is the privilege of man as the basis of rights lies in his own human form, as discovered by him through his thoughts. So human privilege is rational. The proof is everyone's awareness of certain rights. Meanwhile, Franz Magnis Suseno (1999) explained that something is my right, if I can demand that something be given to me and if someone else is obliged to give what I demand it.[21]

Rights are a normative element that functions as a code of conduct, protects freedom, immunity and guarantees opportunities for humans to maintain their dignity. According to James W. Nickel, rights have elements of (1) the owner of the right; (2) scope of application of rights; (3) parties who are willing to exercise their rights. These three elements combine in a basic understanding of rights. It can be concluded that rights are a normative element inherent in every human being which in their application falls within the scope of equality rights and freedoms related to their interactions between individuals or institutions (Tim ICCE UIN Jakarta, 2000).[22]

According to W. Poespoprojo (1999) all obligations, like all rights, come from the law, because all obligations are moral imperatives and all moral obligations arise from the law. There is a division of rights, namely those that can be transferred to other hands (alienable) and cannot be transferred to other hands (inalienable). In addition, there are affirmative obligations and negative obligations. Affirmative obligation arises from affirmative law (command) and demands that an action be carried out. Negative obligations arise from negative laws (prohibitions) and require the abandonment of an act. The implementation can be explained as follows: "Don't call the affirmative law and obligations positive. The term has been used in different meanings. Affirmative obligations can also be related to negative obligations, such as "Honor your parents, and don't neglect your parents." The importance of distinguishing between affirmative and negative obligations is that they each provide different requirements. Negative laws and obligations demand constant fulfillment at all times: one must not do what is forbidden. Law and affirmative obligation distinguish permanent necessity, in the sense that a person is never exempt from these laws and obligations, but their obligation does not demand constant fulfillment at all times." [23]

Liability is imposed by law, which according to its definition is in accordance with common sense and for the common good. The intention is not to freely oppress people - an unreasonable burden regardless of the intended good. Legitimate reasons for being free from obligation are when something is practically impossible and / or the difficulty is unbalanced. Obviously no one can do the impossible. But the difficulty intrinsic to duty itself is never a reason to be free from obligation, because otherwise there is no obligation (Muhammad Erwin, 2011). According to Curzon, the obligations can be grouped as follows: (1). Absolute and relative obligations : Absolute obligations according to Austin, which do not have a pair of rights, such as obligations directed at oneself: which is demanded by society in general; which is only addressed to the power (sovereign) in charge of it. Relative power is one that involves rights on the other hand. (2) Public and civil obligations : Public obligations are those that correlate with public rights, such as the obligation to comply with criminal law. Civil obligations are correlative to civil rights, such as obligations arising from an agreement. (3).

Positive and negative obligations : Positive obligation requires positive action, such as the seller's obligation to deliver goods to the buyer. Negative obligations, namely those that require a party not to do something, such as an obligation for a person not to do something that disturbs his neighbor's property. (4). Universal, general and special obligations : Universal obligations are addressed to all citizens, such as those arising from law. General obligations are addressed to a certain group of people, such as strangers, parents (father, mother). Special obligations are those that arise from certain areas of law, such as obligations in contract law. (5) Primary and sanctioning obligations : Primary obligations are those that do not arise from actions that are against the law, such as the obligation of a person not to defame another person, which in this case does not arise from a violation of other previous obligations. Obligations that are sanctioned are those that arise solely from acts that are against the law, such as the obligation of the defendant to pay the lawsuit of another party who has won the case.[24]

A citizen exercises rights and obligations according to his position, at least covering the following aspects: (1) norms related to the position of a citizen in society, namely regulations that guide a person in social life (2) what individuals can do in society as an organization. (3) individual behavior which is important for the social structure of society [25]

"That the rights and obligations of the citizens arise or originate from the state. This means that the state gives or imposes these rights and obligations on its citizens. This provision / imposition is stipulated in statutory regulations so that citizens and state administrators have a clear role in the application and enforcement of these rights and obligations. " [26]

It is regulated in the 1945 Constitution that "In exercising his rights and freedoms, every person is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society. "

Conclusions

Recognition of the right to freedom of expression has been regulated in the constitution since this country was born. This right must fulfill the principle of balance between the rights and obligations of every citizen with the aim of responsible freedom which can be realized as one of the implementation of human rights in accordance with Pancasila and the 1945 Constitution. Rights are a normative element that functions as a code of conduct, protects freedom, immunity and guaranteeing opportunities for humans to protect their dignity. Only in a country with a democratic rule of law is it possible to recognize the rights of citizens. Therefore, rights in the modern sense can only arise after the recognition of the freedom and autonomy of every human being. Conviction of human dignity as free and autonomous beings is an absolute prerequisite for the recognition of their rights.

The components of a right mainly lie in their personality, liberty and responsibility. Only individuals who are granted liberty and obligations by moral law can have rights. Rights

should not be understood only as claims on other people, but also contain ¹⁷ an obligation to respect the rights of others. Rights always imply obligations. Liability is a passive form of responsibility. Something that is done out of responsibility is an obligation. Liability does not take into account profit or recompense. It is done because of the demands of conscience, not because of thought. He is an order from within humans. All obligations, like all rights, derive from law, because all obligations are moral imperatives and all moral imperatives arise from law.

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