"Posthumanization"
An Attempt to Grant Substantial Justice for Migrant Workers

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Abstract:

Globalization has affected many things in human life, one of which is regarding the human migration. (Indonesian) migrant workers are often suffered from inhumane action and unable to obtain maximum protection of their rights. It can also be said that they experience dehumanization. The latest example advertisement entitled "Indonesian maids are now on sale", circulated in Kuala Lumpur, Malaysia in October 2012. This advertisement is considered as dehumanization of Indonesian migrant workers, as if they were items that can be sold and traded.

Attempts to humanize Indonesian labors can be done in various ways, such as by providing strong regulations. Some of these laws include the Law No. 39 year 2004 concerning the Protection and Placement of Indonesian Workers Abroad; Law No. 37 year 1999 on Foreign Relations; the ICCPR that has been ratified by the Government of Indonesia in Law no. 12 year 2005; Law No. 16 year 2012 on the Ratification of the International Convention on Protection of the Rights of All Migrant Workers and their Families; and Law No. 16 year 2011 about Legal Aid.

Approach from perspective of legislation is considered not sufficient to address existing problems. As such, it takes more than the concept of humanization. This paper suggests the concept of post-humanization that aims to completely humanize a human. This can be done by intensifying inter-cultural dialogue and by executing the real state's responsibility towards migrant workers. Hence, it is recommended to reform the implementation of the rights of migrant workers from substantial, structural and cultural aspects in order to ensure substantial justice for these workers.

Keywords: Post-humanization, Migrant Workers, State's Responsibility, Substantial Justice

I. INTRODUCTION

Issues of Indonesian migrant workers have been under the spotlight of various parties. There are several reasons why this happens. Migrant workers are often placed as an object of policy and are always blamed for every problem due to human migration. Besides, low educational levels of migrant workers is often justified for any problems that occur, and migrant workers have become means to earn a country's foreign exchanges.

Various cases that struck Indonesian migrant workers such as the case of Ruyati, who was beheaded in Saudi Arabia; the case of abusive experience of by Nirmala Bonet, migrant worker from East Nusa Tenggara in Malaysia (2004); the case of torture of Sumiati, migrant worker from West Nusa Tenggara in Saudi Arabia (2010); and the shot of three Indonesian migrant workers by Malaysian police for allegedly committing a crime of robbery.

In relation to that shooting case, there are many interesting things to be observed. First, families of the victims suspect that there are irregularities of the victim's body, which had a lot of stitches and eyes are no longer exists. Due to this fact, it is alleged that victims' organ have become the object of trafficking. Second, after the Malaysian police shot the victims, they did not immediately report to the Embassy, it is then presumed that there is lack of transparency in this case. Third, the Embassy gave late response (because they acted after received a report), after the event occurred almost one month before, which is around March 24, 2012 and many more. When this paper is being made (October 2012), there is a sale advertisement of Indonesian migrant workers in Malaysia. This is particularly degrading and insulting the dignity of workers, as it once said "TKI ku sayang TKI ku malang".[1]

Noting the case above, the fundamental principle that must be understood is to minimize workers with illegal status, because these status may lead to irregularities, especially regarding working conditions and salary aspects and protection of migrant workers. Indeed, as legal consequences, migrant workers have to deal with difficult bureaucracy and complex administrative issues.

Problems of workers abroad are complex and involving multiple inter-linkage elements, both in the host country and in the country of origin (Indonesia). The problem in Indonesia, for example, is poverty, which in many cases has made workers as objects and commercial wetlands, that in turn will create conflicts of interest between government and private agencies. This situation may weaken the law enforcement and the bargaining position of the country of origin the at the same time.

The cases above show how weak it is legal protection of migrant workers. This condition is a paradox, because on one hand, migrant workers contribute

[1] Extracted from various sources : http//kontralisanfm.com, acces tanggal 11 September 2012 ; http//www.suaramerdeka.com, acces tanggal 12 September 2012; http//news.okezone.com, acces tanggal 13 September 2012.

much in a country's foreign exchanges but on the other hand, they do not obtain protection of their human rights. This kind of protection can be obtained in many ways, one of which is through strengthening the government's role to execute its state's responsibility of migrant workers' rights as mandated in the constitution.

If we look closely to the factors that cause a person migrating and working abroad is not merely the matter of government's inability to provide jobs, but to fulfill the rights to get decent work and livelihood. This is the constitutional rights of citizens, as stated in Article 27 UUD 1945 : *"Every citizen deserves decent work and livelihoods for the sake of humanity"*.[2]

In fact, the role of government to protect these workers are not being played as it should, due to a lot of obstacles. One of them is the overlapping roles and functions of various agencies related to migration (BNP2TKI and the Ministry of Manpower and Transmigrations). Moreover, there are others such as law enforcement problems that occur during the migration process, and the absence of a system that unites various roles as well functions of agencies related to the established mechanisms.

Ministry of Foreign Affairs has the Directorate of the Protection of Indonesian Citizens and Indonesian Law Agency, which aims to protect Indonesian citizens and law abroad. This is in line with the provisions of Law No. 37 year 1999 on Foreign Relations, which states that: "Representatives of the Republic of Indonesia is obliged to provide care, protection, and legal aid to citizens and legal entities abroad Indonesia in accordance with national legislation , as well as international law and practice ".

Ministry of Foreign Affairs, as the institution responsible for the execution of Indonesian foreign policy has had clear vision, which is providing service and protection of Indonesian citizens abroad as if they were in home.

Migration is one contributing factors to the increased of cultural and religious diversity in most countries. Diversity has advantages as well as challenges, because when people are moving, they bring along their way of life that they have known in their place of origin, like faith, language, culture, and viewpoints. In the context of migration, this poses challenges for both the migrants and the host community to adapt to each other. And, while this can be mutually enriching and beneficial, it could also be a source of tension and conflict, especially in times of great social and economic stresses.

Theoritically, protection of migrant workers can be done by three

[2] Some related regulations are : Undang-undang No.39 tahun 2004 Tentang perlindungan dan Penempatan Tenaga Kerja Indonesia di Luar Negeri, Undang-undang No.37 tahun 1999 tentang Hubungan Luar Negeri, ICCPR has been ratitied by Indonesian Goverment in Undang-undang No. 12 tahun 2005, Undang-undang no 16 tahun 2012 tentang Ratifikasi Konvensi Internasional Perlindungan Hak Semua Pekerja Migran dan Keluarganya dan Undang-Undang No. 16 Tahun 2011 Tentang Bantuan Hukum

things, through Consular Protection, Diplomatic Protection, and mechanism of International Treaties/Agreement, such as by making the MoU. Consular Protection is often used, because it involves workers-government relationships. Consular protection, which is the intervention of a state to law of another state is allowed under international law, as long as it respects the sovereignty of each other. This protection is, however, limited only to the efforts of ensuring fair treatment and law enforcement.

Diplomatic protection is concerning with the relationship of governments, because sometimes consular protection cannot bring satisfactory results. Although diplomatic protection is high cost because it may creates disputes between states, it should be chosen because certain considerations. It has been done by the Government of Indonesia in the case of two Indonesian marines namely Usman and Aaron, who were hanged in Singapore some time ago. President Suharto intervened by sending a personal envoy to rescue these two men from death row.

As such, it needs the reconstruction of thinking about the law, especially related to the protection of migrant workers, and renewal of state responsibility to protect citizens wherever they may be. This is important in order to achieve conditions of post-humanization to protect migrant workers so they can obtain substantial justice.

II. STATE'S RESPONSIBILITY OF MIGRANT WORKERS

Responsibility means obligation to give an answer which is a calculation of all things happened, and obligation to provide a remedy for the harm that may be caused. Under international law the liability arises when a country harm other countries.[3]

Malanczuk said that: "If a state violates a rule of customary international law of or ignores obligations of a treaty it has concluded, it commits a breach of international law and thereby a so called internationally wrongful act.[4] Element of state action wrong and its characteristics can be observed according to articles 2 and 3 of the Responsibility of States for internationally wrongful act, 2001 as follows:

Article (2): Elements of internationally wrongful act of a state: "there is an internationally wrongful act of a state when conduct consisting of an action or omission:

a. Is attributable to the state under international law and;
b. Constitutes a breach of an international obligations of the states

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[3] Sugeng istanto, **Hukum Internasional,** Fakultas Hukum Atmajaya, Yogyakarta, 1991, hlm. 77

[4] Peter Malannczuk, **Modern Introduction to International Law**, Routledge Seventh Revised Edition, New York, 1997, hlm. 254.

Article (3): The characterization of an act of a state as internationally wrongful act is governed by international law. Such characterization is not affected by the characterization of the same act as law ful by internal law.

State's responsibility is closely linked to the fundamental principles of international law. The state or an aggrieved party is entitled to receive compensation for damages suffered. Accountability, in regard to the determination of the state is based on how the situation can be considered as international wrongful acts.[5]

The existance of the concept of state's responsibility in international law is because no country can give respect to rights without respecting the rights of other countries.[6] Each violation requires a state to account for another state. The recovery of violations can be done through satisfaction or pecuniary reparation. Satisfaction is a recovery of violations of an honor of a country, which can be done through diplomatic negotiations. This action should be done with official apology or guarantees of non-repetition of the act. While pecuniary reparation is executed if the losses are immaterial.

In the case of Indonesian workers on Sale ad, for instance, the Government of Indonesia needs to execute its state responsibility towards the Government of Malaysia. This because there is wrongdoing committed by the Government of Malaysia since they allowed such advertisement that is insulting the dignity of Indonesia. Furthermore, a country cannot use its domestic law as justification or excuse to avoid its responsibility towards other countries.

The recovery of violations by the Malaysian government should be in a form satisfaction, because what is done by the agents who advertise as already mentioned above is an insult to the state that caused immaterial loss. Accountability in the form of satisfaction is done by formally apologized and a promise to not repeat the actions. How it has been done by many countries including Germany who asked for Indonesia apology due to the case of a group of public demonstrations in Dresden, addressed to the Indonesian government in 1995.[7]

State's responsibility has close links with the rights and obligations of the state. With the correct approach, it will also remain over its natural resources, including human resources (migrant workers) owned by the state. Besides, state accountability also relates to the principles of international law on friendship and cooperation. In the context of migrant workers, friendly relations between sending country of migrant workers and country where migrant workers work are also accounted.

[5] Yudha Bhakti Ardhiwisastra, **Hukum Internasional Bunga Rampai,** Alumni, Bandung, 2003, hlm. 4.

[6] Huala Adolf, **Aspek-Aspek Negara dalam Hukum Internasional,** Raja Grafindo Persada, Jakarta, 1996, hlm. 173.

[7] Adji Samekto, **Negara dalam Dimensi Hukum Internasional,** Citra Aditya Bakti, Bandung, 2009, hlm.108

In determining the onset of state's responsibility, it is necessary to do following steps:

1. Determine whether the organ or state officials who are guilty of any act or omission has or does not have the authority under the national law, in addition to the case where a specific instruction has performed instrumentally;
2. If the organ or officials stated that the country has such authority, other problems that should be investigated is whether the violation and the obligation that can be linked or not, so the concerned state needs to be responsible for the international law. Here, the provisions of international law are truly autonomous. For example, even though the organs or officials are beyond the authority granted by the local law, it is possible for international to impose responsibilities to the state.[8]

In the doctrine of international law, there are two theories about mistakes of the states, that discuss whether state's responsibility for acts or omissions violated international law is absolute, or is it necessary to prove fault or intention of the action. The two theories are:

1. Objective theory, or also called the theory of risk. According to this theory, state's responsibility is absolute or strict. If an officer or agent of the state acted to the detriment of others, the state is responsible under international law, moreover it does not need to be clear whether the action is carried out with the intention of good or evil;
2. Subjective theory or the theory of errors. According to this theory, state's responsibility is determined by the presence of elements of error (dolus), or negligence (culpa) of the officers or agents in question.[9]

From the description above, it is clear that the action of the organs of state or representative/state officials could pose liability if the act is a violation against international law, and in accordance with international law, such actions may be delegated to the state.[10] The delegation of responsibility of state officials to state is commonly known as the doctrine of attributes or imputable abilities.[11] Of course, such action may be transferred to countries require certain requirements. If the actions are not transferred to the state, the entire responsibility is usually known as ultra vires.

In accordance with the view of scholars of international law, insofar as the acts of a state are contrary to international law, the responsibility of it is always going to be born civil liability. In short, international law does not recognize the

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[8] J.G Starke,Pengantar **Hukum Internasional,** Edisi 10,Jakarta, 1999, hlm. 405

[9] Huala Adolf, **op.cit.**, hlm.187.

[10] Mohd. Burhan Tsani, **Hukum dan Hubungan Internasional,** Liberty, Yogyakarta, 1990, hlm.48

[11] Example of the transfer of state's responsibility is the action of advertisement agent of "TKI on sale" in Malaysia, that can be transferred as state's responsibility, because Indonesia does not have jursidiction towards the action of the advertisement agent.

distinction between civil liability and criminal responsibility. Many scholars of international law such as Shaw and Brownlie, argues that the concept of a country which can be charged for criminal law has no value at all and there are no justification to it. Even if the acts made by state were unlawful, state has never been held against criminal law. Liability is limited to the payment of compensation.[12]

State's responsibility, as something that should be legally accountable to a particular party can be distinguished by the notion liability as an obligation to indemnify or repair the damage. Thus the state's responsibility is not always coincide with indemnify and repair damages. Something must be legally defensible as legal obligation, as well as an act must comply with what is required by the rule of law as a consequence of the principle of obedience.

As already mentioned above, the liability will only occur due to violation of the rules of international law, and accountability will remain there even though according to country's domestic laws, the violations do not do anything that violates the law. In other words, a country cannot make domestic law as an excuse to avoid the accountability that has been established by international law. In certain cases the state accountability can only be refused on the grounds of self-defense and emergencies.

In general, advises by scholars of international law in analyzing the country's responsibilities at this stage only express several terms or characteristics. As stated by Shaw, what make acts become important characteristic of state's responsibility depends on underlying factors as follows:[13]

1. The existence of international legal obligations in force between the two countries;
2. The existence of acts or omission that violate any international legal obligations that may bear the responsibility of the state;
3. Any damage or loss as a result of unlawful acts or omission.

III. SUBSTANTIAL JUSTICE FOR MIGRANT WORKERS

The study of law is often called progressive or responsive since it is always associated with the search for substantial justice. Responsive law requires people who have the capacity to solve problems, set priorities of what to do, and make the commitment required.[14] The study is based on the idea that humans and law enforcement are independent variables that determine the effectiveness of law in achieving social justice. Humans are not the mouthpiece of the law, but the subject has a conscience, morality and values instilled by their communities.[15]

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[12] Huala Adolf, **op.cit.**, hlm. 178-179

[13] **Ibid.**, hlm. 174-175

[14] Philippe Nonet, Philip Selznick, **Hukum Responsif**, Nusamedia, Bandung, 2011, hlm.125

[15] Nurhasan Ismail, **Ilmu Hukum Dalam Perspektif Sosiologis, Obyek**

Community that have the ability to solve their own problems are often called civil society. Civil society is a society that is able to fill the public space so that it can be a watchdog of state power. In a culture of democracy, every citizen has the right in determining public policy, such as budgeting, and other activities in furtherance of the administration. However, since it is practically impossible to involve all citizens in decision-making, then the procedure of election is used, which means that citizens elect their representatives in government, the deputy is entrusted with the mandate to manage the future of the nation.

Today debate arises (debatable) on the definition of civil society. Regardless of the debate, civil society is essentially a translation of a society where people can live independent, socially just, and prosperous without the pressures of other interests. Thus civil society reflects a high level of ability to be critical in dealing with social problems. Thus it is made up of small groups outside the State and other power-oriented institutions.

Civil society is also a process of reform, where it can fill the public space to control excessive state power. Attempts to control these power is necessary in order to establish the democratic life of the country. Furthermore, democracy will give importance to people who use it, because democratic rights of people is to determine their own course, where state organization is guaranteed. Therefore, almost all the sense given to the term of democracy has always given an important position for the people (civil society), although the operational implications in different countries are not always the same.[16]

The creation of civil society will influence the development of law, because the development of Legal Studies in both positivistic perspective and sociological perspectives are equally based on social reality at the time the theory was constructed. Thus there are at least two conditions that are necessary for the existence of legal system. The first requirement is a valid rule that must be obeyed by the public in accordance with the obligations that must be done. The second condition involves an obligation that must be carried out by the officers involved in the system.[17]

In the context of international migration is an important feature of a globalized world. Positivistic approach can be understood by looking at the positive law (Migrant Workers Convention). The foregoing is based on the consideration that the protection of migrant workers and their families can only be done well when creating a solid foundation of legal norms in a country. Besides, the protection of their culture is also one of the alternative ideas in order to overcome the problems of migrant workers and their families.

Perbincangan Yang Terpinggirkan, Kongres Ilmu Hukum, Semarang, 19-20 Oktober 2012, hlm.9

[16] Moh.Mahfud MD, **Hukum dan Pilar-Pilar Demokrasi**, Gama Media, Yogyakarta, 1999, hlm. 7

[17] H.L.A Hart, **Konsep Hukum**, Nusamedia, Bandung, 2011, hlm.181

Some of the importance of the Convention on Migrant Workers are:

1. The Convention is an international instrument that comprehensively protect migrant workers. This Convention contains a set of standards to address the treatment of the welfare and rights of all migrant workers and members of their families, as well as containing the obligations and responsibilities related to both countries of origin, transit and the country in which they work that benefits from the international labor migration.
2. The Convention emphasizes that all undocumented migrant workers either complete or not their rights be recognized.
3. The Convention is based on the principle of non-discrimination. All migrant workers and members of their families, regardless of their legal status, can enjoy the same rights with nationals in certain situations.
4. The Convention provides a definition of migrant workers are agreed internationally and can be applied throughout the world.
5. The Convention seeks to prevent and eliminate exploitation of all migrant workers and their families throughout the migration process. Besides this convention also attempted to end the recruitment of migrant workers illegally.
6. The Convention established the Committee for Protection of the Rights of All Migrant Workers and their families. The Committee assesses the implementation of the Convention by a state party to the UN migrant workers through the assessment report on the steps taken by the state ratifying.[18]

It should also be bore in mind that when the problem is to obtain affirmation of humanity and institutionalization of the international legal instruments, it is still necessary to establish legal measures from the international community and governments and to implement international instruments consistently. Moreover, on the one hand, it is essential for institutions associated with the handling of migrant workers, and on the other hand, it is very helpful for the protection of migrant workers themselves.

While from sociological perspective, to see the reality that migrants have become one of the major opportunities and challenges for the development of governance and social cohesion.[19] The migrants are human beings first and foremost, and the absolute owner of human rights that are universal. Besides, migrant workers have rights, dignity and safety protection and pengatran often require specific and specialized. Roberto M Unger said that recognition and appreciation of certain values are essential for social order. Standard behavior is required and must be adopted together concrete and coherent enough to be in the community guidelines.[20]

[18] *Ibid.*, hlm 17-18

[19] Workhshop on International Migration Law, 2010, Jakarta, hlm. 3

[20] Roberto M Unger, **Teori Hukum Kritis, Posisi Hukum Dalam Masyarakat Modern**, Nusamedia, Bandung, 2012, hlm.42.

The international community in general is very concerned with humanitarian issues such as these, because the factual issue of migrant workers is often an issue of international or interstate.[21] This may lead to a concern that there have been attempts to humanize migrants (posthumanization). Postmodern approach appears to reevaluate humanization, so there will be shift from humanization, dehumanization, inhumanization to posthumanization. Posthumanization is a form of extracting the essence of humanity.[22]

In the context posthumanization, migrants can obtain substantial justice or fairness plenary. This condition can be achieved when it is no longer assumed that migrant workers are a group of people that can be exploited, victimized, source of cheap labor, weak and willing to accept the 3D working conditions: dirty (dirty), dangerous (dangerous), and degrading (harassing).

Substantial justice for migrant workers can be seen from the following situations:

1. Create minimum standards of protection of civil rights, political, economic, social, and cultural all migrant workers and members of their families. Migrant Workers Convention encourages countries to harmonize the national legislation with the universal standard as stated in article 79 of the Convention, the state still has the prerogative to decide who is allowed to enter their country and eligible to settle.
2. Migrant workers are not just an employee or an economic commodity, but human beings who have rights.
3. Migrant workers contribute economically to the state in which they work and their own country.
4 The vulnerabilities of migrant workers in their relationships with citizens should be able to be accommodated. It is inevitable that some migrant workers have experienced success and earn a decent living conditions, but the majority of migrant workers are exploited and discrimination and violated their rights.

From observation above, the importance of the Convention is very clear to address the main human rights issue of migrant workers. The issue of migrant workers is a humanitarian problem that can occur in any area of the country. As with other humanitarian issues, the international community in general is very concerned with this kind of issue. Moreover, in fact it appears that the problem of migrant workers is often an issue of international or interstate.[23]

[21] Atik Krustiyati, **Aspek Hukum Internasional Penyelesaian Pengungsi Timor Leste**, Disertasi, Program Studi Doktor Ilmu Hukum Program Pasca Sarjana Universitas 17 Agustus 1945, Surabaya, 2009, hlm. 145

[22] Suteki, **Legal Pluralisme Dan Implikasi Metodologinya**: Sebuah Pendekatan Terhadap Hukum Yang Multifacet, Kongres Ilmu Hukum, Semarang, 19-20 Oktober 2012, hlm.,13

[23] Atik Krustiyati, Aspek Hukum Internasional Penyelesaian Pengungsi Timor Leste, Disertasi, Program Studi Doktor Ilmu Hukum Program Pasca Sarjana Universitas 17 Agustus 1945, Surabaya, 2009, hlm. 145

It should be also bore in mind that when the problem is obtaining affirmation of humanity and the institutionalization of the international legal instruments, it is necessary to establish legal measures from international community and governments to implement international instruments consistently. Clear benefits are, on the one hand, it is essential for related institutions that handling migrant workers, and on the other hand, it is very helpful for the protection of migrant workers themselves.

IV. CLOSING

1. There are many kinds of cases experienced by migrant workers as mentioned above that indicate the experience of dehumanization. Inhumane treatment is a violation of Article 5 of the Universal Declaration of Human Rights as follows: "No one shall be subjected to torture or to cruel, Inhuman or degrading treatment or punishment". Meanwhile, Article 7 International Covenant on Civil and Political Rights states: "No one shall be subjected to torture or to cruel, Inhuman or degrading treatment or punishment. In particular, no one shall be subjected without free consent to medical or scientific experimentation. "
   Step of posthumanization should continue to be pursued, either by law or by responsive ongoing dialogue between the countries concerned, so that migrant workers can obtain substantial justice. Primary and fundamental task on this matter is considered as state's responsibility as a consequence of sovereignty possessed.

2. Current conditions are Indonesian migrant workers have not received substantial justice as regulated in Act No 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad, even the regulation has not given enough space to protect the rights of migrant workers both in the pre placement, placement, and after placement. This is due to the Act that protection is only provided in article 8. Thus the revision of Law No. 39 year 2004 should be a priority.
3. Efforts to create substantial justice is by maximizing the role of Indonesia Representative Office Abroad. This is important in the diplomatic mission of Indonesia as stated in article 19 of Law No. b. 37 Year 1999 on Foreign Relations as follows: "Representatives of the Republic of Indonesia is obliged to provide care, protection, and legal aid for Citizens and Legal Entities of Indonesia abroad in accordance with national legislation and customary international law.
3. The law is responsive (progressive) in protecting migrant workers is the availability of the rule of law and implentasinya that provides minimum standards of protection of civil rights, political, economic, social, cultural and all migrant workers and members of their families. Migrant workers

is not just an economic commodity, but they are human beings who have rights. Vulnerability of migrant workers in relationships with citizens where migrant workers should be able to be accommodated. For this purpose sustainable and comprehensive dialogue on interfaith and interculture are necessary.

International Symposium
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Desain Sampul : Media@Art
Layout Isi : Fajar NA
Cetakan I : Januari 2013

Diterbitkan atas kerjasam :
THAFA MEDIA
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Phone : (0274) 6863938 Layanan SMS 082138313202
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Didistribusikan Oleh : Thafa Media
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xiv + 511 hlm ,16 x 24 cm
ISBN: 9786021716045

Foreword

For the time being, there has been a predisposition to predominantly understand law as one of the autonomous knowledge having the characteristic of sui generis as elaborated by Roger Cotterel that one of the most fundamental characteristics of law from professional perspective is its intellectual alienation. In this sense, law has been imagined specifically in such a way as a doctrine and professional practice in which its internal ranking categories can be analyzed and understood without referring to social circumstances. Law disregards the core contribution of modern science development which gets more complex. Consequently, the invention in quantum physic proclaiming that all matters have relative characteristics has not resuscitated the egoism of law formalism fanatics on how the world phenomenon is actually related to each other. Further, the studied knowledge is merely examined the indications from its phenomenon and has not been able to trace and understand the essence of it. If the stance is defended, law will lose its preexisting identity as the tool of human being to regulate social life to maintain order and prosperity of the society.

In the study about law, Meuwissen distinguishes three levels of its domain viz. philosophy of law, theory of law and science of law. Basically, those three levels are integral parts that could not be separated from each other, thus every study involving law as an object shall include them. Meanwhile if law is examined in one perspective, it will be alienated from the basis of knowledge and social. Its philosophy, in fact, represents all fundamental issues related to the study of law, not only the reality and method of its science or knowledge, but also critical behavior toward the influence of ideology of modern philosophy. In this respect, the theory is placed at the higher abstraction than science of law since it becomes domain of transfer from philosophy. Further, it reflects the object and method from various forms. Science of law from pragmatic perspective is the development of the most essential theoretical view in the study about its mechanism as a tool of social work to maintain order in the society.

Law is superiorly examined with interdisciplinary optical; thus it could be sensed as the study of not only constitution products, but also law functionality, on how it immensely contributes to maintain the social order. We should bear in mind that constitution is only one of the endeavors contributing to the maintenance of social order. The signs of the extension of law paradigm

and the collapse of it as a set of rule have appeared after its examination in multidisciplinary and interdisciplinary studies; the paradigm of the constitution could no longer handle the issues of social order that are constantly changing in line with the advancement of other branch of knowledge. The further inventions in technology and information have resulted in the constriction of world and the static law could not keep pace with the trend of global alteration.

What is currently required in the study of law is its enactment as an institution which is capable of following the update in a particular period. It has close relation with other aspects of life for instance in the context of morality, state, history, economy, culture and so forth. Tamanaha has disclosed its relationships by sparking off the idea of "mirror thesis"; that law is essentially the reflection of the society life utilized for maintaining the social order. In contrast, this perspective is completely different with legal-positivism fanatics who regard law only from the juridical optic and exclude it from moral aspects guiding the behavior of the society.

According to Satjipto Rahardjo the science of law in Indonesia actually has been left for some decades behind the political and social domain since 1945. Indeed the cogitation and theorization of law in this country exemplifies slow-moving response in the long run before the realization of the need of its knowledge and theory that could possibly explain the political and social dynamism in this country. The theoretical framework of law, in point of fact, must reach the further social dynamism. It must be able to give the prognosis of framework as the alternative reaction to the further political, economical and social change so that the study of law will not be greatly burdened with the fast-growing phenomenon.

The international symposium held by Faculty of Law Semarang State University is one of the committed endeavors in the domain of law science to take advantage the outgrowth of the emerging phenomenon in the world. In addition, the focus on the influential thinking of Pierre Bourdieu shall contribute to the development in the domain of law. Towards this end, the study shall follow the up-to-date advancement in a number of disciplines so as law can immediately respond that progress in a directed as well as precise manner.

This book is a collection of writings presented in international symposium concentrated its study on thinking postulated by Pierre Bourdieu, a French sociologist and contemporary anthropologist who influences the development of multidisciplinary knowledge. I hope you find this proceeding useful particularly for the development of law science in Indonesia.

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Bourdieu's Legal Socio-Analysis

On November 30, 2012 an international symposium themed Pierre Bourdieu: a Reflexive Sociology of Law and Society had been successfully conducted by Semarang State University. In this event, the main speakers Yves Dezalay and Bryant Garth presented their paper entitled: Lost in Translation: on the Failed Encounter between Bourdieu and Law and Society Scholarship and their respective Blindness. In addition, both reputable scholars also presented the results of their four books derived from their research. As far as history records, this symposium becomes one of the milestones of Bourdieu discussion in Asia. The discussion in symposium about philosophy as well as framework of social research method was first organized by the Faculty of Law, Semarang State University.

Faculty of Law adheres to the purposes for the advancement and education of agents as technocrats, politicians, activists, journalists, bureaucrats, and intellectuals. To these ends, it is the heart of power and knowledge. Further, its alumni are expected to give social influence in the realm of political battles in the state and the global competitive market. They shall uphold idealism and social capital as a weapon of war. In order to speculate the tendency of the faculty of law's alumni agents, observing their behavior is not sufficient. It should be explored in more detail within a certain timeframe research by taking into account the micro and macro aspects. The observation also requires historical context (ranging from Bologna school tradition, Roman law, tradition professorenrecht Germany), politics, economics, and culture.

The international symposium on Pierre Bourdieu: a Reflexive Sociology of Law and Society did not only discuss the themes presented by the main speakers. Yet, the forum also invited several speakers selected by the committee to present their papers. Dozens of articles were gathered to put together the writings of Dezalay and Bryant. This implies the arrangement of proceeding that was initiated by Dezalay and Bryant masterpiece, subsequently followed by other speakers' articles. By examining the context of Indonesia on Bourdieu's philosophy and practice research areas, deeper and sharper analysis can be developed.

At the opening session, this international symposium officially declared the establishment of a research institute named: Unnes Center for Contemporary Legal Studies. The institute is expected to follow up the recommendations

resulted from this forum by encouraging activities such as research, training, advocacy, and publishing scientific papers. Since Bourdieu is one of the main objects of study in this institution, his works will be the main reference for establishing a tradition of philosophical and intellectual in Faculty of Law, Semarang State University.

Social philosophical thoughts of Pierre Bourdieu (1930-2002) have given a great contribution to the development of jurisprudence. Through its theoritical perspective, jurisprudence is developed from correspondence with the concept of homoaeconomicus, symbolic violence, social capital, cultural social, habits, doxa, field and reflexive sociology. By using Bourdieu's view, scholars will find it easier to have in-depth analysis on the operation of a political domination, the movement of social agents, and the practical habits of law enforcers.

In its last development, jurisprudence takes a lot of considerable multidiciplinary study which does not only examine the norms, legislation, and the authority of apparatures. Jurispudence needs the other branches of disciplines, such as economics, politics, culture, technology, and social post-structuralism. Bordieu's social philosophy believes that the object of study of jurisprudence will clearly describe the collision of philosophy, science, theory, and practice in the legal framework. On the matter of its agents, there are fragments of habitues among academicians, judges, public prosecutors, lawyers, and law enforcers who build their own conduct and cultures. Each of these communities possesses the interconnected power that competes with each other in authoritarian discourse. Each of them has their own unique features to spread hegemony and form separated social scheme to shape a tradition of jurisprudence, to review legal practice, and to enhance research.

In Bourdieu's perspectives, media also plays a significant role in building the tradition of law and determining the conduct of the agents. By the means of television, pictures, and media's symbols, the culture is gradually formed. In other words, a symbolic system is built in a media filled with the conflict of interset which competes with each other to determine the model, fashion, workstyle, and ideology of law enforcers.

Bordieu's books and articles are: Homo academicus (1990), Distinction: A social Critique of the Judgement of Taste (1984), On Television (1999), Practical Reason: On the Theory of Action (1998), the Force of Law (1987), Sur L'Etat (1989), etc. Many of Bourdie's work are worthwhile for the development of jurisprudence. For the study of law and society, Bourdieu's thoughts are especially beneficial when being used to observe social interaction, the structure of society, and the culture of law itself, etc. Jurisprudence will not finally be about the study of acts, but also on the domain of socials, politics, and cultures. The power of law does not merely prevail over the nation, but also on the other informal institutions which have social authority such as churches, mosques, monasteries, temples, dan the other social agencies. In particular, Indonesia

has a special study of indigenous community law well-known as custom law.

Bordieu's theories that discuss the social phenomenon factually and critically analyse the historical treatise of "Western" imperial with the model of influential westernization by the means of post-colonialism. The mechanism of law operation in Roman and American democracy or the other developed countries have after all influenced the historical stories of eastern and southern third world nations. By that means, law cannot be separated from the history of dominating power along with the agents who are there to compete with each other.

This is the proceeding of international symposium on a Reflexive Sociology of Law and Society by Semarang State University. Enjoy your reading.

Editor

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ISBN 978-602-17160-4-5