

## CHAPTER II

### LITERATURE REVIEW

#### A. The Definition of Health

Based on World Health Organization, Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.<sup>8</sup> Furthermore, Law Number 36 of 2009 of Health, Health is good condition, in physically, mentally, spiritually and socially that allows anyone to live socially and economically productive.

Both definitions above have some similarities, namely: based on the definition, health is a state of complete physical, which means good condition. And also deals with mental and social. However, in the WHO did not mention spiritually. Spiritual<sup>9</sup> is reflected in the healthy way of expressing one's gratitude, praise, trust and so on beyond the mortal nature, the Almighty God (Allah in Islam). For example, it can be seen from the healthy spiritual practice one's religion. In other words, a healthy spiritual is state in which a person to worship and all the rules of their religion.

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<sup>8</sup> <http://www.who.int/about/definition/en/print.html>, accessed on August 11, 2013, at 8.28 pm.

<sup>9</sup> [http://zainal-a-fkm10.web.unair.ac.id/artikel\\_detail-35770-Kesehatan-Pengertian%20Sehat.html](http://zainal-a-fkm10.web.unair.ac.id/artikel_detail-35770-Kesehatan-Pengertian%20Sehat.html), accessed on August 13, 2013, at 7.44 pm.

## B. The Definition of Human Rights

Recognition that every person, everywhere he lived in this world, has a natural dignity and same rights and can not be deprived of all members of the human family is the foundation of freedom, justice, and peace in the world. The existence of a strength basic (basic rights) which can not be repealed by political forces though, has a strong influence on the two events in modern history.

First, at the end of the decade of the eighteenth century, namely what is called revolution which inspire further the war of independence in America to get the liberty from the British and the French in an attempt to overthrow the absolute monarchy. These events raises the understanding of individual freedom which can not be contested by the state.

Second, the United Nations in early 1948 put the United Nations charter, recognition of the inherent dignity, the equal rights and inseparable from all members of the human family is the foundation of freedom, justice, and peace.<sup>10</sup>

Before examining some theories about human rights, let us first identify its sources, namely what is called laws of nature. Natural law is a concept of general principles of morality and justice system applies to all human being which are recognized and believed by human beings as well.

The concept of natural law as theoretically natural rights that can be

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<sup>10</sup>Koesparmono Irsan, 2009, *Hukum dan Hak Asasi Manusia*, Yayasan Brata Bhakti Jakarta, p. 6.

moved and placed as stated in the Declaration of Independence of the United States.

Francois Geny, developed a theory of natural law, argued that the law covers the factors which can not be contested and be universal. These factors are the basis of all positive law. Geny divided into four categories called *donnees*,<sup>11</sup> namely:

**1. *Le donne Réel ( the Real Gives)***

It consists of the realities of physical and psychological, as the facts about sex, climate and so forth, religious traditions, folk customs and so on.

**2. *Le donne Historique (the History Gives)***

He covers all the facts, the tradition, environmental conditions concocting and managing physical and psychological facts, according to all a certain way.

**3. *Le donne Rationnel (the Rational Gives)***

It consists of principles which are born based on reasonableness on consideration of human relationships, such as: basic postulates of fairness, such as respect for human life, the development of the ability of the human person and freedom of thought.

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<sup>11</sup> Ibid, p. 7.

#### 4. *Le donne Idéal (the Ideal Gives)*

He enter the dynamic elements, because it includes the moral aspirations of a particular period of time and civilization.

According to Geny, through the techniques of law, legal experts manage these materials, so the result will be consistent with the needs of the community. For example, the institution of marriage, not to be born without a man and a woman. Satjipto Raharjo called as a social process, a natural process, which not created by the intervention of the law, but rather arise by itself.<sup>12</sup>

Even though understanding of 'human rights' newly formulated as explicitly in the 18th century, but the origin of the opinions and views of legal terms and the basic principle has been existed since the time before Christ.<sup>13</sup>

However, writing the history of the development of the conception of human rights appears only started since the time of Greek culture, namely the writing of the laws of nature (600-400 years BC). In the article it was mentions that the Greek philosophers at the time, it was receives the natural law which is based on common sense assessment, which is steady

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<sup>12</sup> Ibid, p. 7.

<sup>13</sup> Ibid, p. 8.

(no change) as the basis of social life. Recognition of this law is deduced from the natural order produces a view that humans are equal by nature.<sup>14</sup>

And there are similarities between the statements in the Preamble of the 1945 Constitution and Universal Declaration of Human Rights received in the UN General Assembly on 10 December 1948, clearly contains the soul and spirit are not much different each other. The similarities could be seen in the following, for example:

*Fourth paragraph of the Preamble of the 1945 Constitution of Indonesia* states that purpose of the establishment of Indonesia, namely:

- "To advance the entire nation and entire country of Indonesia.";
- "To advance general welfare";
- "For the intellectual life of nation"; and
- "Participate in the establishment of world order based on freedom, eternal peace and social justice".

In the statement of these goals, contained therein, as well as rights in the UDHR as follows:

- Article 22: "everyone as a member of society, has the right to social security";

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<sup>14</sup> Ibid, p. 8.-9.

- Article 25: “everyone has the right to a standart of living adequate for the health and wll-being of himself and of his family, including food, clothing, housing, madical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”;
- Article 26: “everyone has the right to education”;
- Article 28: “everyone is entitled to a social and international order in which the right and freedoms”;

Fourth paragraph of Preamble: “whereas it is essential to promote the development of friendly relation between nations”.<sup>15</sup>

### **1. Human Rights in International Law**

Human rights have a universal value. Universal value means not recognize the limits of space and time. The universal values which are then translated into the various national legal products in various countries in order to protect and uphold human values. This fact was confirmed in the universal value of international instruments, including in the field of human rights treaties, such as the International Covenant on Civil and Political Right; International Covenant on Economic, Social, and Cultural

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<sup>15</sup> Barda Nawawi Arief, 2011, *Kebijakan Hukum Pidana*, Perdana Media Group, Jakarta, p. 57-59.

Rights; International Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; Convention on the Rights of the Child; and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.<sup>16</sup>

**a. Rights to Life**

The right to life is the most important rights and other rights under these rights. This right is set specifically in the UDHR 1948 and ICCPR 1996. Deprivation of the right to life is a major denial of human dignity. It is obvious why the article 6 of the ICCPR set so that the countries that have not remove the death penalty. "May be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not Contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide ". Furthermore, there is a general tendency of countries to eliminate the death penalty and it is apparent from the "Second Optional Protocol to the ICCPR" which came into force in 1991. Unfortunately, the progress is very slow.<sup>17</sup>

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<sup>16</sup> Muladi, 2009, *Hak Asasi Manusia*, Refika Aditama, Bandung, p. 70.

<sup>17</sup> Ibid, p. 105.

**b. Treatment of Prisoners**

Prisoners as human being have also medical care as like as human being in general, in Standard Minimum Rules for the Treatment of Prisoners (UN, 1957) states that:<sup>18</sup>

In article 22, paragraph (1): "at every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

Paragraph (2): "sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoner, and there shall be a staff of suitably trained officers.

Paragraph (3): " the services of a qualified dental officer shall be available to every prisoners.

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<sup>18</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx> accessed on August 11, 2013 at 9.32 pm.



## **2. Human Rights in Indonesian**

The statements that are stated in the Preamble of the 1945 Constitution of Indonesia requirement with a statement (declaration) and the recognition that uphold the dignity, and human values are very lofty and very fundamental. Among others, affirmed the right of every nation (including individual) will be independence, life is free, orderly and peaceful, the right to build the nation achieves prosperity and welfare, sovereignty, deliberation, nationality, humane, equitable, and believes God Almighty.

Furthermore In Indonesia, arrangements about human right get additional wider, it is contained in Law No. 39 of 1999 on Human Rights. Based on Law No. 39 of 1999 on Human Rights in chapter 1 paragraph (1,3,4, and 6) explain about what are human rights, discrimination, torture, and human rights violation;

1. Paragraph (1): "Human Rights are a set of rights attached to nature and human existence as a creature of God Almighty and it is His grace that must be respected, upheld and protected by the state, law, government, and everyone for the respect and protection of human dignity."
2. Paragraph (3): "Discrimination are any limitation, abuse or ostracism, directly or indirectly based on human differences on the basis of religion, ethnicity, race, ethnic group, class, social status, both

economic status, gender, language, political conviction. Resulting in a reduction, or elimination of irregularities recognition, implementation or application of human rights and fundamental freedoms in both individual and collective life in politics, economics, legal, social, cultural, and other aspects of life”

3. Paragraph (4): "Torture are any act committed intentionally, causing pain or suffering, both physical and spiritual, on a person to obtain information or a confession from a person or a third parties, punishing him for an act committed or alleged to have been exhausted do by a person or a third parties, or intimidating or coercing him or a third parties, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, at the instigation of, with the consent, or knowledge of anyone and or public officials."
4. Paragraph (6): "*human rights violation are all actions by individuals or group of people, including state apparatus, both intentional and unintentional, that unlawfully diminish, impede, limit, or revoke and human rights a person or group of people are guaranteed by this Law, and do not get, or is feared will not obtain a fair trial and the right, based on the mechanism of the law.*"

### C. The Definition of Prisoner

Prisoners, according to Law No. 12 of 1995 concerning Detention, Article 1, paragraph (6) a person who is convicted offenders under a court decision binding. Paragraph (7) is undergoing criminal defendants lost his freedom in Prison.

The objective of the penitentiary system is to make prisoners aware of his mistake, improve themselves, and not to repeat the offense so that it can be accepted back by the society. The purpose already outlined in Article 51 of bill of criminal law states that the purpose of punishment are:

1. to prevent the perpetration of a crime by enforcing legal norms of society aegis;
2. socializing prisoners by conduct of coaching that makes people good and useful;
3. resolve conflicts caused by criminal acts, restore balance and bring a sense of peace in the society;
4. absolve sense of guilt in a criminal;
5. punishment is not intended to suffering and not dehumanizing people.<sup>19</sup>

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<sup>19</sup>Erdianto Effendi, 2011, *Hukum Pidana Indonesia Suatu Pengantar*, Refika Aditama, Bandung, p. 141.

Consistent with statement above, in Article 5 of Law No 12 of 1995 concerning Penal Guidance confirms that the implemented system based on principle;

- a. Aegis
- b. Equality of treatment and care
- c. Education
- d. Development
- e. Homage
- f. *Homage for human dignity*
- g. Loss of independence is the only suffering and
- h. Guarantee of the right to keep in touch with certain people

Balance and harmony between freedom and responsibility are important factors within respect, advancement, fulfillment, and protection of human right. In terms of the treatment must be humanized, not then dumped. As stated in article 14 number 12 of 1995, are as follows;

Right of Prisoners :

- a. worship according to his religion or belief;
- b. *treatment, both spiritual and physical care;*
- c. education and instruction;

- d. health care and proper food;
- e. file a complaint;
- f. *get reading materials and follow other broadcast media that are not prohibited;*
- g. a wage or premium the work done;
- h. receiving family visits, legal advisor, or other specified person;
- i. a reduced penalty period (remission);
- j. get a opportunity to assimilate including time off to visit family;
- k. get a parole;
- l. get time off before free; and
- m. acquire other rights in accordance with the legislation in force.

#### **D. The Definition of LAPAS**

*Understanding of Detention, Penal System, and Prison mentions in article 1, paragraph (1, 2, and 3) Law No. 12 of 1995 concerning Detention, namely;*

- (1). *Detention is performing the activities of prisoners construction based on system, institutional, and how to coaching which is the final part of the criminal system in the criminal justice system.*

(2). Detention system is a limit order on the direction and guidance as well as ways detention inmates based on Pancasila is implemented in an integrated between the coaches, who constructed, and the community to improve the quality of detention inmates in order to realize the errors, improve themselves, and not to repeat the offense so that it can be accepted back to the community, can actively participate in the development, and can live naturally as a good citizen and responsible.

(3). Detention which hereinafter called prisons is the place to implement coaching to prisoners and detention students.

Recognizing the article above that detention is a coaching process which prisoners are often called "therapeutics process", it is clear that the development of prisoner is synonymous with heal someone who temporarily lost his life because of its weaknesses.

Generally, prisoners coach is aimed them to enable to be fully human as like as that has been towards national development through approaches:

- a. Strengthen their faith.
- b. Nurture them to be able to integrate fairly in the life of the group during in prison and a wider life after undergoing their punishment.

Specifically, sentencing of prisoners are intended during training and after completes their punishment, such as:

1. succeed to reestablish dignity and self confidence and optimism about the future;
2. succeed to acquire of knowledge, skills for supplies at least able to live independently and participate in national development;
3. succeed become a people who are obey the law, reflected in the attitudes and behavior are orderly, disciplined and able to garner a sense of social solidarity;
4. succeed to have a soul and a spirit of dedication to the nation and the state.<sup>20</sup>

Detention institutions have duties to perform on the detention prisoners to carry out such tasks are:

- a. Conduct training on prisoners / client of Detention.
- b. Providing guidance prepare a facilities and infrastructure and manage the work of detainees or prisoners.
- c. Perform social or spiritual guidance of detainees or prisoners.
- d. Perform administrative affairs and household.
- e. Perform maintenance of security and order prison.

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<sup>20</sup><http://www.ditjenpas.go.id/pasnew/sites/default/files/KEPMENKUMHAM%20NO%20M.02-PK.04.10%20TAHUN%201990%20POLA%20PEMBINAAN%20NAPI%20DAN%20TAH.pdf>, accessed on August 12, 2013, at 7.59 pm.

These tasks intended that they are able to integrate them naturally live in social life, the place where they are to be useful for the whole human self, society, nation, and religion.