

RIGHT TO HAVE RIGHTS¹

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Abstract

Right is the basic essentials that can make legislation run well. But every practice of right always causes some legal issues. It means that the practice of every human in Indonesia can have right to have rights is not used yet, because of the exist of Pancasila. Indonesia needs to care more about this, that every citizen must have their right to have rights, as long as the right is not divide the unity and integrity of the nation of Indonesia. What's mean with the right that Indonesian people must get is about right to live or death, right to choose their own religion, or right to choose their sex.

Keywords: rights, interpretation, to have right

A. Introduction

In a country, there are nations, the definition of nations based on what Kranenburg said is about "a group of humans" and that word 'nation' comes earlier before 'state'.² This kind of understanding needs to be known because this is the source how Indonesian law was born.

The legal system today can't be interpreted by default as presidential and parliamentary. The legal system in a developing country according to the development of the country in the face of legal issues surrounding. As a result, the presidential can be mixed with a parliamentary or vice versa. In state practice, the legal system also bring legal consequences against the laws and regulations in a country. The laws and regulations in Indonesia should reflect that everything must be sourced on the Pancasila. In this paper the author focuses on the nature of whether the right to have rights is something that is allowed or restricted in Indonesia. One example that laws and regulations provide requirements that the right is especially. Any legislation provides that the right provision is the main aspect. As some rights in legislation following:

1. Article 5 paragraph (1) of the Constitution of the Republic of Indonesia Number 16 of 2006 on Agricultural Extension System, Fisheries, and Forestry stipulated that "The most eligible to benefit extension covers the main goal and target between".
2. Article 15 paragraph (1) of the Constitution of the Republic of Indonesia Number 6 of 2007 on the Establishment of District of North Kayong stipulated that the "District of North Kayong eligible for allocation of equalization funds in accordance with the legislation regarding equalization funds between central and local governments".
3. Article 49 paragraph (1) of the Constitution of the Republic of Indonesia Number 4 Year 2011 on Geospatial Information set forth that "Users are entitled to know the quality of the Geospatial Information Geospatial Information obtained".
4. Article 3 letter b Aceh Qanun Number 3 Year 2013 concerning Aceh Flag And Emblem stipulated that "to make sure that Aceh has the right to determine and set a flag and symbols that reflect the privileges and specificity".

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² Hotma P Sibuea, *Ilmu Negara*, 2014, Jakarta, Erlangga, p. 38.

5. Article 54 paragraph (1) of the Constitution of the Republic of Indonesia Number 2 Year 2014 on the Amendment of Act No. 30 of 2004 concerning Notary stipulated that "Notaries can only give, show, or notify the contents of the Deed, Grosse Deeds, Deed Copies or citation Act, to the person directly concerned in the deed, heir, or the person who obtained the right, unless otherwise stipulated by legislation".
6. Article 3 paragraph (1) of the Constitution of the Republic of Indonesia Number 11 Year 2016 concerning the Tax Forgiveness stipulated that "every taxpayer is entitled to get tax forgiveness".

Based on the six examples above, it can be said that the right is the main essence that can make a legislation run well. But right in the legislation has some restrictions which created in the certain condition.

B. Explanation

1. The Definition of Right

Genesis 3: 14-19 describing how God expressed His punishment of three principals: snake, man (Adam) and the woman (Eve). The snake goes on its belly and eat dust of the earth; women have struggled to give birth with a lot of pain; while the man (Adam) had to work hard to get a fortune.³ Rights in the Bible could be a conflict when interpreted without using proper interpretation. Rights may arise due to the purpose or caused a distress.

Referring to Article 1 paragraph 1 of the Act of the Republic of Indonesia Number 39 of 1999 on Human Rights stipulated that "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". When a right has a derivative of the Almighty God then raises the legal implications that everything must be measured with the right divinity.

Described in Article 2 of the Law of the Republic of Indonesia Number 39 of 1999 on Human Rights stipulated that "the Republic of Indonesia recognizes and upholds human rights and human freedoms as the rights that are naturally inherent in and inseparable from man, who must protected, respected and enforced in order to improve human dignity, prosperity, happiness, and intelligence and justice". And Article 3 of the Law of the Republic of Indonesia Number 39 of 1999 on Human Rights stipulated that:

- (1) Every person is born free with human dignity and the equal and equally endowed with reason and conscience to live in a society, nation and state in the spirit of brotherhood.
- (2) Everyone has the right to recognition, security, protection and fair legal treatment and to have legal certainty and equal treatment before the law.
- (3) Everyone has the right to the protection of human rights and basic human freedom, without discrimination.

Based on Universal Declaration of Human Rights 1948:

Article 1 "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

³ Why there should be this kind of punishment ? Psalm 51, King David expressed repentance that this underlines the very important. "So it turns out if you just judge me, * and thy judgment is appropriate", further in Ignatius Budiono, *Kerahiman: Ruang Bagi Kehidupan (Beberapa Gagasan dari Kejadian 1-3)* in Hari Studi STFT Widya Sasana - Malang 29 Oktober 2016, p. 5.

Article 2 "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

Article 3 "Everyone has the right to life, liberty and security of person."

From that sense, there is a fundamental difference between the nature of the right according to the Law of the Republic of Indonesia Number 39 of 1999 on Human Rights Universal Declaration of Human Rights 1948 namely the international nature of the right according to the rights of human beings freely freely without any element of God or divine rights while nationally in Indonesia, there is no associated human rights as a creature of God Almighty and is a gift from Him. The phrase "creature of God and is His grace" is actually equivalent to the rights conferred by Universal Declaration of Human Rights 1948 but in practice in Indonesia is limited to Pancasila. The next comparison when Indonesia fully implement human rights based Universal Declaration of Human Rights 1948 then that is where the state directly create rights to everything as long as it is not inconsistent with law.

It seems clear that the right to show human nature itself. Although rights should not be sued, but in the level of practice is frequently found restriction of rights or granting created with certain conditions. The author uses two examples of legislation in this paper that the Law of the Republic of Indonesia Number 13 Year 2003 on Employment and Law of the Republic of Indonesia Number 1 Year 1974 about Marriage. Argument to choose the law because both of them is a law that pretty much set the rights in the society.

The first, referring to Article 93 paragraph (1) and (2) of the Constitution of the Republic of Indonesia Number 13 Year 2003 stipulated that:

- (1) Wages are not paid if the workers/laborers are not doing the job.
- (2) The provisions referred to in paragraph (1) is not valid, and company must pay its workers if:
 - a. workers/laborers are sick so they can't do their job;
 - b. female workers/laborers who are sick in the first and second day of the menstrual period and therefore can get two days of to have a rest;
 - c. workers/laborers are not present in work because workers/laborers are having schedule to married, wed, circumcised, baptized his son, his wife gave birth or miscarriage, husband or wife or son or daughter or parents or in-laws or family members died in one house;
 - d. workers/laborers can't do the work because they are carrying out their duty to the state;
 - e. workers/laborers can't do the work because they have to do praying as what they religion commanded.
 - f. workers/laborers are willing to do the work that has been promised but the company doesn't hire, either for own mistakes or obstacles that should be avoided;
 - g. workers/laborers take the right to rest;

- h. workers/laborers carry out the task of trade unions/labor unions with the consent of the employer; and
- i. workers/laborers are carrying out educational tasks of the company.

In the aforementioned article, the company is obliged to pay wages when one of the workers/laborers married, circumcised, baptized his son, his wife gave birth or miscarriage instructed to practice his religion. Actually this is a coercive rights to be given to legal subjects who received the rights to certain conditions. Such a restriction is actually incompatible with the nature of the right itself. The obligation to provide wages is not a legal act that must be done because by giving it to the worker/laborer's rights which has the form of a compulsion. The workers/laborers must be under that article because not all workers/laborers to take legal actions such as getting married, married, circumcised, baptized his son, his wife gave birth or miscarriage instructed to practice his religion.

Workers/laborers must be construed as a legal subject in the free state. Legal supposition if the worker/laborer legal actions such as getting married, wed, circumcised, baptized his son, his wife gave birth or miscarriage instructed to practice his religion, the acquisition of rights in the form of wages from employers is not a right but it is a mistake. The writer said as an error because the legal act is a legal act with something divine.

Phrases the terms "worker/laborer perform legal acts such as marriage, married, circumcised, baptized his son, wife give birth or miscarriage of the content of worship instructed his religion" it is contrary to the meaning of Pancasila. When private is set in a law then the rights thus can not be completely. Problems will arise the law when the worker/laborer married then workers/other workers who choose not to marry have the right to acquire rights as workers/laborers who are married, when the workers /laborer marry his son then the workers/other workers who choose not to marry off his son certainly has the right to acquire rights as workers/ laborer marry his son, when the workers/laborers circumcised his son then workers/other workers who choose not circumcised his son certainly has the right to acquire rights as workers/laborers who circumcised her son, when the workers/laborers baptize his son then workers/other workers who chose not to baptize her son certainly has the right to acquire rights as workers/laborers who would baptize his son. Especially in the phrase the terms "worship instructed his religion" that phrase must be understood as the right to have rights is very wide. Religious orders is the relationship of the single between subjects of the law with what he believed in. The state cannot set requirements that workers obtain their rights but with worship then directly right to have rights attached to them. The right to have rights related to worship cannot be interpreted in general because of the diversity of what is believed by the human.

Imam Suprayogo stated that:

"Man needs the formulation of the ideals of life together. The ideals which are also referred to as the ideology that, for the nation of Indonesia has been successfully formulated and is called Pancasila. In such a beautiful formulation of the ideals that that nation was built is a nation of divinity, humane, united, led on the basis of the wisdom, and justice. Read the formulation of this, anyone would say that those ideals are good and noble. That is why even if have to go through the debate, the formulation of these ideals can be accepted by all people as a principle-the basic principle of life together. But as a human characteristic in general is clever to

formulate the ideals, but the reverse is always weak in realizing or implementing it. Moreover, what it aspired to be at the level of behavior, value, or something that is deemed ideal. Concerns about the value, humans usually have or put up too high a standard so that while people call it being in the sky. But at the implementation level, man doesn't easily leave her perch that is in the earth. Man is always potentially looking for their Lord, humanity, love of unity, leadership full of wisdom, and fair but their behavior day-by-day because of the urge to meet the interests of private, group, and /or groups, then the noble ideals meant by so easily forgotten."⁴

The author displays the thinking of Imam Suprayogo in the state upheld that the right to have rights is the willingness of the great man. To understand more about the will of the author then the second example is Article Article 3 of the Law of the Republic of Indonesia No. 1 of 1974 on Marriage⁵ stipulated that:

- (1) In principle, a married man can have only one wife. A woman can have only one husband.
- (2) The court may grant a license to a husband to take more than one if required by blame groups concerned.

The phrase of paragraph (2) is, described in Article 4 of the Law of the Republic of Indonesia No. 1 of 1974 on Marriage stipulated that:

"Give permission to a husband who will be more than one wife if:

- a. the wife can not do her obligation as a wife;
- b. the wife got a disability or illness that is not curable;
- c. the wife can't give birth."

Article 4 of that when viewed from the perspective of the husband's application for permission as stipulated in paragraphs a, b and c is the right coercive. Husband to take legal actions to obtain the right to remarry by reducing the rights of marriage which is owned by the wife. Referring to Article 1 of the Law of the Republic of Indonesia Number 1 Year 1974 on Marriage stipulated that "Marriage is a bond born of spiritual between a man and a woman as husband and wife with the intention of forming a family (household) a happy and lasting popularity Godhead Almighty" then legal act performed husband to remarry should also be given the similarities to the wife to do so. But such understanding would be

⁴ Imam Suprayogo, *Manusia, Pancasila, Dan Indonesia*, Kongres Pancasila IX "PANCASILA JIWA BANGSA" (Dinamika, Tantangan, dan Aktualisasi di Indonesia) in 21-23 Juli 2017 Universitas Gadjah Mada.

⁵ Clarified that the registration of marriages of First Instance became valid and binding on the member states with the approval of the Permit Covenant Marriage, Minimum Age of Marriage and Registration of Marriages, 1964, Article 3 states that "all marriages should be formally recorded by the competent authority". Session of United Nations General Assembly had already approved the resolution to give the recommendation a civil registry official. The first is a resolution number 843 (IX) of 1954, entitled "Status of Women in Private Law: Traditional, Ancient Laws and Practices Affecting the Human Dignity of Women", urging all member states to make efforts were deemed necessary in countries and territories that are under its jurisdiction with a view to eliminating all customs/customary laws and practices of ancient sort of thing ...; and build a civil or other register in which all marriages and divorces are recorded; ..., More in Perserikatan Bangsa-Bangsa, *Buku Pedoman Tentang Sistem Pencatatan Sipil Dan Sistem Vital Statistik Penyiapan Kerangka Hukum*, 2005 United Nations, Handbook On Civil Registration System and Vital Statistics System Setup Legal Framework, 2005, Jakarta, Citra Grafika Pratama, p. 131-132.

incompatible with Article 1 because of the nature of marriage to form a happy family and eternal, this is the most fundamental rights.

Although contrary to Article 1, in the development of the subsequent marriage is not to be the most fundamental rights. Marriage is not always associated with the nature of the family. When there is a definition of marriage then there should be also the definition of a life of celibacy. Humans basically don't always want a marriage as the fulfillment of the needs of his life. Marriage was also to be a formality. The fulfillment of the necessities of life not through marriage can be seen for example through work as a priest, monk, sister or those who devote their life for the sake of humanity. When the right to have the right not to marry then the state can not fulfill such rights. With the deed so then the state can not protect it. As a continuation of the right in Article 1, the authors continue understanding of the rights in Article 33 of the Law of the Republic of Indonesia Number 1 Year 1974 about Marriage "Husband and wife shall keep each other love-love respect-respecting, loyal and giving aid and soul one to the other" that the obligation of love-love is not an obligation but a right to have rights.

1. Love of Neighbor

Love is the most fundamental that underlies all types of love is love of neighbor. What I mean by that is a sense of responsibility, caring, respect, understanding of other human beings, the will to preserve life. This is the kind of love that is said in the scripture : love your neighbor as yourself. Love of neighbor is love to all mankind; love is characterized by a completely absence of exclusivity. If you have developed the capacity to love, no doubt I love my fellow men. In love of neighbor there is the experience of union with all men, of human solidarity, wholeness of human. Love of neighbor is based on the experience that we are all one. From the perspective of the love of neighbor then the interpretation of the phrase "love-love" in Article 33 of the Law of the Republic of Indonesia Number 1 Year 1974 about Marriage should be done well. Husband and wife in the Law of the Republic of Indonesia Number 1 year 1974 on Marriage is a legal subject that has the same position.

2. Love of Mother

The relationship of mother and child, in accordance with his nature is a relationship of inequality where one needs the full help and others give it. That is why the character is altruistic and not selfish to make the love of mother is considered as a type of love the most high and most sacred among all the emotional ties. However it appears that the achievement of maternal love that is real not lies in the love of the mother on a tiny baby but her love for the growing child. In fact almost all mother is a mother who loves as far as the baby is still small and still entirely dependent on him. Most women want children, to feel happy with a newborn child and very much want to take care of him. It is fact even though they don't "get" any reply from the child except a smile or expression of satisfaction on his face. From the perspective of a mother's love then the interpretation of the phrase "love-love" in Article 33 of the Law of the Republic of Indonesia Number 1 year 1974 on Marriage, the husband should have a great love to the wife in order to create a sense of compassion as desired in the Legislation of the Republic of Indonesia Number 1 year 1974 about Marriage.

3. Erotic Love

Erotic love is often confused with experience of the explosive “fall” in love, the collapse of all the obstacles in between two strangers in real time which lasts until that experience happens. However, as has been shown earlier, the experience of the intimacy of the instantaneous short-term nature. After the stranger it becomes personal that has known the intimate, no more obstacles need to be overcome, no more closeness instantly that need to be achieved. The personal “a loved one” itself has been known well. From the perspective of erotic love then the interpretation of the phrase “love-love” in Article 33 of the Law of the Republic of Indonesia Number 1 year 1974 about Marriage wants a husband and wife loves loves without regard to the deficiency or excess of each subject.

4. Love of Self

Love someone is the actualization and concentration of the fundamental contained in the love addressed to the beloved as an incarnation of nature – human nature. Love on someone means love in humans. The presence of a kind of “division of labor”, where by a person loves his family but doesn’t have the feelings to “strangers”, is indicative of the fundamental inability to love. Human love is not like the assumption a lot of people, namely the abstraction that appears after loving certain personal but is the premise even though genetically obtained with a loved a specific individual. From the perspective of love of self then the interpretation of the phrase “love-love” in Article 33 of the Law of the Republic of Indonesia Number 1 year 1974 on Marriage is an article that makes the subject of husband and wife is separate. The content of this article is the clarity of the Article 4 of the Law of the Republic of Indonesia number 1 year 1974 about Marriage that :

“The court referred to the data of paragraph (1) of this article shall only give permission to a husband to be married more than a if:

- a. Wife can't perform the obligations as a wife;*
- b. Wife got a defective body or a disease that cannot be cured;*
- c. Wife can't give birth to offspring.”*

5. Love to God

In all religions teistic, both politeistic and monoteistic, God is the supreme value, a virtue that is most coveted. Then the meaning of God’s special depending on what was the virtue most coveted for a personal. An understanding of the concept of God must start with an analysis of the structure of personal character that the worship of God. He said I was I mean God is not finite, not a person, not a “creature”. The translation is adequate for sentences that are “My name is no name”. The prohibition to make images of God, pronounce His name in vain and in the end pronounce the whole name, have the same goal, i.e. freeing man from the idea that God is a father, that He is a person. In the development of theology then, the idea was carried further with the principle that a person doesn’t even need to give positive attributes to God. Call God wise, powerful, or better again show that he is a person. The more I know what is not God, the greater my knowledge of God. From the perspective of love to God, then the interpretation of the phrase “love-love” in Article 33 of the Law of the Republic of Indonesia Number 1 year 1974 about Marriage can not be interpreted well because even though there the phrase

“By the GRACE of GOD THE ALMIGHTY” as irah-irah in the legislation but the existence of irah-irah is just a complement.⁶

The term ‘right’ in the phrase ‘the right to have rights’ is built upon this prior claim of membership. To have a right, when one is already a member of an organized political and legal community, means that “I have a claim to do or not to do A, and you have an obligation not to hinder me from doing or not doing A.” Rights claims entitle persons to engage or not to in a course of action, and such entitlements create reciprocal obligations. Rights and obligations are correlated: rights discourse takes place among the consociates of a community. Such rights, which generate reciprocal obligations among consociates, that is, among those who are already recognized as members of a legal community, are usually referred to as “civil and political” rights or as citizens’ rights. Let us then name the second use of the term right in the phrase ‘the right to have rights’ its juridico-civil usage. In this usage, ‘rights’ suggests a triangular relationship between the person who is entitled to rights, others upon whom this obligation creates a duty, and the protection of the rights claim and its enforcement through some established legal organ, most commonly, the state and its apparatus.⁷

2. Right to Right

In the free or nature condition, human as the creature that always competitive have got their rights since birth. Rights are divided into:

- a. The right to record important events:
 1. The right to register a birth. This right is stated in Article 24 of the International Covenant on Political Rights and Civil Rights in recognition of the fact that the birth is valid evidence on the crime scene.
 2. The right to register the death. In Article 12 paragraph (2) a of the International Covenant on the Rights of Economic, Social and Cultural Rights which states that member states must adopt, among others, the efforts shown to reduce the rate of stillbirth and infant mortality rate, ...”.
 3. The right to register the death of the fetus. The decline in the infant mortality rate is one measure that the member states that signed the Covenant must adopt to ensure the fulfillment of the rights to health.
 4. The right to register marriages.
 5. The right to register a divorce. As a general rule, the divorce process take place in the courts and a divorce was granted by a court ruling.
- b. Human rights can depend on keeping track of important events
 1. The right to have an identity. The significance of the enactment of this right are explained clearly by the fact that the effectiveness of other rights of a person depends on whether in sufficient time can be quickly created a perfect identification of the person.

⁶ This research is made with thought by Erich Fromm, in Tomy Michael, *Penafsiran Frasa “Cinta-Mencintai” Dalam Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan* in Forum Rembuk Nasional 2016 “Menata Indonesia Dalam Perspektif Nawa Cita” Himpunan Mahasiswa Pascasarjana Indonesia. 25 – 29 Mei 2016 Universitas Negeri Jakarta.

⁷ Seyla Benhabib, *The Right To Have Rights In Contemporary Europe*, Yale University, February 2005, p. 6-7.

2. The right of children to know their parents. According to Article 7 of the Convention on the Rights of the Child, since his birth a child has the right to a name and as far as possible, the right to know their parents.
3. The right not to be discriminated against on the grounds of birth. For the purpose of providing a complete reference to the identification of the child, also stipulated that the pseudonym fathers and mothers must be included for identification purposes.
4. The right to a name. The rights of children should cover four main areas to all under the fundamental principle of the supreme interests of the child. The field is the survival, growth, protection and participation. In terms of survival along with the inherent right to life, the child has the right to a name and nationality. You have the right from birth on a name and nationality. Every child shall be registered immediately after birth and has the right to have a name.
5. The child's right to nationality. Child shall be registered immediately after birth and shall have the right from birth to have a name, nationality and as far as possible the right to know and cared for by their parents.
6. The right to health. Everyone is entitled to a standard of living adequate to provide health and well-being of themselves and their families.
7. Right for family to get a protection. Family is the natural and fundamental element of a society so they should get protection and help, particularly for its establishment and while it is responsible for the care or the care and education of children dependents.
8. The rights of juvenile delinquents. Minors are accused of violating the criminal law has the right to be given the appropriate treatment to promote a sense of dignity and social rehabilitation.
9. The right to get an education. Education should be important task to everyone.
10. The right to maintenance and protection. Every child has the right to special protection that ensures its development. Every child is entitled without any discrimination on the safeguards by the family, community and country.
11. The right to marry. For married men and women must meet the minimum age as specified in the legislation. Minimum age is also used to prohibit minors to marry.
12. The rights of minors to protection of underage marriage. Age is a prerequisite for a valid marriage.
13. The right to protection from forced marriage. Both couples getting married have to agree freely and fully to mating. "Approval" of one party only, it is not enough.
14. The right to food. Is part of the right of everyone to an adequate standard of living for himself and his family.
15. Right to bear. Part of the right of everyone to an adequate standard of living adequate for himself and his family, which also includes food and shelter as well as the improvement of living conditions that continue to rise.
16. The right to housing. Part of the consequences of living adequate.
17. The right to work. Everyone has the right to work freely chosen, within the requirements and equivalent level of payment and protection against unemployment.
18. Property rights/ownership. Everyone is entitled to the property either individually or collectively.

19. The right to inherit. The State should guarantee the right to inherit “ab intestato” and therefore gain, running, enjoying and determine inherited goods.
20. The right to migrate. Everyone has the right to leave any country, including his own, and return to his country.
21. The right to social security. Everyone has the right to insurance in the event of unemployment, sickness, are not able or disabled, widows, widowers, old age or other income loss events due to circumstances beyond their control.
22. Right to partner for the supervision of children. Each partner has the right and responsibility equivalent on a marriage, during marriage and upon dissolution of marriage events. If the dissolution of the marriage because of the death of one partner marriage, protection and supervision of the child is usually handed over to the living. But if it is because of divorce or separation under the court ruling, protection and supervision is determined by age and sex of the child, and personal financial circumstances and environment of each partner.
23. The right to elect and be elected. The willingness of many is the basis for the authority of the state.⁸

Expressly, the rights that are recognized internationally quite specific but those rights aren't entirely right to have rights. The author only examines the right most main that is the right to have rights can be either rights on death or rights to choose religion and / or belief outside of religion that is prevalent in Indonesia.

2.1. Rights to the Death

Rights to death in Indonesia has not been regulated in full in Indonesia because it is contrary to human nature. In section 28A of the Basic Law of the Republic of Indonesia Year 1945 stated that everyone has the right to life and the right to defend his life and existence. Sustain life can also be done through death. But referring to Article 344 of the Penal code stated that “whoever removes the lives of people over the earnest request of the person himself, shall be punished by a maximum imprisonment of twelve years”. Euthanasia in general are distinguished into two kinds, namely euthanasia is active (an action directly from the physician on the consent of the patient or the family to hasten the death of patients, so that regardless of the suffering prolonged) and passive euthanasia (an action indirectly from the physician on the consent of the patient or the family to stop all the efforts of the medical which is considered not to give change to patients).⁹ In practice in Indonesia, Article 344 the Book of the law of Criminal Law is difficult to apply to filter the act of euthanasia as a criminal act, because the euthanasia that often happens in this state is passive, while the existing settings prohibit euthanasia active and voluntary. Reflecting from the experience in the Netherlands, Komariah said the euthanasia procedure imposed in the Netherlands is not arbitrary. Necessary approval from the court to do such deeds. Although the patient's family expressed its will to perform euthanasia, but the court can only refuse to make a determination.

In a case in around 1990 in the Netherlands, a patient's family who want to perform euthanasia was rejected by the court, although finally granted. For that, according to

⁸ More in Perserikatan Bangsa-Bangsa, *Buku Pedoman Tentang Sistem Pencatatan Sipil Dan Sistem Vital Statistik Penyiapan Kerangka Hukum*, 2005, Jakarta, Citra Grafika Pratama, p. 129-150.

⁹ Adami Chazawi, *Kejahatan Terhadap Tubuh dan Nyawa*, 2004, Jakarta, RajaGrafindo Persada.

Komarariah if there is no other way, no longer life expectancy and biomedical someone had unplugged his life through euthanasia, there must be a determination of the court to run the process. Therefore, the determination of such court will be used so that the family or the party pleading can't be imprisoned. Similarly, the role of the doctor, so the doctor can't be called malpractice. In addition to the determination of the court, the description of the prosecutor's office should also be required so that later the country doesn't demand the issue of euthanasia.

2.2. Rights to choose religion and/or belief outside of religion that is prevalent in Indonesia

Refer to the explanation of Article 1 the Determination of the President of the Republic of Indonesia No. 1 /PNPS 1965 on Prevention of Misuse And/Or Desecration of Religion that "in addition to Islam, Christianity, Catholicism, Hinduism, Buddhism and Khong Cu (Confucius) get a guarantee from the state. This does not mean that other religions, for example: Jewish, Zarasustrian, Shinto, Taoism are prohibited in Indonesia. They got a full guarantee as provided by article 29 paragraph 2 and they left the presence, the origin does not violate the provisions contained in this regulation or legislation". The contents of the complete Explanation of Article 1 the Determination of the President of the Republic of Indonesia No. 1 /PNPS 1965 on Prevention of Misuse And /Or Desecration of Religion that:

[With the words "the Public" is meant what is commonly defined with the words in the Book of the law of Criminal Law. The religions embraced by the population in Indonesia is Islam, Christianity, Catholicism, Hinduism, Buddhism and khong Cu (Confucius). This can be evidenced in the history of the development of Religions in Indonesia. Because 6 of this Religion is a religion - a religion that embraced almost the entire population of Indonesia, then unless they get a guarantee as provided by article 29 paragraph 2 of the Basic Law, also they got the aid and protection as provided by this chapter. this does not mean that other religions, for example: Jewish, Zarasustrian, Shinto, Taoism are prohibited in Indonesia. They got a full guarantee as provided by article 29 paragraph 2 and they left the presence, the origin doesn't violate the provisions contained in these regulations or legislation. Against loss/flow inwardness, the Government is trying to channel them towards a healthy outlook and towards To the Goodness of The Almighty. This is in accordance with the provisions of the M. P. R. S. No. II/MPRS/1960, appendix A. the Field I, figure 6. With the words "religious Activities" is meant all sorts of activities that are religious, for example calling a flow as a Religion, use the term-the term in the run or the teachings of his trust, or perform his worship and so on. The principal teachings of religion can be known by the Department of Religion for it to have the tools/means to investigate.]"

Explanation of Article 1 the Determination of the President of the Republic of Indonesia No. 1/PNPS 1965 on Prevention of Misuse And/Or Desecration of Religion can be interpreted to mean that the sixth religion is not the official religion because the process of legalize it just based on the norms *sinderesis* namely with the phrase "Because of the 6 kinds of Religion this is a religion-a religion that embraced almost the entire population of Indonesia". The phrase is thus contrary to the principle of clarity of the formulation in Article 5 letter f of Law of the Republic of Indonesia Number 12 Year 2011 on Establishment of Laws and Regulations that "any Legislation must meet the technical requirements of drafting

Legislation, systematic, choice of words or terms, as well as legal language that is clear and easy to understand so as not to cause a wide range of interpretation in its implementation". The next phrase "This doesn't mean that other religions, for example: Jewish, Zoroastrian, Shinto, Taoism are prohibited in Indonesia. They got a full guarantee as provided by article 29 paragraph 2 and they left the presence, the origin does not violate the provisions contained in these regulations or legislation. Against loss/flow inwardness, the Government is trying to channel them towards a healthy outlook and towards To the Goodness of Almighty God".

In fact, if observed carefully the phrase "This doesn't mean that other religions, for example: Jewish, Zoroastrian, Shinto, Taoism are prohibited in Indonesia. They got a full guarantee as provided by article 29 paragraph 2 and they left the presence, the origin doesn't violate the provisions contained in these regulations or legislation. Against loss\flow inwardness, the Government is trying to channel them towards a healthy outlook and towards To the Goodness of Almighty God", then the Jews, Zoroastrian, Shinto, and Taoism are not forbidden because there is the phrase "origin doesn't violate the provisions contained in these regulations or legislation. Against loss/flow inwardness, the Government is trying to channel them towards a healthy outlook and towards To the Goodness of Almighty God". This phrase can be interpreted to mean that in essence, the sixth religion is prevalent (the author uses this term due to the norm *sinderesis*) and Jews, Zoroastrian, Shinto, Taoism as well as the outside still recognized because of relied on To the Goodness of The Almighty.

Rights to choose religion and/or belief outside of religion that is prevalent in Indonesia should be the protection of the law and the rule of law because these rights in line with human nature itself.

C. Conclusion

Right to have rights can not be applied in Indonesia because it collided with Pancasila. An understanding of Pancasila make the country does not have the courage to give right as the subject of law in Indonesia. Right to have rights is also incompatible with the nature of the precepts one that is on God.

Understanding the right to have rights also should be limited as far as not divide the unity of the Indonesian nation. The right to have these things may be right to death, the right to choose a religion and/or religious beliefs outside the norm in Indonesia or the right to choose the sex.

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