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# PHILOSOPHICAL AND SOCIOLOGICAL ASPECTS OF HUMAN ATTACHMENT TO THE LAW

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## Abstract

This research objective was to discover and reveal the attachment of humans/society to the law based on philosophical and sociological perspectives. This research used the library research method, namely by analyzing literature, data or documents from related institutions, and data from electronic media that were closely related to the research problems. Meanwhile, the research approach was the statute approach, which was a method by reviewing laws relating to the research problems and regulations related to the legal issues under research. Therefore, consistency between each law was seen. In addition, a philosophical approach was also carried out as a reflection of the legal rules to be analyzed based on reality as the function of legal philosophy, namely studying and reviewing law correctly and adequately in interpreting its philosophical problems. The research results indicated that the human attachment to the law in the perspective of legal subjects was viewed from the point of view of philosophy, whether humans for law or law for humans, in the context of modern society in a modern state, as well as in the context of simple society starting from pre-Socratic times when people were looking for true justice until the current modern era. The essence of law created both by state authorities and by a group of people themselves is clearly "law for humans" as legal subjects (natuurlijk persoon) in regulating their social life or in taking actions, or both. Law (rechthandeling) is not "humans for law," but the law can be born from human life association.

**Keywords**: Philosophical, Sociological, Human, Attachment, The Law.

## 1. INTRODUCTION

The title of human attachment to the law based on a philosophical perspective, namely either humans are for law or law for humans, is a very philosophical question. If the researchers look back, the questions of the essence of humans as a whole legal subject, and, indeed, humans and law cannot be separated, will occur. It can be seen in the adage put forward by a Roman philosopher Cicero, namely, “Ubi Societas Ibi Ius.” It means that where society is, there are laws. So, every society must have its laws, both natural laws and laws made by state authorities. Therefore, in the initial review, the researchers discussed the existence of humans as whole legal subjects so that the attachment between law and humans (people) as legal subjects were seen.

There are various perspectives reflected in mind when discussing humans. Some people say humans are rational animals, and some philosophers believe this opinion. Meanwhile, other people judge humans as symbolic animals because humans communicate language through symbols, then interpret these symbols. However, others judge humans as homo Faber, where humans are animals that do work. Human is indeed perfect being. On the one hand, a human is a natural being; like an animal, he needs nature to live. On the other hand, he deals with nature as something foreign, so he must adapt to nature according to his needs.

Humans can be called homo sapiens. Wise humans have reason and excel other creatures. Allah (God of the universe) describes humans as perfect creatures. Humans are considered homo faber. It is because humans can use tools and create them. Humans are also called homo ludens (creatures who like to play) cultured creatures.

Therefore, humans are nothing more and nothing less, and nothing but "hayawaanun naatiqun" or intelligent animals. Humans' intellects distinguish them from other God-created animals. If humans cannot use their minds, there will be no difference between other unreasonable animals with humans as rational animals. In a verse of the Qur'an, Allah says, "Human was given ears but cannot use their ears, cannot use their minds, cannot use their tongues, cannot use their mouths, so they are much worse off than animals which do not have the sense at all.

Based on the existence, Musa Asy'ari, in his book 'Filsafat Islam' (1999), argues that the ways of humans' existence distinguish them significantly from other creatures. As in reality, humans are creatures that can walk on two legs with the ability to think, then that thinking ability determines human nature. Moreover, humans can produce works to be different from other creatures. Humans' works can be seen in the historical and psychological settings of the emotional and intellectual situations that underlie their works. Based on humans' works, humans are creatures who create history. Humans can also be seen from a theological approach perspective. This perspective complements other perspectives by completing the transcendence side because understanding is more fundamental.

Meanwhile, based on the historical attachment, according to Paulo Freire, humans are the only creatures that have a relationship with the world. Humans are different from animals with no history and uncritical contact with the world, live in the eternal present, and only exist in the world. Humans are distinguished from animals because of their ability to reflect (including the intentionality, directionality, temporality, and transcendence operation) that make beings related because of their capacity to convey relationships with the world. Human actions and consciousness are historical in nature. Humans make their connection with their world epic, showing that they relate here to there, now to the past, and the future. Humans create history and vice versa. History creates humans. (Denis Collin & Paulo Freire, 2002).

Meanwhile, western thinkers, such as Karl Marx, points out the difference between humans and animals regarding their needs. Animals immediately integrate into their life activities. Meanwhile, humans make their lives' works as will and consciousness objects. Animals produce only what they need directly for themselves and their offspring, while humans produce universally accessible from physical needs. They only produce from the real in freedom from their needs. Humans are free from their products, and animals produce according to the size and needs of the type of production. Humans produce according to various types and sizes with inherent objects because humans produce according to the laws of beauty. Humans, in working freely and universally, are free to work even though they do not feel immediate and universal needs because they can use several methods for the same purpose. On the other hand, they can face nature not only in terms of one's needs. Therefore, according to Marx, humans are only open to aesthetic values, and the nature of the difference between humans and animals shows

the free and universal nature. (Franz Magnis Suseno, 1999).

## 2. Research Method

This research objective was to discover and reveal the attachment of humans or society to the law based on philosophical and sociological perspectives. This research used the library research method, namely by analyzing library materials, data or documents from related institutions, and data from electronic media that were closely related to the research problems. Meanwhile, the researchers used the statute approach, namely an approach method by reviewing laws relating to the research problems and regulations related to the legal issues under research, so that consistency between each law was seen. In addition, a philosophical approach was also carried out as a reflection of the legal rules to be analyzed based on reality as the function of legal philosophy, namely studying and reviewing law correctly and adequately in interpreting its philosophical problems. This research used primary and secondary data. The primary data was collected by studying laws and regulations, while the secondary data was carried out utilizing literature research.

## 3. Result and Discussion

1. The Essence of People (Humans) As Legal Subjects

The human essence is always related to the essential elements that make it up. It is similar to in monotheism perspective, which seeks a single decisive element, namely material elements in the materialism perspective, or spiritual elements in the spiritualism perspective, or dualism perspective that stipulates two main elements at once. Thus both of them, material and spiritual elements, do not deny each other. The dualism perspectives include pluralism perspective, which establishes a perspective on various main elements reflecting the elements in the macrocosm; or a mono dualism perspective, which establishes humans on the unity of two elements; or mono pluralism, which places the essence in the unity of all elements that make it up. Individual humans have never created themselves, but it does not mean that they cannot determine their way of life after their birth and their existence in the life of this world reaches maturity. Furthermore, all these realities will contribute to answering questions about their nature, position, and roles in life (Musa Asy'ari, 1999, and Vide Mustofa, 2004).

Musa Asy'ari further stated that human nature must be seen at the stages of the nafs, individualist, self, ego. At these stages, all elements form an actual, present, and dynamic unity of self and the dynamic actualization of the present actions and deeds. Humans are substantially and morally worse than demons. However, conceptually humans are better because humans have creative abilities. The stages of human nature’s nafs are determined by deeds, works, and deeds. Meanwhile, in tauhid, human nature and their functions as servants and caliphs become the unity of actualization of body and spirit that forms the actual stage of the nafs. (Musa Asy'ari, 1999, and Vide Mustofa, 2004).

Freire claims that understanding human nature and consciousness cannot be separated from the world. Human relations must always be associated with the world where they exist. The world for humans is separate because humans can perceive the reality outside of themselves and perceive the existence within themselves. The human presence is never separated from the world, and their relationship with the world is unique. The unique status of humans with the world is because of humans in their capacity to know. Knowing is an action that reflects human orientation to the world to raise awareness or authentic action because consciousness explains the human existence in the world. The orientation of the world centers on critical reflection, and the ability to think is a process of knowing and understanding. Therefore, human is process and historical creature bound in space and time. Humans have the ability and must rise and be involved in the historical process to become more. (Siti Murtiningsih, 2004, and video Juhaya S. Praja, 2002).

In the context of humans as legal subjects, basically, since humans are still in the womb, they are legally formal when they want them to be clear as legal subjects. It can be seen in Article 2 of the Indonesian Civil Code or what is known as Burgerlijk Wetboek (BW) voor Indonesie, stating that "The child in the womb of a woman is deemed to have already been born should his interest so requires. If the child is stillborn, he is deemed to have never existed."

The formulation of Article 2 of BW above, if viewed from a grammatical interpretation, shows how desirable it is as a legal subject in which a human who is still in the womb is clearly and considered a person with rights and obligations like an adult human. Thus, basically, between humans and the law cannot be separated. No punishment can result in the death of civil rights or the loss of all civil rights.

2. Human For Law or Law For Human

If looking closely at the title of the sub-chapter above raises a further question. Is it natural law or positive law currently used in a particular country? Moreover, the title of the sub-chapter above is a very philosophical question, imposing on the essences of nature and law, which should both be integrated and complement each other as the researchers explained at the beginning, Cicero, in his famous work, "De Ligibus" says Ubi Societas Ibi ius, meaning where society is, there is the law. In any society, there must be laws with appropriate patterns and forms to the society civilization level.

The meaning of "ubi societas ibi us," according to Peter Mahmud Marzuki (2009:59-72.), is that the law existence always follows the social existence. It indicates that society and law are inherent. As individual beings and social beings (zoon politicon), the law covers the physical and existential aspects of humans. Each society has its laws in the space and time dimensions, whether it is natural law or common law, or customary law, or customs made into law, even positive law with a national dimension.

Law and society have a reciprocal relationship, in which, where the law is, there is society. The law exists to regulate social life so that people have legal awareness regarding the norm guidelines regarding what can be done and actions that are deviations in people's lives.

The research on human attachment to the law becomes philosophical and phenomenal because humans are unique creatures as philosophical research objects, even by studying them as microcosmos. In philosophy, viewing something is divided into essence and existence. Likewise, humans are seen as two parts, essence and existence. Human presence in the world is part of human essence and existence. This human essence and existence make humans exist on earth. Essence and existence run simultaneously, and there is a priority for essence and existence in their journey as humans.

According to Mudlor Achmad (n.d., 9-13), humans have been tirelessly searching for the truth throughout their lives. This desire can be found if people want to explore stories of belief (religion) and the history of human thought (philosophy and science). Truth-seeking means that the truth has not occurred and has not been connected yet, so there is a distance between humans and the truth. It is why if people fail in reaching the truth, it is understandable because there is no connecting path between both of them.

Humans who do reflection will realize that they are dimensional and unique creatures. Humans in existence are due to the potential in humans such as intellectual, biological, spiritual, social, and aesthetic. Human nature is a creature that is free to be a creative and historical creature with transcendent values that always aim for perfection. Humans have professional traits and characteristics not found in other God's creatures.

The liberation carried out by humans is the liberation of humans from the victims of their social oppression and liberation from the alienation between their existence and their essence; therefore, they can be themselves and do not slave to others. Humans as personal

beings who are also called social beings or known as "zoon politicons." They have no meaning in their solitude if they cannot combine themselves with other people around them or make life with specific groups.

If connected with law, this law can be understood as one of the controllers and social engineers to bring order to society. Satjipto Rahardjo (2008) argues that the law is not just regulation, but a portrait of our behavior, and humans will always flash with the law whenever the law is discussed.

According to the flow of natural law, natural law is a universal and eternal law. Judging from the source, some natural laws come from God (irrational), and some from human reason (ratio). According to Friedmann (1970: 95), the history of natural law is the history of humanity in its efforts to find what is called absolute justice in addition to the failures it has experienced. (Lili Rasjidi & Ira Thania Rasjidi, 2007:53).

Meanwhile, Von Savigny emphasizes the essence of his teaching that "das Recht wird nicht gamacht, est ist und wird mit dem volke." He states that the law is not made but grows and develops with society. His view is based on the fact that in this world, there are many nations, and each of these nations has a volksgeist– the people's soul. This soul is different, both according to time and place. The reflection can be seen in the different cultures of each. Law comes from the people's souls. Therefore, the law will always be different at each time and place. It does not make sense if there is a universal and eternal law. Furthermore, Von Savigny says that the association of human life determines the content of the law from time to time. The law developed from a simple society reflected in every individual's behavior to a complex society, where the people's legal awareness is evident in the words of the legal experts. (Lili Rasjidi & Ira Thania Rasjidi, 2007:63).

By looking closely at the legal formulation proposed by Von Savigny from the Historical School of Law, it is evident that law and humans go hand in hand. It can be seen in the sentence "law is not made, but grows and develops with the society." Based on the formulation, it is clear that the law develops behind the society development. If society dies, the law will also die. However, if people live, then the law will also live. If society develops, then the law will also become a modern society. In the context of this School of History, the correlation is the same between law and society. However, the existence of society clearly precedes the law because the law follows society's development.

The school of natural law views law as an instrument to achieve justice. Justice is an essential element of the law. If the law is not fair, it is not the law. Thus, the natural law school views that the law has binding power because the law has a "value of justice." If the law is separated from the value of justice, then the law has no binding force. (Syofyan Hadi, 2018-2019: 36).

Meanwhile, the flow of positive law analytically defines law as "a command of the lawgiver," or an order from the legislator or the ruler. It is an order from those who hold supreme power or sovereignty. Law is considered a logical, fixed, and closed logical system. Law is strictly separated from morals, so from matters relating to justice, and is not based on good or bad considerations or judgments. Furthermore, John Austin divides the law as follows (Lili Rasjidi, 1985:41):

1. God's law, and

2. Man-made law, consisting of:

a. Law in the true sense, which is also called positive law, with details: (1) laws made by the authorities, such as laws, government regulations, and others. (2) laws made by the people individuals used to implement the rights given to them, such as the rights of guardians against people under guardianship, rights of curators against bodies/people in forgiveness (curatele).

b. Law in an unreal sense, namely law that does not meet the requirements as law. This type of law is not made or stipulated by the competent authority or sovereign body,

such as the provisions made by specific associations or bodies in the field of student sports and so on.

In the context of this positive flow of law, it is clear that the attachment of humans to the law is very close and even inseparable because the law is made to regulate humans as legal subjects and not humans made for the law. Many developed countries do it by using the law as a policy instrument. As stated by Satjipto Rahardjo (2006: 151), the law is for humans and not humans for the law, and the law does not exist for itself, but for something more expansive, namely human dignity, happiness, welfare, and human glory.

In this regard, Shidarta (2017) argues, three significant theses explain the relationship between society and law, namely:

1. A mirror thesis states that the positive law that applies in a country fully reflects what is happening among its people. Therefore, it is a society that determines the law. If the social system is damaged, then that is the face of the law. On the other hand, if the social system is healthy, then the law is healthy too. Durkheim is one of the main characters of this mirror thesis. In the constellation of schools of legal thought, the Historical School of Law is also one of this thesis supporters, stating that law is entirely derived from society. Therefore, there is no need for an effort to form structured laws to be carried out by the state because the law needs to follow what has happened and is applicable in society.

2. Selective mirror thesis states that the law is no longer original, following the behavior patterns in society. The law has been designed according to the rulers' interests so that there are patterns that are taken (if it benefits the ruling class), and there are patterns that are abandoned (if it is not profitable). Therefore, the ruler is the power holder who selects the law. Karl Marx believes in this thesis.

3. Interactive mirror thesis, in which Max Weber's thesis believes that there is an interactive process between society and law. It is not always the people who influence the law, but it will also affect society.

Shidarta further states that this interactive mirror thesis is the most reasonable to describe the relationship between society and law in forming and applying the law in the current era. Almost certainly, there is not a single country in the world that functions its positive legal system only as a means of dispute settlement and social control. The positive legal system must also engineer society (social engineering).

According to legal theory, the law plays a vital role in society and even has multifunctionality for the good of the society to achieve justice, legal certainty, order, and benefit. However, the opposite situation can occur even often, where state authorities use the law as a tool to pressure the society so that the society can be mobilized to the desired place by the state authorities (Nazaruddin Lathif, 2017:74).

If the legal function has reached the stage of social engineering, it can be ascertained that a country's positive legal system already has expectations for the future, no longer reflects on the past. Law, thus, is used as a tool to invite people to change. These changes are designed intentionally, not naturally occurring according to society's will. It is dangerous if the ruler does not have good intentions when making a legal design for his people. Marx had already begun to remind him of this because the selection process was never neutral and objective.

Therefore, the law is for humans and not vice versa. If it is drawn into the pragmatic concept of law in Indonesia, the law is made, formed, or created for humans to regulate human life, for example, Law No. 23 of 2004 concerning the Elimination of Domestic Violence was promulgated to prevent violence from occurring within the household which has so far been rampant. In the formulation of several Articles, it is clearly stated that domestic violence is a criminal act, which before the enactment of the law. Hence, domestic violence is considered a common thing and taboo. Therefore, it is clear that the law conceptualized in Law No. 23 of 2004 concerning the Elimination of Domestic

Violence is "for humans" as people with rights and obligations, not “human for the law,” and binds man.

The binding power of a regulation (law) is born when a regulation has been promulgated because promulgation is a form of acknowledgment of the sovereignty of the people themselves. The state must ensure that the regulations made to regulate society to achieve common goals must be known in advance by the society before being enforced. Ideally, every regulation is made by mutual agreement between the government and representatives of the people. That agreement is a form of state recognition of the people's sovereignty. However, the development of the legal system in Indonesia has given rise to many types or forms of implementing regulations that have been unilaterally stipulated without the approval of the people's representatives. Legislation is a solution to accommodate the development of the Indonesian legal system, which still maintains the recognition of people's sovereignty. (Andi Yuliani, 2017:433).

Law and society have interrelated functions. The function of law in society is to prevent conflicts of interest. If it happens, the law will become an instrument or a tool to resolve based on policies based on the applicable laws and regulations. Another example that the researchers can put forward is Law No. 13 of 2006 concerning the Protection of Witnesses and Victims. This law was promulgated for humans as legal subjects, namely regulating the protection of the rights of a witness in all judicial processes within the judiciary and victims of threats from the perpetrators of crimes. Therefore, it is clear that the law is for humans, not vice versa.

Satjipto Rahardjo (1996:90) suggests that the use of law as a policy instrument is a recent development in the history of law. Furthermore, Satjipto Rahardjo (2000) argues that the birth of modern law is very closely related to the phenomenon of the emergence of a modern state. Nevertheless, nowadays, the world is undergoing a fundamental change where the modern state that was so firm in the 18th century is becoming increasingly diluted and affects the sovereignty factor, which is an essential element in law.

However, law and modern still rely on society. As Ergen Eurligh (1862-1922) says, now or at another time, the center of attraction for legal developments is not in the science of law, not in-laws or judges, but in society itself.

Therefore, describing how the law is not simple, even in a superficial society. The development of society into a modern, in certain parts, will lead to convenience, and the rest quite a lot of problems in society, including the problem of law itself. Law is neither born in a vacuum, nor is it autonomous, nor is it value-free. However, the law can be influenced by various aspects of human life, such as society, legal culture, religious values, and customs, so the law must still be relevant to life.

The cause of the law is not relevant to the reality of society because the existing law is formed top-down. It comes from the elite's will (rulers), while society is the target object. Whereas for the law to apply responsively, the law must be formed bottom-up from the reality that lives in society. Referring to the origin or source of the material and the process of forming the law, there are two legal traditions, namely the top-down legal tradition and the bottom-up legal tradition. The top-down tradition has the consequence of emphasizing written law, which is widely adopted by continental European countries with a civil law legal system. Meanwhile, the bottom-up tradition tends to prioritize living customary law from the general behavior of society, which is generally adopted by countries. (Roseffendi, 2018:190).

In modern society and a modern legal state, the law is also modern. The modernity of the law can be seen from the codification of the legal concept itself in the form of law. It has been done by many developed countries, such as countries that adhere to the common law. The United States has regulated particular objects in the form of laws. For example, in the United States, several years ago passed a law regarding

respect for Muslims who are fasting during Ramadan.

## 4. Conclusion

Based on the description above, it can be concluded that the human attachment to the law from the perspective of legal subjects was viewed from a philosophical perspective. Whether humans were for law or law for humans, in the context of modern society in a modern state, as well as in the context of a superficial society starting from pre-Socratic times when people were looking for true justice until the current modern era, the essence of law was created both by state authorities or by a group of people themselves. It was clear that "law for humans" as legal subjects (natuurlijk persoon) in regulating their social life and in carrying out legal actions (rechthandeling) was not "humans for the law." However, the law could be born from the human life association.

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