



FILSAFAT HAK ASASI MANUSIA

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Tujuan Perkuliahan & Pokok Bahasan

Tujuan Perkuliahan

- Memahami signifikansi HAM
- Memahami pembenaran klaim atas HAM
- Memahami kritisisme filosofis HAM

Pokok Bahasan

- Analisis Filsafat terhadap Konsepsi HAM
- Pembenaran Klaim atas HAM
- Hak moral dan hak hukum

[Kepustakaan]

- Andrew Fagan (2006) *The Internet Encyclopedia of Philosophy: Human Rights*. Human Rights Centre, University Of Essex, UK. Source <http://www.utm.edu/research/iep/h/hum-rts.htm>
- *[Constitutional Law and Human Rights Studies]* - herlambangperdana.wordpress.com
- Howard, Rhoda E (1995) *Human Rights and The Search for Community*. Colorado/Oxford: Westview Press.
- Lauren, Paul Gordon (1998) *The Evolution of International Human Rights: Vision Seen*. Philadelphia: University of Pennsylvania Press.

[Memahami Filsafat]

- *Apa itu Filsafat?*

Webster Dictionary

- *a search for a general understanding of **values** and **reality** by **chiefly speculative** rather than observational means*
- *an analysis of the **grounds of** and **concepts** expressing fundamental beliefs*

Mengapa kajian filsafat diperlukan untuk memahami HAM?

- Untuk memahami nilai-nilai dan realitasnya
- Untuk memahami landasan dan konsep-konsepnya

[Pertanyaan dasar (1)]

- Mengapa **manusia memerlukan HAM**? Untuk apa?
- Kalau memang manusia memerlukan HAM, lalu apakah **HAM berlaku untuk semua** manusia?
- Apakah ada HAM yang hanya cocok untuk komunitas/bangsa tertentu, dan belum tentu cocok untuk lainnya?
- Apakah HAM itu **universal**?

[Universality]

- *Human rights have been defined as 'basic moral guarantees that people in all countries and cultures allegedly have simply because they are people (Andrew Fagan 2006)*
- *Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.'* (Nickel, 1992:561-2)

[Pertanyaan dasar (2)]

- Apakah HAM itu harus **dihormati**?
- Bila memang harus dihormati, **siapa** yang memberikan pembenaran bahwa HAM memang harus dihormati?
- **Dimana** pembenaran terhadap HAM itu ada?
- Apakah pembenaran HAM itu **harus melalui hukum**? Dan bila tidak diatur dalam hukum maka apakah HAM akan kehilangan **daya pembenarnya**?

Moral Justification

- *The **moral justification** of human rights is thought to **precede considerations** of strict national sovereignty (Andrew Fagan 2006)*
- *The **contemporary doctrine of human rights** is one of a number of **universalist moral perspectives**. The origins and development of the theory of human rights is inextricably tied to the development of moral universalism.*
- Natural Moral Order (Aristotle) and the Stoics

[Pertanyaan dasar (3)]

- Lalu, apakah yang disebut moral itu?
- Apakah moral itu untuk tujuan keadilan?
- Apakah berarti tujuan keadilan pastilah melekat nilai moral?
- Apakah setiap tujuan keadilan (yang dinyatakan terlekat nilai moral) pastilah adil?
- Apa ukuran untuk mengatakan “adil”?

Moral Philosophy

(Immanuel Kant 1948:84)

- *The basis of moral reasoning must rest upon a **condition that all rational individuals are bound to assent to**. Doing the right thing is thus not determined by acting in pursuit of one's own interests or desires, but acting in accordance with a maxim which all rational individuals are bound to accept. Kant terms this the categorical imperative, which he formulates in the following terms, 'act only on that maxim through which you can at the same time will that it should become a universal law.'*

[Pertanyaan dasar (4)]

- Apakah HAM perlu diatur dalam hukum?
- Bila HAM diatur dalam hukum, apakah nilai-nilai moral akan secara otomatis menjadi bagian dari hukum itu sendiri?
- Bila HAM belum diatur dalam hukum, apakah ia tetap menjadi suatu hak yang harus dihormati?

Moral Rights vs. Legal Rights

- *Legal rights refer to all those rights found within existing legal codes. **A legal right is a right that enjoys the recognition and protection of the law.***
- *Apartheid South Africa: its denial of numerous fundamental moral rights, including the rights not to be discriminated against on grounds of colour and rights to political participation → line of opposition and protest could only be pursued because of a belief in the existence and validity of moral rights.*

[Justice]

(*Nicomachean Ethics*, 189)

- *In distinguishing between 'natural justice' and 'legal justice', Aristotle writes, 'the natural is that which has the same validity everywhere and does not depend upon acceptance.'*

Pertanyaan dasar (5)

- Mengapa banyak terjadi kejahatan HAM justru di abad XX?
(vide: Holocaust, Romusha & Jugun Ianfu, Tragedi 1965, Genocida di Rwanda, Yugoslavia dan Darffur, Invasi Amerika ke Afghanistan dan Irak, dll).
- Apakah kejahatan itu terkait dengan tidak universalnya HAM? Sehingga bangsa satu bisa menindas bangsa lainnya atau bangsanya sendiri?
- Apakah ada hukum yang bertentangan dengan HAM, dan apakah hukum tersebut bermoral?

[Penutup]

- *The principal philosophical foundation of human rights is a belief in the existence of a form of justice valid for all peoples, everywhere.*
- **Bisakah anda bayangkan, apa yang terjadi bila dunia tanpa HAM?**